Case No: FD04P00455

Neutral Citation Number: [2004] EWHC 762 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
PRINCIPAL REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 April 2004

Before :

THE HONOURABLE MR JUSTICE MUNBY

- -

In the Matter of X and Y (Children)

And in the Matter of the Inherent Jurisdiction

Between :

F	**Claimant**
- and -	
(1) NEWSQUEST … LIMITED	
(2) X	
(3) Y (the second and third defendants by their guardian William Simmonds)	**Defendants**
- and -	
TIMES NEWSPAPERS LIMITED	**Intervenor**

- -
- -

Mr Jonathan Baker QC and Ms Louise Potter for the claimant (father)
Mr Anthony Hudson (instructed by Farrer and Co) for the first defendant and the intervenor (the newspapers)
Mrs Heather MacGregor (instructed by Cafcass Legal) for the second and third defendants (children)

The name of the claimant's solicitor is omitted in the interests of confidentiality

Hearing date : 29 March 2004

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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 judge hereby gives leave for it to be reported.

WARNING

Attention is drawn to the terms of the injunction as set out in paragraph [103] of the judgment.

The publication of the whole or any part of this judgment in the form in which it here appears is not of itself prohibited by the injunction.

But the publication of this judgment, either in whole or in part, in conjunction with other information may in some circumstances (and even if that other information is in the public domain) amount to a breach of the injunction.

Mr Justice Munby :

1. This case raises in the most acute form the question of how the courts, exercising their responsibilities under the Human Rights Act 1998, are to hold the balance between, on the one hand, the public interest in knowing about the criminal activities of convicted paedophiles and, on the other hand, the private interest and welfare of a convicted paedophile's vulnerable children. The public, represented for this purpose by the print and other media, have an interest in knowing – a right to know – about what goes on in our criminal courts, especially when paedophiles are convicted of the very gravest sexual offences against children. That public interest, that public right, has a strong call on the support and protection of the court. It is, of course, a public interest that also serves to succour and protect the innocent children who find themselves the victims of such criminality. But the equally innocent children who, as the children or other close relatives of convicted paedophiles, also find themselves the hapless if indirect victims of adult crime also have a strong call on the support and protection of the court. How is this almost excruciatingly difficult balance to be struck? That is the question I have to decide, albeit, of course, in the context of the particular, and unusual, facts of the case which is before me.

The facts

2. The claimant, F, and his brother, U, are identical twins. They have lived for some years in the same town. F is the father of twin daughters born in 1995, X and Y. They are exceptionally vulnerable and suffer from a variety of disabilities. X has both physical and learning difficulties. She suffers from global developmental delay, has severe learning difficulties and has very special needs in terms of both placement and education. She attends a special day school. Y has significant physical disabilities and emotional problems but attends a mainstream primary school.

3. F and U are both convicted paedophiles.

4. In 1996 F was convicted in the Crown Court of one count of indecent assault on and two counts of gross indecency with a boy of 12. He was sentenced to two years' imprisonment. Reports of F's guilty plea and sentence were published in a local daily newspaper, published by Newsquest … Limited, which I shall refer to as "the local daily". The report included F's name and photograph. It was reported that F was a "football youth coach". It was also reported that as part of a plea in mitigation on F's behalf his counsel told the court that F had been abused in a children's home in Ireland and was suffering stress because his wife and two children were all disabled. It was also reported that F and U were "professional fraudsters with a string of convictions to their names". F was referred to as a "father of twins".

5. In 1997 U was prosecuted in the Crown Court on three counts of rape of and two counts of indecent assault on a boy of 11. He was acquitted of all charges. Extensive reports of the criminal trial were published over three days in the local daily. U was

also a football coach. The reports included photographs of U, and gave his name and address. It was reported that his trial had been transferred to another Crown Court "because of fears the case could be prejudiced by adverse publicity surrounding [U]'s twin brother [F], who pleaded guilty last [year] to indecently assaulting a 12 year old boy in a separate case".

6. At that time, of course, F was in prison. As a result of publicity at the time of U's trial, the children's mother suffered harassment to such an extent that she and the girls were re-housed by the local authority in a different area of town. Following his release from prison, F received intensive and long-term psychological support and treatment in relation to his offences from, amongst others, a psychologist well-known for the assessment and treatment of sex offenders. He made concerted efforts to rehabilitate himself. He retained close links with his wife and children.

7. In 2002, F's wife became terminally ill and the local authority commenced care proceedings in relation to X and Y. Following their mother's death later that year, X was placed in a residential home and Y in foster care. F underwent risk assessments and, with the support of the local authority and the children's guardian, gradually assumed sole care of the girls. In fact no care order was ever made: the care proceedings were concluded with no order but with a written agreement providing a comprehensive package of support and monitoring for F and the girls. F is the only person with parental responsibility for his daughters and since then he has cared for them himself, albeit with respite and other support from the local authority.

8. In 2002 another local newspaper published, on its front page, a report that Y was to receive a trophy for her courage. The report included Y's name and photograph and gave quite detailed information about her medical condition. It also reported, incorrectly, that X and Y were in care following the death of their mother. A little later the local daily published, on its front page, a report with the headline 'Mother leaves legacy of love'. In the report F "father of disabled twins … told how his wife prepared them for life without her before she died". F, his wife, X and Y were all named and the report was illustrated by a photograph of the four of them. The report gave the names of the schools attended by X and Y and stated that F was looking after them. In the editorial of the same edition questions were raised about the possibility of F bringing a claim against the hospital that had been treating his wife before her death.

9. In 2003, the local daily reported that U had been charged with raping a boy aged under 16 and indecently assaulting boys under 16. The report included his address. Two days later it reported that U had been bailed by magistrates to appear at the Crown Court. U's arrest and charge were also reported by the local radio station. As a result of this publicity about the charges against U, his property was vandalised, and he was forced to move to a different address.

10. U's trial was fixed to commence in the Crown Court on 22 March 2004. The present proceedings were commenced the previous week and came before Dame Elizabeth Butler-Sloss P on 18 March 2004. F sought an order the material parts of which, as

slightly amended in the light of certain observations made by the President, were in the following terms:

> "RESTRICTIONS
>
> (3) This order prohibits the publishing in any newspaper or broadcasting in any sound or television broadcast or by means of any cable or satellite programme service or public computer network or any other public medium of
>
> (a) the names and address of the children … ;
>
> (b) the name and address of F … ;
>
> (c) the name and address of the schools or any other establishment at which the children are being educated or treated;
>
> (d) any photograph or other picture of either of the children;
>
> (e) any photograph of F;
>
> (f) any other matter.
>
> (4) Paragraph (3) of this order only prohibits publication in a manner calculated or likely to lead to the identification
>
> (a) of either of the above-named children
>
> (i) as the nieces of U;
>
> (ii) as the nieces or daughters of a man who has been accused and/or convicted of sexual offences against children;
>
> (iii) as children who are in the care of a man who has been accused and/or convicted of sexual offences against children;
>
> (b) of F as being
>
> (i) a man convicted or accused of sexual offences against children; or
>
> (ii) the brother of a man convicted or accused of sexual offences against children;
>
> (c) of either of the schools or any other establishment at which the children are being educated or treated as being an establishment at which a child, whose father or uncle has been convicted or accused of sexual offences against children, is being educated or treated.

(5) In addition to the prohibition set out in paragraph (3) above, this order prohibits the publishing in any newspaper or broadcasting in any sound or television broadcast or by means of any cable or satellite programme service or public computer network or any other public medium in connection with any report of the trial of U at the … Crown Court on charges of sexual offences against children of

(i) any photograph of U; and

(ii) any reference in the evidence or otherwise during the trial

(a) to F by name or

(b) to F as father of X and/or Y, or

(c) to X or Y.

(6) Save for service of this order in accordance with paragraph (9) 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.

(7) This order prohibits soliciting any information relating to the children from

(a) either of the children;

(b) their father;

(c) any relation;

(d) any friend;

(e) any carer;

(f) the staff or pupils or residents, or relatives of any pupils or residents, of any establishment;

(g) any employee of [the local authority].

WHAT IS NOT RESTRICTED

(8) Nothing in this order shall of itself prevent any person

(a) inquiring whether a person is protected by paragraph (7) above;

(b) seeking or receiving information from any person who has previously approached the person seeking or receiving information with the purpose of volunteering information;

> (c) soliciting information relating to the child 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."

11. It will be noticed that paragraph (8) does *not* include either an "open court reporting" proviso or a "public domain" proviso, that is, provisos that nothing in the order should of itself prevent any person publishing "any particulars of or information relating to any part of the proceedings before any court other than a court sitting in private" or "any information or picture already lawfully in the public domain": see *Harris v Harris, Attorney-General v Harris* [2001] 2 FLR 895 at paras [92], [350], [353].

12. The President declined to include the words in paragraph (5)(i) which I have emphasised above but otherwise made a temporary order in the terms sought. She directed that the matter was to be heard by me on 29 March 2004, the injunction she had granted being expressed as having effect until 4pm on that day. She also directed that X and Y were to be joined as defendants and invited Cafcass Legal to represent them. That invitation was accepted and a new guardian was appointed for both children.

13. U's criminal trial started on 22 March 2004. A report of the trial was published in the local daily on 24 March 2004, under the headline 'Coach denies abuse charges'. U's name and address were reported. Prosecuting counsel was reported to have told the court that U may have been involved in a local boys' football club as part of "an intentional stratagem to associate with young boys". F was referred to in open court during the trial and he gave evidence in support of U.

14. One of the complainants was shown a photo-album. The witness was asked to identify people in the photographs. He identified F, amongst others, and stated that he was U's twin brother. In cross-examination that complainant was asked whether he knew "that [F] had faced a trial involving interfering with young people and was imprisoned for it". It was stated – all this, of course, in open court – that F had been involved in football teams. U's counsel questioned the officer in the case about F's previous convictions. When U gave his evidence he was asked to confirm that his twin brother was F. U denied that one of the complainants stayed overnight at his (U's) house. He stated that the complainant had, on a few occasions, stayed at his twin brother's house. He also gave evidence that in 1995 F and he were next-door neighbours, sharing a communal garden.

15. On 25 March 2004, F gave evidence in support of U. That evidence was given in open court. He confirmed that he was U's identical twin brother. He gave evidence about the abuse he suffered as a child. He also gave evidence about his conviction in 1996 for sexually abusing a 13 year old boy and his other convictions for offences of dishonesty. He also confirmed that one of the complainants had stayed overnight at his house on four or five occasions, but that he was not aware of him staying overnight with U. He told the jury about his treatment. He expressed the opinion that U had not abused any of the complainants.

16. There was, of course, further reporting of the proceedings in the local daily. The report in the local daily on 26 March 2004 included a photograph of U.

17. Thus the state of affairs when the matter came before me on 29 March 2004. The criminal proceedings against U were still under way in the Crown Court.

The evidence

18. The basic facts as I have set them out above are not controversial. Some elaboration, however, is required, particularly in relation to X and Y.

19. F, in his witness statement, gave this description of his daughters:

> "[X] is very, very disabled. She suffers from developmental delay, cerebral palsy, autism with consequent speech and language difficulties and attends … a special school, and is not really aware of very much that goes on. However she does pick up anxieties and she would be disturbed by unknown people coming to the property either as vigilantes or journalists seeking information and she would of course be dreadfully upset if anything were to happen to me. [Y] is extremely alert. She is physically disabled rather than developmentally delayed and has numerous operations to ensure that she can lead as normal life as possible …
>
> Her cognitive abilities are very good and although she is still categorised as special needs, because her attainment has suffered through her bereavement and all the operations, she is now catching up. She is at … School, which is out of the area, a school deliberately chosen to make disclosure of my past less likely. That said some of the staff are aware of the position with my Schedule 1 status, as indeed they have to be. The Head teacher, Deputy Head teacher and [Y]'s teacher are the only members of staff who are aware of my status. There is a strict protocol in force when I attend the school in that I am always accompanied. Should disclosure be made and the link recognised by the parents in the school then I fear that [Y] would be ostracised, shunned and taunted and that would cause me to have to remove her from the school and start again. This is her third school in recent years and she has settled in extremely well so I would be very anxious at subjecting her to another move. Both children were affected by [their mother]'s death and each is very close to the other twin and very protective of each other as far as they are able to be.
>
> Not only do the children have their regular home and school contacts where they may be targeted but they are active outside school. Both attend a disabled club for children 3 times a week

> and swimming club and [Y] goes to Cubs and Ballet and is currently in the Gang Show and rehearsing very hard for it. She is the more emotionally vulnerable of the two children and acutely aware of what people say and do and could be very damaged by inadvertent disclosure. She is too young to understand the concept of paedophilia but she is not too young to be affected by verbal and physicals assaults on me or the children by vigilante groups."

20. The children's social worker, in her witness statement, said this about X:

> "[X] has global development delay and a severe learning disability with attention seeking behaviour. She has difficulties with balance and is unable to walk long distances. She can say very few words and uses gestures, sounds, expressions and body language to make herself understood. At time she presents with challenging behaviour and is very demanding of adult attention especially from her father. She would not be as directly affected as her sister if publicity about [U] was linked to her and she received unfavourable reactions. Although her comprehension is more advanced than her ability to communicate she would not understand a verbal attack in the way her sister would but she would understand the feelings behind it such as hostility and anger and this would be very unsettling for her. She is very able to pick up moods and feelings. If she witnessed any sort of scene involving her father or at home it would be an immensely negative experience for her. Like [Y] she depends on her father who is her main carer and who provides for all her day to day needs, her basic physical care as well as her emotional needs.
>
> [X] has a Statement of Special Education Needs and attends a Special School … She has short-break care at one of the Local Authority's respite centres. [X] is settled in both these establishments and there are protocols in place to manage [F]'s involvement with them. Both the head teacher of the school and the manager of the respite centre agree with the view that if anyone makes the link between [X] and [U] this could get out of hand and be extremely detrimental for her well-being.
>
> [X] is learning a form of communication called the Picture Exchange Communication system which everyone working with her will use and will assist in easing her frustration at not being able to communicate effectively at times. It is part of the work to help her develop her full potential. This kind of development is only possible if the current stability in [X]'s life is maintained. [X] does not have as many after school interests as her sister but she attends a swimming class on Saturdays so there are several settings where she could come across adverse reactions if there is publicity about her uncle."

21. The social worker said this about Y:

> "After years of great emotional upheaval and physical difficulties [Y] has benefited from a stable home situation over the past few months. She has been expressing her distress through difficult behaviour at school but she started at a different school in April 2003 and has settled very well. She has a Statement of Special Education Needs but is holding her own in a mainstream school with extra support. Most of her difficulties are thought to relate to her emotional and behavioural difficulties and to the amount of school time she has missed. She is expected to catch up with her peers gradually and the school reports her continued progress both academically and socially.
>
> The headteacher and key staff know of [F]'s Schedule 1 offenders status and there are protocols and contracts in place to manage [F]'s involvement with the school. These are working well. The headteacher has told me that in his opinion it would be very detrimental to [Y]'s progress if her uncle's situation became public knowledge and it affected her security.
>
> [Y] presents as a lively, outgoing, talkative, eight-year-old girl. She has been described in the past as being overly friendly with adults she does not know well and as a young child she was indulged and spoilt by her parents. [F] has taken advice about this and is working hard to help [Y] behave appropriately. He no longer gives her an unreasonable amount of material goods. [Y]'s self-esteem, which appears robust when first meeting her, is not secure and she needs love and reassurance to boost her confidence. She has no knowledge of her father's Schedule 1 offender status and although she will be told about it when she is old enough to understand and deal with it maturely, she would be devastated if her trust in him was destroyed in a negative way."

22. Finally, the children's guardian in the care proceedings expressed the view that "if [F] is physically assaulted and unable to care for his daughters they will suffer intolerably such is the extent of their needs for their father to be able to support them both physically and emotionally on a 24 hour cycle."

The hearing

23. F was represented by Mr Jonathan Baker QC and Ms Louise Potter, X and Y by Mrs Heather MacGregor and Newsquest … Limited and Times Newspapers Limited (which I shall refer to as "the defendant newspapers") by Mr Anthony Hudson. Their submissions were uniformly of the highest quality and have been of the very greatest assistance to me.

24. Mr Baker, on behalf of F, and Mrs MacGregor, on behalf of X and Y, both sought a continuation of the order made by the President, but including the words omitted from paragraph (5)(i).

25. In opening the case Mr Baker summarised F's worries as follows. F is extremely concerned that, in the event of U being convicted, there will be adverse publicity not only about U but also about himself, including references to the evidence given by or about him during U's trial, re-publication of the old story about his conviction, articles drawing attention to the similarity of the brothers' criminal records, and exposure of the fact that he, a convicted paedophile, is the sole carer of his two disabled daughters. He is worried that such publicity may include photographs of and material about the girls. He is concerned that the girls will suffer harm as a result of the publicity: physical harm if their home is attacked and psychological harm if they come to hear of the allegations or if their father's capacity to care for them suffers under the intense pressure. In particular, F is concerned that Y, who is being educated in a mainstream primary school and has as much understanding as any 8-year-old girl, will suffer greatly from such publicity. He is also concerned that publication of a photograph of U in connection with any article describing him (U) as a sex offender, may cause significant harm to the girls. U and F, as I have said, are identical twins. F reports that when he is in the town centre he is mistaken for U. He has been shouted at, called a paedophile and pervert and threatened.

26. These concerns are shared by the professionals responsible for providing support to F and the girls. In particular, the social worker from the local authority disabilities team who co-ordinates the support package is concerned that the placement of the girls with their father may break down under strain from adverse publicity. If the girls have to leave their home, it will be very difficult if not impossible to find any placement that meets their needs.

27. Mrs MacGregor told me that the guardian (entirely appropriately as it seems to me) has not sought to establish the views of either of the children in relation to the current application. Nor has he met the children. The scope of his enquiries has been limited to discussions with the local authority. X, due to the nature and level of her disabilities, is not capable of setting out her wishes and feelings. Y is almost 9 and might therefore be thought to be able to indicate her views to the court, but in the light of her current lack of knowledge concerning the matters at issue it was – rightly – not thought appropriate to involve her directly. It is assumed that neither child would wish her privacy or her family life to be disturbed. In short, Mrs MacGregor made common cause with Mr Baker.

28. Mr Hudson, on behalf of the defendant newspapers, opposed the application for an injunction in its present terms and submitted that any injunction granted ought not to extend to F. But the real thrust of his argument was that the injunction ought to include both an open court reporting proviso and a public domain proviso and that there should be no injunction preventing publication of photographs of U. His skeleton argument set out the local daily's position very clearly:

> "Newsquest wishes, amongst other things, to:

> (i) publish a fair and accurate report of the trial of [U], including publishing any references to, and the evidence of, [F]; and
>
> (ii) be able to publish, when appropriate, reports of [F]'s previous convictions and reports of any future criminal proceedings against and/or involving [F].
>
> Save for fair and accurate reports of criminal proceedings held in public, Newsquest does not wish to name [X] and/or [Y] as being the daughters, and in the care, of a man convicted of serious offences involving the sexual abuse of children; or as being the nieces of a man who has been previously accused of sexually abusing children and who is currently on trial facing very serious charges of sexually abusing children."

29. Whilst the hearing before me was going on, the local authority held a planning meeting to consider contingency planning in the event of F for any reason being unable to care for his daughters. The general plan in that event would be for X to be accommodated at an identified respite care resource and Y to be placed either with friends or with family and failing that in local authority foster care. The meeting also considered contingency planning in the event of the injunctions granted by the President being varied or discharged. I do not propose to go into the details save to record that the local authority contemplates that it might become necessary for the family to move to a new address or for the girls to move schools.

30. The hearing had not concluded by 4pm, so I renewed the order made by the President on 18 March 2004, extending the injunctions she had granted until I had given judgment. At the end of the hearing I reserved judgment.

31. The next day – 30 March 2004 – whilst preparing this judgment I was informed that U had in fact been convicted. The charges related to three boys, all brothers. Although U was acquitted on some charges of indecent assault in relation to the eldest boy, he was convicted on five counts of rape of the middle boy between the ages of 11 and 16 and five counts of indecent assault on the youngest boy from the age of 11 upwards. He was sentenced to a total of eleven years' imprisonment. All this was reported in the local daily. Again, there was a photograph of U.

32. On 2 April 2004 I sent the draft judgment to the parties and heard argument on the form of the order. I now (6 April 2004) hand down judgment.

The law – general

33. I can take the law reasonably shortly. I need not go through all the old authorities. Nor need I do more at this stage than merely refer to *Douglas v Hello! Ltd* [2001] QB 967 and *A v B plc* [2002] EWCA Civ 337, [2003] QB 195. The starting point now is the recent decision of the Court of Appeal in *Re S (Identification: Restrictions on*

Publication) [2003] EWCA Civ 963, [2003] 2 FLR 1253, the implications of which I considered in *Re Roddy (a child) (identification: restriction on publication), Torbay Borough Council v News Group Newspapers* [2003] EWHC 2927 (Fam), [2004] 1 FCR 481.

34. Shortly before the Human Rights Act 1998 came into force I had summarised the jurisprudence 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."

But, as I pointed out in *Re Roddy* at para [16], this analysis has had to be revisited in the light of the Act, and all the earlier learning has now to be reviewed in the light of the Court of Appeal's decision in *Re S*:

> "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."

35. Although at one stage Mr Baker sought, somewhat faintly, to suggest otherwise, it is in reality – and correctly – common ground in the present case that I am concerned, as Hedley J and the Court of Appeal were in *Re S*, with the protective jurisdiction and not with the custodial jurisdiction. So the children's interests are not paramount: see *Re S* at paras [19]-[22]. In such a case the proper approach now to the jurisdiction is that encapsulated in a passage in Latham LJ's judgment in *Re S* at para [75]:

> "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."

36. There is a balancing exercise to be performed. As Lord Phillips of Worth Matravers MR said at para [108]:

> "It is necessary in the individual case to balance Article 8 rights which are engaged against Article 10 rights."

See also Hale LJ, as she then was, at paras [40], [52] and [60]. Thus, as I said in *Re Roddy* at para [18]:

> "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."

37. Latham LJ in *Re S* at para [64] described the nature of the balancing exercise required under the 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."

This has to be read together with Hale LJ's observation at para [54] that:

> "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."

The law – Convention rights

38. Thus the nature of the balancing exercise. But what precisely are the rights which are here in contention? Primarily, of course, there are ranged against each other the rights of the children, under Article 8, to "respect for [their] private and family life" and the rights of the newspapers and the media generally and indeed of the public at large, under Article 10, "to freedom of expression" including "freedom to hold opinions and to receive and impart information and ideas without interference by public authority". But one must not forget F's corresponding rights under Article 8 (though they are not in fact relied upon by Mr Baker) and also U's right under Article 6 to a fair trial.

39. I mention the latter because, as Hale LJ pointed out in *Re S* at para [44], Article 6 impacts upon Article 10. As the Strasbourg court said in *Diennet v France* (1995) 21 EHRR 554 at para [33]:

> "The court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6. This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the court can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6(1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society."

As Hale LJ pointed out, newspaper and other media reports have an important part to play in safeguarding that public character and protection.

40. Mr Hudson has appropriately directed my attention to a number of well-known authorities emphasising the importance both of the principle that justice should be performed in public and of the principle that the press and other media should be free to report what goes on in open court: see for example *Scott v Scott* [1913] AC 417 at pp 463, 477, *Attorney-General v Leveller Magazine Ltd* [1979] AC 440 at pp 449-450, *R v Secretary of State for the Home Department ex p Simms* [2000] 2 AC 115 at p 126 and *Clibbery v Allan* [2002] EWCA Civ 45, [2002] Fam 261, at para [16]. I confine myself to two citations from domestic authority. The first is the observation of Sir John Donaldson MR in *Attorney-General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109 at p 183 that:

> "the existence of a free press … is an essential element in maintaining parliamentary democracy and the British way of life as we know it … the media are the eyes and ears of the general public. They act on behalf of the general public. Their right to know and their right to publish is neither more nor less than that of the general public. Indeed, it *is* that of the general public for whom they are trustees."

41. The other is the ringing statement of principle to be found so eloquently expressed in the judgment of Watkins LJ in *R v Felixstowe Justices ex p Leigh* [1987] QB 582 at p 591:

> "The role of the journalist and his importance for the public interest in the administration of justice has been commented upon on many occasions. No one nowadays surely can doubt that his presence in court for the purpose of reporting proceedings conducted therein is indispensable. Without him, how is the public to be informed of how justice is being administered in our courts? The journalist has been engaged upon this task in much the same way as he performs it today for well over 150 years. In her work, *Justice and Journalism*

(1974), p. 24, Marjorie Jones, making a study of the influence of newspaper reporting upon the administration of justice by magistrates, stated, having referred to a case decided in 1831:

> "The same ruling that excluded the attorney admitted the newspaper reporter. The journalist entered, and has remained, in magistrates' courts as a member of the public taking notes. The constant presence of newspaper men in magistrates' courts provided not only a record of the proceedings but also a means of communication with the public. Through newspaper reports magistrates had access to a wider audience beyond the justice room or the police office. Communication is particularly important for deterrent sentencing, which requires that potential offenders shall be aware of the punishment they are likely to incur."

Later in her study, she recorded, at p. 26, that in Dickens' time journalists were the only impartial observers who sat regularly in magistrates' courts, day after day, week after week, month after month. In the provinces, particularly, the same reporter might often cover the local courts for year after year. These men regarded themselves as representing the absent public. And they were the first to concern themselves with the defence of the defenceless in the summary courts.

Lord Denning in The Road to Justice (1955) stated with regard to the free press, at p. 64:

> "A newspaper reporter is in every court. He sits through the dullest cases in the Court of Appeal and the most trivial cases before the magistrates. He says nothing but writes a lot. He notes all that goes on and makes a fair and accurate report of it. He supplies it for use either in the national press or in the local press according to the public interest it commands. He is, I verily believe, the watchdog of justice. If he is to do his work properly and effectively we must hold fast to the principle that every case must be heard and determined in open court. It must not take place behind locked doors. Every member of the public must be entitled to report in the public press all that he has seen and heard. The reason for this rule is the very salutary influence which publicity has for those who work in the light of it. The judge will be careful to see that the trial is fairly and properly conducted if he realises that any unfairness or impropriety on his part will be noted by those in court and may be reported in the press. He will be more anxious to give a correct decision if he knows that his reasons must justify themselves at the bar of public opinion."

> Those observations suffice to emphasise to the mind of anyone the vital significance of the work of the journalist in reporting court proceedings and, within the bounds of impartiality and fairness, commenting upon the decisions of judges and justices and their behaviour in and conduct of the proceedings."

42. Mr Hudson also, equally appropriately, took me to various decisions of the Strasbourg court: see *Handyside v United Kingdom* (1976) 1 EHRR 737 at paras [48]-[49], *Pretto v Italy* (1983) 6 EHRR 182 at para [21], *Axen v Germany* (1984) 6 EHRR 195 at para [25], *Campbell and Fell v United Kingdom* (1984) 7 EHRR 165 at para [87] and *Jersild v Denmark* (1994) 19 EHRR 1 at para [31]. I have already set out the key passage in *Diennet v France* (1995) 21 EHRR 554 at para [33]. It suffices if I refer to just two more authorities.

43. The first is *The Observer and the Guardian v United Kingdom* (1991) 14 EHRR 153 at paras [59]-[60] where the court provided the following summary:

> "[59] The Court's judgments relating to Article 10 – starting with *Handyside*, concluding, most recently, with *Oberschlick* and including, amongst several others, *Sunday Times* and *Lingens* – enounce the following major principles.
>
> (a) Freedom of expression constitutes one of the essential foundations of a democratic society; subject to Article 10(2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.
>
> (b) These principles are of particular importance as far as the press is concerned. Whilst it must not overstep the bounds set, inter alia, in the "interests of national security" or for "maintaining the authority of the judiciary," it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog."
>
> (c) The adjective "necessary," within the meaning of Article 10(2), implies the existence of a "pressing social need." The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on

> whether a "restriction" is reconcilable with freedom of expression as protected by Article 10.
>
> (d) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient."
>
> [60] For the avoidance of doubt … the Court would only add to the foregoing that Article 10 of the Convention does not in terms prohibit the imposition of prior restraints on publication, as such. This is evidenced not only by the words "conditions," "restrictions," "preventing" and "prevention" which appear in that provision, but also by the Court's *Sunday Times* judgment and its *Markt intern Verlag GmbH and Klaus Beermann* judgment. On the other hand, the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest."

44. The other is *Bergens Tidende v Norway* (2000) 31 EHRR 430 at paras [48]-[49] where the court said this:

> "[48] According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". This freedom is subject to the exceptions set out in Article 10(2), which must, however, be construed strictly. The need for any restrictions must be established convincingly.
>
> The test of "necessity in a democratic society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the

> reasons given by the national authorities to justify it are relevant and sufficient. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10.
>
> [49] The Court further recalls the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. In cases such as the present one, the national margin of appreciation is circumscribed by the interests of a democratic society in enabling the press to exercise its vital role of "public watchdog" by imparting information of serious public concern."

45. As the court said in *Castells v Spain* (1992) 14 EHRR 445 at para [43]:

> "the pre-eminent role of the press in a State governed by the rule of law must not be forgotten."

46. But however important the rights protected by Article 10 – and, as we have seen, the Strasbourg court views freedom of expression as being "one of the essential foundations of a democratic society" and something of "particular importance", just as it views the press as having a "pre-eminent role" in a State governed by the rule of law – Article 10 is no longer the trump card referred to by Hoffmann LJ in *R v Central Independent Television PLC* [1994] Fam 192 at p 203: see now *Douglas v Hello!* per Sedley LJ at paras [136]-[137], *A v B plc* per Lord Woolf CJ at para [6] and *Re S* per Hale LJ at para [60]. As Mr Baker pointed out, Lord Woolf CJ was careful to omit from the extract of Hoffmann LJ's judgment which he cited with approval in *A v B plc* at para [11] the famous passage where Hoffmann LJ had said that "there is no question of balancing freedom of speech against other interests. It is a trump card which always wins."

47. In my judgment *Re S* is, as Mr Baker and Mrs MacGregor assert, plain authority for the proposition that the court has jurisdiction to grant an injunction that has the effect of restricting the reporting of a criminal trial being held in open court: see, for example, at paras [40] and [75].

48. There was a certain amount of debate before me as to whether the court also has jurisdiction to restrain the re-publication of information which is already in the public domain. In my judgment the court plainly has jurisdiction to make such an order. That seems to me necessarily to follow from the general principles articulated in *Re S*. And if direct authority for the point is required then there is, as I remarked during the course of argument, a decision of mine earlier this year: see *Re K* [2004] EWHC 47 (Fam), a case where, as it happens, I restrained, albeit initially only for a limited period, both the publication of certain information about a criminal case proceeding in open court in the Crown Court and the re-publication of certain information that was undoubtedly in the public domain.

49. As Mr Baker points out, it has been, ever since the decision in 1990 of Sir Stephen Brown P in *In re C*, the general, though by no means the invariable, practice to qualify injunctions *contra mundum* with a public domain proviso: see *Kelly* at p 92. Indeed in *Kelly* at p 93, and again in *Harris v Harris* at para [353], I expressed the view that such a proviso should "normally" be included. But, as Mr Baker also points out, the proviso was omitted from the order made by the Court of Appeal in *Re H (Minors) (Injunction: Public Interest)* [1994] 1 FLR 519, from the order made by Charles J in *A v M (Family Proceedings: Publicity)* [2000] 1 FLR 562 and, indeed from the order made by Hedley J in *Re S*: see *Re S (publicity)* [2003] EWHC 254 (Fam) at para [20]. And it may be noted that this part of Hedley J's order was not challenged in the Court of Appeal: see per Hale LJ at para [12]. Moreover, as both he and Mrs MacGregor point out, section 12(4)(a)(i) of the Human Rights Act 1998 plainly treats "the extent to which the material has … become available to the public" as being relevant but not determinative. The simple fact is, as Charles J put in *A v M* at p 565, that "the repetition of material that has been placed in the public domain can be damaging to a child." I agree.

50. So much for the important public rights protected by Articles 6 and 10. What of Article 8? As Mrs MacGregor points out, in the circumstances of the present case X and Y are each entitled to pray in aid both their "right to respect for [their] private … life" and also their "right to respect for [their] … family life": see *Re S* per Hale LJ at para [38]. The meaning in this context of "family life" is plain enough: it relates to the family life that the girls currently enjoy and share both with their father and with each other: cf *Re Roddy* at para [38]. The meaning of "private life" is perhaps not so obvious. In *Botta v Italy* (1998) 26 EHRR 241 at para [32] the Strasbourg court said:

> "Private life, in the court's view, includes a person's physical and psychological integrity; the guarantee afforded by Article 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."

In *Bensaid v United Kingdom* (2001) 33 EHRR 205 at para [47] it added:

> "Private life is a broad term not susceptible to exhaustive definition … 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."

51. So, as I pointed out in *R (A, B, X and Y) v East Sussex County Council (No 2)* [2003] EWHC 167 (Admin), (2003) 6 CCLR 194, at paras [99] and [114], included in the private life respect for which is guaranteed by Article 8, and embraced in the "physical and psychological integrity" protected by Article 8, is the right to participate in the life of the community and to have access to an appropriate range of social, recreational and cultural activities.

52. Furthermore, as I observed during the course of argument, a disabled person is, purely by reason of their impairment, likely to be constrained in their ability to enjoy what life has to offer. So anything which impacts upon what remains to such a person of the pleasures of life is commensurately more important to them. For that reason, and to the extent that disability deprives someone of what makes life enjoyable and enriching for the majority, enhanced weight is properly to be attached to the Article 8 rights of the disabled: see the *East Sussex* case at paras [138], [148].

The law – the application of the balancing exercise

53. In the context of a case such as this there is to be found in Hale LJ's judgment in *Re S* at paras [55]-[59] what counsel were all rightly agreed is some very helpful guidance as to how the balancing exercise should actually be approached:

> "[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 … It must also consider those features which enhance its importance in the particular case. In this case, these include: (a) the particular importance to be attached to the reporting of criminal trials; these have to be subject to the scrutiny, not only of those in the courtroom but also of the wider public, not only to protect individuals against arbitrariness but also to preserve public confidence in the administration of justice; (b) in this context, therefore, the importance of the press's freedom of expression is enhanced by the corresponding freedom of the public to receive the information in question; and (c) this particular trial will raise more than usually important issues, about an unusual and controversial form of child abuse and about the conduct of the world famous children's hospital in which it was allegedly allowed to take place. The factors mentioned in s 12(4) of the 1998 Act are also relevant at this point.
>
> [56] But that does not mean that no restriction, however limited, can be justified under art 10(2). The court must

consider what restriction, if any, is needed to meet the legitimate aim of protecting the rights of CS. If prohibiting publication of the family name and photographs is needed, the court must consider how great an impact that will in fact have upon the freedom protected by art 10. It is relevant here that restrictions on the identification of defendants before conviction are by no means unprecedented. The situation may well change if and when the mother is convicted. There is a much greater public interest in knowing the names of persons convicted of serious crime than of those who are merely suspected or charged. These considerations are also relevant to the extent of the interference with CS's rights.

[57] In considering the proportionality of the proposed interference with the right of CS to respect for his private and family life, the judge must again consider the magnitude of the interference proposed. He must consider among other things: (a) the extent to which this additional intrusion would add to the interference which has already taken place and is bound to take place in future; (b) the extent of any further harm that identifying publicity about the trial will do to this child's private and family life, in which his mental health is a 'crucial part'; (c) the impact, not only directly upon the child but also upon his father and others who are looking after him, and his school, and the extent to which their task will be made harder by this kind of publicity; and (d) the impact on this child's relationship with his mother in the short and the longer term and the extent of the damage this will do to this aspect of his family life.

[58] The court must then consider what steps, if any, are necessary to prevent or minimise this interference. Again, there may be an important difference between the impact of prolonged identifying publicity, with photographs, during the trial and the rather shorter period during which the family might be identified if there is a conviction.

[59] These considerations may be helpful in thinking carefully about the extent of the interference or limitation proposed and the necessity for each. A comparatively small additional harm to a child who has already suffered so much may not be a sufficient reason to limit reporting of such an important trial. But the extent of the limitation proposed is not so great in relation to the reasons why reporting criminal trials is so important as to suggest that it could never be justified to impose it. No one is seeking to limit what can be said about the trial, however much the terms of some court reporting by some newspapers may be disliked in some quarters. Mere distaste or disapproval, as Hoffman LJ indicated in *R v Central Independent Television plc*, can never be a ground for interference."

The law – some other cases

54. Cases are of course to be decided by the proper application of principle and not just by comparing the facts of more or less similar cases with a view to following the previous decision which seems closest on the facts. But that said, there is, I think, advantage in briefly comparing and contrasting the facts of some of the reported cases in this area of the law.

55. I start with *In re X (A Minor) (Wardship: Jurisdiction)* [1975] Fam 47. The facts are too well known to need much elaboration. An injunction was sought to suppress a book describing the aberrant private practices 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". The Court of Appeal refused to grant relief.

56. I go next to the equally well-known case of *R v Central Independent Television PLC* [1994] Fam 192. There an attempt was made to prevent the broadcasting of the fact that the non-resident father of a 5-year-old girl, who lived with her mother, was a convicted paedophile, and the broadcasting of scenes showing the father's arrest and reception into custody at the police station. It was accepted that the child would inevitably discover this sad and terrible secret of which she was previously unaware and would be bound to suffer, perhaps suffer very deeply, as a result. Again, the Court of Appeal refused to grant relief.

57. Both those cases, of course, were decided before the Human Rights Act 1998 came into force and long before the decision of the Court of Appeal in *Re S*. But as I said in *Re Roddy* at para [20], there is nothing whatever in the judgments in *Re S* to suggest that the outcome in either case would have been different had the new approach been adopted.

58. That conveniently takes me on to the facts of *Re S* itself. In that case the mother of a 7-year-old boy was due to stand trial in the Crown Court for the murder of his elder brother. She was now separated from the boy's father with whom he was now living. Hedley J accepted that the boy was a very vulnerable child, having a report from a consultant child psychiatrist (see *Re S* per Hale LJ at para [11]) indicating that:

> "if there is a long period of adverse named publicity, the effect on this vulnerable boy, who has already lost a brother by death and has been deprived of his mother's care (and it has to be said that there is no evidence that she was anything other than a good and caring parent to CS) would, in my opinion be significantly harmful. It would not be possible to protect him in the way I mentioned above. The effect of bereavement on a child of this age is to enhance the risk of developing a depressive disorder five-fold. CS, therefore, whilst at present well-functioning carries this enhanced risk which may not manifest itself immediately. The risk continues into adult life.

> The addition of the stress of coping with the curiosity and possible teasing and bullying of his peers would be to significantly increase the possibility of his developing a psychiatric disorder."

But he refused to make an order preventing the identification of the mother as the defendant in the criminal proceedings. By a majority, the Court of Appeal upheld his decision. Latham LJ at para [64] said that Hedley J had come to "the right conclusion". Lord Phillips of Worth Matravers MR at para [106] said that his conclusion "was correct".

59. Hale LJ at para [37] contrasted the facts of the case with the facts of *Re X* and the *Central Television* case:

> "The information in this case lies somewhere in between that in *Re X* and *R v Central Independent Television plc* and that in *In re M and N (Minors) (Wardship: Publication of Information)* [1990] Fam 211 or *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100. The proposed publication will not relate directly to how CS is currently being brought up. We do not know whether it will be necessary to refer to him at all in the criminal trial, but we understand that these respondents have agreed not to publish anything which would refer to him directly. 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. They are the reason why he has lost the older brother he loved, why he had to go into foster care for more than a year, and why he is no longer living with the mother he loves. The impact upon him of all those events will be heightened as the trial proceeds and is reported in the press. The reactions of others around him to those reports are likely to have an important bearing on his relationship with and understanding of his mother. Thus the reports can be expected to have a real bearing on how he is brought up in future. The more harm that is done by the trial process, the more difficult will be the family court's task in trying to safeguard his future welfare. Decisions which have still to be made about contact with the mother are likely to be affected, as might also be future decisions about where he and his father are to live, and the continuation or discharge of the care order."

She added at para [39]:

> "[CS] is also, in a very real sense, a victim of the alleged offence. He has lost his brother, his mother, and his family life, and he is at much greater risk of suffering serious psychiatric ill-health in future."

Her analysis was not challenged by either of the other two judges and, if I may respectfully say so, is plainly correct.

60. Any proposed publication in the present case, in contrast, according to Mr Hudson, would not relate to X or Y, or to events in which they have been involved, or relate to or impact on the manner in which they are being brought up.

Discussion

61. It may be helpful to take stock at this point. As Mrs MacGregor points out, a great deal of information concerning the family is already in the public domain. This includes information relating to (a) F's convictions, including those for indecency in 1996, (b) U's arrest, trial and subsequent acquittal in 1997 for offences of indecency, (c) U's current trial for offences of indecency, (d) the nature of the children's disability, (e) the death of their mother in 2002 and (f) the fact that they were in the care of social services and are now in the sole care of their father F. The material in the public domain includes articles featuring the girls, by name and in photographs, and identifying F, by name and in photographs, as their carer. Furthermore, as she points out, although the last media coverage of F and the children in 2002 was entirely positive, details concerning F's convictions, his connection with U and the events relating to the current trial have been repeated in open court although thus far not *published,* pursuant to the President's order of 18 March 2004.

62. There is controversy before me as to the extent to which all this is currently known to – or perhaps putting the point more accurately is presently in the minds of – the general population of the town where F and his daughters live.

63. The defendant newspapers say that a large but necessarily unquantifiable number of people in the area know of both F and U and know of their history. Many people, it is said, will know that F and U are twin brothers and (in part as a result of the articles published in 2002) that F is the father of X and Y. Specifically it is said that a large but unquantifiable number of people in the area will be aware: (i) that F has been convicted of serious offences involving the sexual abuse of children; (ii) that F has twin daughters, X and Y; (iii) that F is the sole carer of X and Y; (iv) that F has an identical twin brother, U; and (v) that U has been prosecuted and now convicted, having on a previous occasion been acquitted, in relation to very serious offences involving the sexual abuse of children. All this information, says Mr Hudson, is not merely in the public domain but also well-known in the area.

64. The defendant newspapers also point to F's own evidence that "all the neighbours know my history and accept it", that a neighbour who has recently moved in has

"complained to the Council" – the nature of the complaint is unspecified – and that "when I am in [the town centre] people think I am [U]. I have been pointed at, shouted at, called a paedophile, called pervert and threatened with people shouting "You're dead" at me."

65. As against that F says that, although a small number of people who need to know are aware of his background, none of the parents and few of the other adults at Y's school or who are involved in her various extra-curricular activities know his history.

66. Clearly, all this information is in the public domain, but that is not at all the same thing as saying that it is well-known in the area or that it is currently in the minds of people generally. There is, I think, considerable force in the point made by Mr Baker that, with the advent of the internet, and in a world where there is an almost infinite quantity of accessible information, it is impossible to see the public domain as something which has clear boundaries. As he says, although some information will be manifestly well-known so that re-publication will have comparatively little effect, other information may be obscure so that re-publication could have a very significant effect. As he also says, whereas some information, once in the public domain, will stay there permanently, other information may in reality disappear from the public domain after time, in the sense that although it remains in a cuttings file or a database it never or hardly ever sees the light of day. Moreover, there will be cases – and this he says is one – where pieces of information may have been published separately, and thereby brought into the public domain, without any connection being made between them, but where subsequent publication of an article linking the pieces will bring the whole story into the public domain in an entirely new way. He draws the analogy with a jigsaw – someone in possession of the individual pieces will only see the whole picture when it is put together. He submits, and I agree, that these are all matters to which the court must have "particular regard" under section 12(4)(a)(i) of the Human Rights Act 1998 when analysing "the extent to which the material has … become available to the public". Specifically, he submits that the contents of the earlier articles in 1996 relating to F's conviction, and the later articles in 2002 about the fact that he was caring for his daughters, have disappeared from the general public consciousness and thus, as he would have it, from the public domain.

Discussion – the case for restraint

67. Mr Baker and Mrs MacGregor, as I have said, make common cause. Their submissions can, I think, be summarised as follows.

68. The defendant newspapers have a clear and legitimate aim in reporting U's criminal trial. The offences for which he was on trial, and for which he has now been convicted, are obviously extremely serious and there is an undisputed public interest in such reporting. It is accepted that the order sought interferes with the rights of the media and the public under Article 10 in that it curtails, inter alia, the reporting of both the fact that F gave evidence and the content of his evidence. It also, of course, interferes with the media's right to report again the circumstances of F's own trial and conviction.

69. Mr Baker and Mrs MacGregor acknowledge that the defendant newspapers are responsible bodies whose aim is to report on matters legitimately in the public interest; that it is in the public interest that trials involving allegations of serious sexual offences against children should be fully reported; that U having now been convicted, it can be argued that the fact that twin brothers have been convicted of similar offences is a matter of public interest that should be published; and that it can be argued that the placement of children in the care of their father after he has served a prison sentence for serious offences against another child is a matter of public interest. They accept that the mere fact that the girls have the misfortune to be related to men who have committed extremely serious sexual offences against children does not by itself justify an injunction.

70. As against that, it is said that X and Y have important rights which are entitled to protection under Article 8. Each has the right to maintain, to preserve and protect the family life she currently enjoys both with her father and with her sister. And each has the right to have her private life respected. Mr Baker and Mrs MacGregor draw attention to the particular factors which they submit make any interference with their rights disproportionate in the circumstances of the current case:

i) Although the defendant newspapers are responsible bodies, the manner of all modern reporting, especially tabloid reporting, is unavoidably sensationalist. However responsibly the matters are reported in the defendant newspapers, it is highly probable that the story will be picked up and covered by other, possibly less scrupulous, publications.

ii) The strong public feeling about paedophilia has led on occasions to harassment and victimisation of innocent persons. Whilst F is not innocent, he has, they say, paid his debt to society, received ongoing treatment for his problems, and been entrusted with the important task of raising his two disadvantaged daughters. It is not in the public interest that he, and they, should be exposed to harassment.

iii) Both children are exceptionally vulnerable. Each is seriously disabled. They have suffered a number of setbacks and disruptions in their lives including the devastating loss of their mother. Both girls have only recently become settled at home and school. Their father is their sole carer. The care of the children is extremely demanding. Any stress on him is likely to severely impact upon his ability to care for the children.

iv) Each of the girls suffers from profound disability and has special needs. X, as I have said, suffers from global developmental delay and has severe learning disabilities. She has very special needs both in terms of placement and education. Any disruption, says Mrs MacGregor, would have seriously adverse consequences for her. Although Y has physical disabilities and emotional problems, she is likely to become fully aware of any material published about her father and this is likely to have devastating consequences for her at the present time.

v) In the light of the information already in the public domain, any repetition or further reporting of matters concerning their father or his association with their uncle may well lead to the identification of the children. The publication of material linking their father with their uncle and the repetition of matters concerning their father's previous convictions will, says Mrs MacGregor, *inevitably* cause their placement with their father to be put under tremendous strain and lead to a risk of breakdown.

vi) The nature of and extent of the children's disabilities means that if the placement with their father were to be put in jeopardy it would be unlikely they could be placed together. They would therefore lose not only their father but also each other.

vii) Even if they could continue to be cared for by their father, it is likely they will suffer hostility from other parents and children and will not be able to access their current schools and extra-curricular activities. It is likely that they will have to move home and school because of adverse publicity, and even then, it is said, there is the possibility that their father's reputation would go before them. The impact of this on children such as X and Y whose lives are already circumscribed is far in excess of that on an ordinary child.

71. Mrs MacGregor submits that the injunction sought does not restrict the ability of the media to report what she calls the most important aspects of U's trial, that is his name, the offences of which he was charged and has now been convicted, or any part of the evidence with the sole exception of those parts which involve or refer to F. All that is ought to be restrained is the publication, or re-publication, of material which links U and F (including photographs of U), or which identifies X and Y as the daughters of F and the nieces of U, or which concerns F's past convictions.

72. Mrs MacGregor accepts that a great deal of information concerning the family is already in the public domain, but submits that this does not in itself limit the jurisdiction to grant an injunction, although it is an admittedly important consideration to be taken into account. She submits that the same balancing exercise has to be undertaken in relation to material in the public domain, and the question of whether or not there ought to be a public domain proviso, as with all other aspects of the proposed prohibition. The date and extent of any previous publication must clearly be relevant factors, she says: "old news is invariably cold news".

73. She submits that the balance comes down in favour of the injunction that is sought. The children are totally reliant upon their father for all aspects of their care. F is not accused of any crime and to all intents and purposes has done nothing since his conviction in 1996 to suggest he is anything other than a devoted father to his children. His care for the children under the most difficult and demanding circumstances is exemplary. The last mention of F's convictions was in 1997. Nothing in that report alluded to fact he had children but the publication of the material with his address nonetheless led to harassment of his wife and children. To repeat matters which occurred in 1996 and earlier simply because U, eight years later,

was accused and has now been convicted of a similar offence is not proportionate to the risk of harm to the children. Further the unique fact of F and U being *identical* twins inevitably means there is a clear risk that their identities will be confused with the attendant consequences of possible physical assault and molestation which will in itself lead to the risk of placement breakdown.

74. Considering the various factors identified by Hale LJ in the passage in *Re S* at para [57] which I have set out above, Mr Baker submits that in this case there has hitherto been no press intrusion into the girls' lives so any publicity would represent a wholly new and unpleasant interference in their lives, triggered moreover, by events outside their lives and having nothing to do with them. He further submits that for the reasons stated above publicity will do grave damage to the girls' lives, including their psychological health, that there will be a significant impact on F (who is not merely their carer but also himself potentially vulnerable), on others involved in the girls' care, and on their schools, and that their task will be made considerably harder, with the risk that the arrangements for the girls' care and education may have to be changed.

75. So, in sum, it is said that there is here convincing evidence that an injunction in the terms sought is necessary to protect X and Y from clear and identifiable harm. As against that, it is said that, whilst an injunction in the terms sought would represent a restriction on press freedom, it would not preclude the most important component of any reporting on this case, namely the reporting of U's trial, save that any incidental references to the girls and to F would be barred and no photograph of U could be used to illustrate the reports. A restriction on any article which links F with his brother, in particular one which refers to X and Y, is not, it is said, a serious infringement of the media's freedom to publish reports about U's trial. It is said that, in terms of the qualification to freedom of expression allowed by Article 10 (2), the injunction is necessary in a democratic society, for the prevention of disorder and for the protection of the girls' health and rights. Mr Baker suggests that there is no pressing need for U's photograph to be published. The history of litigation over the centuries, he says, is full of examples of vivid reportage unaccompanied by contemporaneous pictorial illustration.

Discussion – the case for the newspapers

76. Mr Hudson submits that the injunction ought not to be granted in its current form for the following summary reasons:

i) The current injunction, as it extends to fair and accurate reports of criminal proceedings held in open court, constitutes an unnecessary and disproportionate interference with the article 10 rights of the defendant newspapers and their readers.

ii) F and U has each been the subject of significant press reports. X and Y have also been the subject of press reports.

iii) A large (but unquantifiable) number of people in the area will be aware of the following:

a) F has been convicted of serious offences involving the sexual abuse of children, has twin daughters, X and Y, is the sole carer of X and Y, and has an identical twin brother, U;

b) U has previously been prosecuted (and acquitted) and has now been prosecuted again and convicted in relation to very serious offences involving the sexual abuse of children.

iv) F has been referred to during U's recent trial and has given evidence in support of U.

v) A refusal to grant the relevant terms of the injunction or to include the provisos sought by the respondent newspapers would not constitute a disproportionate interference with the Article 8 rights of either X or Y.

77. Addressing the children's rights under Article 8, Mr Hudson submits that the potential interference with those rights is very limited. There have been extensive reports of F's criminal convictions and sentence. This information is in the public domain and well-known in the area. The fact that F is the father and carer of X and Y is in the public domain and well-known in the area. F voluntarily decided to put X and Y in the public spotlight after the death of their mother. The fact that F and U are twin brothers is in the public domain and well-known in the area. It necessarily follows that it is well-known in the area that U is the uncle of X and Y. It is also in the public domain and well-known in the area that U has in the past been prosecuted (and acquitted) for serious offences involving the sexual abuse of children and that he has now been convicted on multiple counts of rape and indecent assault on young boys.

78. According to Mr Hudson, reporting that F gave evidence in support of U and that F has previous convictions for the sexual abuse of children will constitute a minimal, if any, interference with X and Y's Article 8 rights. Moreover, the proposed publications pursue the vital and legitimate aim of freedom of expression. In particular, they constitute fair and accurate reports of criminal proceedings held in public (both current and previous). The proposed publication and any consequential potential interference with X and Y's Article 8 rights is, he says, both necessary and proportionate. It is very limited and will, he says, have minimal, if any, additional impact on X and Y's private and family life. Refusing to grant the relevant terms of the injunction would for all these reasons, he submits, be a proportionate interference with their private and family life.

79. Turning to the Article 10 rights of the defendant newspapers and their readers, Mr Hudson accepts that the proposed interference is capable of pursuing the legitimate aim of respect for X and Y's private and family life. But he submits that the interference with the Article 10 rights of the defendant newspapers and their readers

is not necessary in order to respect X and Y's right to private and family life. The interference, he says, is not proportionate to the legitimate aim pursued. It is moreover a significant one as it prevents reporting of important evidence in a trial involving very serious allegations of child abuse. And it is also prevents publication of reports of F's criminal convictions.

80. Mr Hudson submits that I should take the following matters into account:

i) The proposed publications are not directed at the children and cannot, he says, be shown to have any, or any significant, adverse effect on X and Y's care.

ii) U's trial did not involve X and Y and they will not be named in any reports of the criminal proceedings;

iii) To the extent that a full report of the trial, including publication of U's photograph and F's name and evidence, will affect X and Y, it will be indirectly, by reason of their association with F and U. Anyone reading reports of the criminal proceedings who makes the connection between X and Y and U is likely to be aware of the proceedings in any event, and would make the connection even if F was not named.

iv) X and Y are unlikely to suffer any, or any significant harm, by reason of reports of the criminal trial in which F is named.

v) There is a clear and proper public interest in reports of the criminal proceedings being able to name F as he was an important witness in U's defence. The community, he says, is entitled to know how U's defence was being run, including his reliance on F's evidence. There is also a clear and public interest in reports that U's twin brother has been convicted of similar offences.

vi) The freedom of expression in issue is the right to report fully a criminal trial: see *Re S* per Lord Phillips of Worth Matravers MR at para [106].

vii) The injunction granted is, in practice, unlikely to make a significant difference to the children and therefore their Article 8 rights do not outweigh the respondent newspapers' right to freedom of expression.

For these reasons, he says, the interest of the press in freedom of expression outweighs the Article 8 rights of the children. The present case, he submits, comes within the category where the interest of the press in freedom of expression should prevail.

81. In relation to the question of whether any injunction should be qualified by a public domain proviso, Mr Hudson points out that in *Re S* the *relevant* information in the public domain was the name and identity of the child, S, so that to allow publication of that information would largely have defeated the purpose of the injunction. In the present case, he says, the relevant information in the public domain relates not to X and Y but to F and U.

82. In summary, Mr Hudson submits that the injunction ought not to be granted in its current form; the injunction ought not to be extended to prohibit publication of photographs of U; any injunction granted should include a proviso which excludes reports of proceedings held in public from its terms; and the injunction should contain a public domain proviso.

Discussion – striking the balance

83. As I said at the beginning of this judgment, there is here an almost excruciatingly difficult balance to be struck. There are in the present case two groups of interests, each of which, judged on its own terms, is compelling and has, as I have said, a strong call on the support and protection of the court. But those interests, in truth, stand in stark and almost irreconcilable conflict with each other. I have to strike the balance mandated by the Convention and in accordance with the principles expounded in *Re S*. But there is, in my judgment, simply no way in which the necessary balance can be struck without impinging to some extent – and a more significant extent than counsel were prepared to concede – on both groups of interests.

84. Subject only to three possible qualifications there is in my judgment compelling need for the injunction granted by the President to be continued indefinitely. Without such an injunction F, X and Y will be at the unrestrained mercy of a media parts of which may well not be willing to show the same restraint as the defendant newspapers. Everything which is already in the public domain can be re-published. Anything that the media can discover from interviewing anybody who has had any contact with or has any knowledge of the family will be grist to their mill. There will be nothing to stop the media 'door-stepping' the family at home and X and Y at their schools. There may well be a media 'circus' outside both the home and the schools. On any basis such an intrusion into the girls' lives, such an interference with their rights under Article 8, would be grossly disproportionate when contrasted and weighed in the balance with the interference to the media and the public's rights under Article 10 if such conduct is restrained, as in my judgment it must be.

85. Without formally making any concessions, Mr Hudson did not seriously seek to argue to the contrary. The real thrust of his submissions, as we have seen, was addressed to the three matters to which I now turn: (i) whether there should be an open court reporting proviso, (ii) whether there should be a public domain proviso, and (iii) whether there should be a prohibition on the publishing of U's photographs.

86. I approach the case applying the principles articulated by the Court of Appeal in *Re S*, in particular by Latham LJ in para [64] and by Hale LJ in paras [54]-[59]. Applying those principles, taking into account all the relevant rights and interests as I have identified them above, in the light of all the evidence before me, and applying the balancing exercise – or, to be more precise, the series of balancing exercises mandated by *Re S* – I have come to the conclusion that the overall balance can fairly and justly be held only if I make an order which:

i) does *not* restrain the publication of U's photograph;

ii) contains an open court reporting proviso, albeit one qualified so as to prevent the publication or re-publication of any reference to X and Y;

iii) but does *not* contain a public domain proviso.

87. The effect of the order I propose to make will therefore be that the media will be able to publish the full details of U's trial, including the fact that F has given evidence and details of the evidence he has given (excluding only any reference in that evidence or otherwise during the trial to X or Y or to the fact that F has children); the media will be able to re-publish the full details of U's earlier trial and F's trial (subject only to the same exclusions); but that, except in relation to the reporting of the criminal trials, the media will not be able to re-publish material even if it is already in the public domain. In other words, the media will be able to report, or re-report, all three criminal trials, and using photographs of U, but will not be able to link that reporting with the children in any way.

88. If I were to make an order in the terms sought by Mr Hudson, that is, an order containing both an open court reporting proviso and a public domain proviso, there would, as Mrs MacGregor correctly pointed out, be nothing to prevent the media generally, whatever stance the defendant newspapers might choose to adopt, linking up what are in a sense two separate and distinct stories: one the story of how two twin brothers are both convicted paedophiles, the other the story of how one of those convicted paedophiles is now caring for his two daughters. Whilst there is of course, as I accept, a public interest in both those stories, the second story has little if anything to do with that part of the first story which relates to U. And whilst permitting the media to link the two stories would, as it seems to me, add comparatively little to any story about the various criminal proceedings, it would impact very seriously indeed on the girls' private and family life. The primary public interest here, the interest which most directly engages Article 10, relates to the reporting of the various criminal proceedings. The reporting of proceedings in open court, particularly the reporting of proceedings in the Crown Court in relation to offences as serious as those for which both F and U now stand convicted, is one thing: and it is something which, as we have seen, demands a high degree of protection under Article 10. The reporting of the story that a convicted paedophile has the care of his children, although I readily accept that it is of great public importance and has a clear claim to the protection of Article 10, nonetheless stands on a somewhat different

level and is one which more obviously has to be balanced against the children's compelling Article 8 rights.

89. Striking the overall balance in the manner required by the Convention and by *Re S*, it seems to me that the balance comes down heavily against the media being able not merely to report the various criminal proceedings in full but also being able to report the story about F's care for X and Y. I recognise that it is a strong thing to restrain the re-publication of material which is already in the public domain, as is the story about F's care for his daughters. But there is as it seems to me, in the particular circumstances of this unusual case, compelling force in the arguments put forward by Mr Baker and Mrs MacGregor, especially Mr Baker's 'jigsaw' arguments.

90. The more difficult question relates to whether or not there should be an open court reporting proviso and, if so, whether it should be qualified in the way I have mentioned.

91. Mr Baker and Mrs MacGregor are able to mount a cogent case for saying that, particularly in the case of these peculiarly vulnerable children, the balance should, perhaps unusually, fall against the media. That is, I accept, a powerful argument. But it is particularly at this point that I have to bear in mind what Hale LJ said in *Re S*, especially in paras [57]-[59].

92. The fact is that the girls have already suffered, and will inevitably suffer further, both directly and indirectly, from their relationship with U and from the reporting of his latest trial that has already taken place, including, in accordance with the President's order, the publication of U's photograph. This is not merely my assertion: it is, as we have seen from the evidence, the considered view of those who are concerned for the girls' care. The fact is, as F's own evidence demonstrates, that whether as a result of what is known about his own past or of U's past and/or as a result of confusion between them, he (F) is pointed at, shouted at and threatened in public as a paedophile and pervert. The fact is that his neighbours know of F's history. The fact is that when U was on trial in 1997, the resulting publicity led to the children and their mother having to move. And the fact is that, whilst I think Mr Hudson probably exaggerates the extent to which people in the area know about F's history or have it consciously in their minds, that knowledge and awareness is probably significantly more widespread than F himself would care to accept. The sad fact is, and it is simply part of the human condition, that sometimes the wholly innocent have to suffer because they are related to more or less notorious criminals.

93. What additional harm will X and Y suffer if I permit the reporting and re-reporting of the criminal proceedings in the manner sought by Mr Hudson? Without the qualification to the open court reporting proviso that I have in mind, the answer in my judgment, is that they will suffer additional – and too much additional – harm. The finger will be pointed not just at their father but also at them. They, as well as their father, will be the object of public attention and comment which is likely to be far from benign, to be heedless of their welfare and interests and to be driven in large

measure by an unforgiving and cruel public interest in the fact that their father is a paedophile. They will become, overtly and directly, part of *that* story.

94. What harm, additional to that which they will in any event be exposed to, are X and Y likely to suffer, on the other hand, if I include only a qualified open court reporting proviso? I accept that there is a risk – though not I think as great a risk as Mr Baker and Mrs MacGregor would have me accept – that they will suffer *some* additional harm if their father's involvement in U's trial is reported and if his own earlier conviction is again reported. There will be some parents and others in their circle who will learn for the first time of F's history, and some of these people may speak out or act in a way which will be damaging – perhaps very damaging – to the girls. But a sense of proportion must be kept. For example, it is, I think, very unlikely if I make the order I have in mind, that F will be unable to go on looking after the girls or that they will have to be separated. Realistically, it seems to me, the worst that is at all likely to happen is that Y may have to move school yet again and, possibly though I think improbably, that F and his daughters will have to be re-housed. I do not of course minimise the significance of any of this, but it falls significantly short of the total breakdown and separation of the girls both from their father and from each other which is feared by some. And significant though it may be, it has, at the end of the day, to be balanced against the serious restriction of the media's ability to report events in open court relating to very serious criminal offences.

95. There is, as Mr Hudson submits, a real public interest in the media being able to report not merely the outcome of criminal proceedings but also the nature of the defence that was run, albeit in the event unsuccessfully, as also in being able to report both the fact that F gave evidence on U's behalf, and what that evidence was, and the fact that F also is convicted paedophile.

96. In the final analysis, as it seems to me, that public interest in the reporting of very serious criminal proceedings does, in the particular circumstances of this case, outbalance the additional harm these girls may indirectly suffer if such reporting is permitted. The clear damage to the interests protected by Article 10 if I make the order sought by Mr Baker and Mrs MacGregor is, in my judgment, greater than the likely damage to the children's interests protected by Article 8 if I make an order in the terms I propose.

97. There will accordingly be an open court reporting proviso, albeit one qualified in the manner I have indicated.

98. The question of U's photograph I can take quite shortly. The fact is, as I have said, that his photograph has been used – quite lawfully and consistently with the President's order – in the most recent reporting of his trial. Any damage that such publication may cause has already been suffered. I find it hard to see that any further publication of U's photograph is likely to have any very significant additional impact on either of the girls. But, even if it were to, the balance in my judgment would quite clearly come down against preventing publication of U's photograph. There is a clear and compelling public interest in the publication of a convicted criminal's

photograph, not least so that the public are able to 'put a face to the name' and be the better able to avoid coming into unwanted contact with him and, in the case of a paedophile, to protect their own children coming into contact with him.

Discussion – form of the order

99. Subject only to one matter counsel are agreed that the appropriate way for me to give effect to my judgment is to make an order omitting paragraphs (4)(b) and (5) of the order made by the President but including an open court reporting proviso, albeit one qualified by the words "save that there shall be excluded from the ambit of this proviso any reference (i) to the fact that the father is a father or (ii) to the children whether by name or otherwise".

100. The one matter of controversy is whether or not F's photograph can be published, Mr Baker contending that it should not be, even though I have decided that U's photograph can be.

101. I accept that the two cases are not identical. After all, even though F and U are identical twins, publication of F's photograph will, as Mr Baker contends, increase the number of people who may link him with his daughters. Nonetheless the same argument as I have mentioned above in relation to U – the clear and compelling interest in the publication of a convicted criminal's photograph: the public's ability to put the face to the name – applies to F as well as to U, even if, as Mr Baker would have it, F is now "reformed". Moreover, although this is by no means decisive, there is the point made by Mr Hudson that a photograph of F actually featured in U's recent trial. In my judgment the balance, despite what Mr Baker says, comes down in F's case, as well as in U's case, against prohibiting the publishing of photographs in connection with the reporting of the various criminal proceedings.

102. After I had sent the parties the draft judgment Mr Hudson raised for the first time the question of whether paragraph (7)(g) of the order made by the President was appropriate. In my judgment it is, very much for the same reasons as commended themselves to the Court of Appeal when addressed with an analogous contention in *In re C (A Minor) (Wardship: Medical Treatment) (No 2)* [1990] Fam 39.

103. I shall accordingly make an order in the following terms:

> "RESTRICTIONS
>
> (3) This order prohibits the publishing in any newspaper or broadcasting in any sound or television broadcast or by means of any cable or satellite programme service or public computer network or any other public medium of
>
> (a) the names and address of the children … ;
>
> (b) the name and address of F … ;

(c) the name and address of the schools or any other establishment at which the children are being educated or treated;

(d) any photograph or other picture of either of the children;

(e) any photograph of F;

(f) any other matter.

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

(a) of either of the above-named children

(i) as the nieces of U;

(ii) as the nieces or daughters of a man who has been accused and/or convicted of sexual offences against children;

(iii) as children who are in the care of a man who has been accused and/or convicted of sexual offences against children;

(b) of either of the schools or any other establishment at which the children are being educated or treated as being an establishment at which a child, whose father or uncle has been convicted or accused of sexual offences against children, is being educated or treated.

(5) Save for service of this order in accordance with paragraph (8) 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.

(6) This order prohibits soliciting any information relating to the children from

(a) either of the children;

(b) their father;

(c) any relation;

(d) any friend;

(e) any carer;

(f) the staff or pupils or residents, or relatives of any pupils or residents, of any establishment;

(g) any employee of [the local authority].

WHAT IS NOT RESTRICTED

(7) Nothing in this order shall of itself prevent any person

> (a) publishing any particulars of or information relating to any part of the proceedings before any court other than a court sitting in private (save that there shall be excluded from the ambit of this proviso any reference (i) to the fact that the father is a father or (ii) to the children whether by name or otherwise);
>
> (b) inquiring whether a person is protected by paragraph (7) above;
>
> (c) seeking or receiving information from any person who has previously approached the person seeking or receiving information with the purpose of volunteering information;
>
> (d) soliciting information relating to the child 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"

Costs

104. All the parties are agreed that, save for a detailed assessment for public funding purposes of the claimant's costs, there should, in the particular circumstances of this case, be no order as to costs. I agree.

Permission to appeal

105. Mr Baker on behalf of the claimant sought permission to appeal. Mr Hudson on behalf of the defendant newspapers sought permission to cross-appeal in the event of my giving the claimant permission.

106. I refuse permission to appeal. Mr Baker did not suggest that there was any error of law in my judgment and I do not think that an appeal would have a real prospect of success. In any event, this is, as it seems to me, one of those cases where, if there is to be an appeal, it is much better for the Court of Appeal to give permission than the judge at first instance.