Case No: CT01C00052

Neutral Citation Number: [2004] EWHC 411 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
PRINCIPAL REGISTRY
(In Public)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 March 2004
(previously handed down in private on 5 March 2004)

Before :

THE HONOURABLE MR JUSTICE MUNBY

- -

In the Matter of B (A Child)

And in the Matter of the Children Act 1989

Between :

KENT COUNTY COUNCIL — **Applicant**
- and -
(1) The mother
(2) The father
(3) B (by her Children's Guardian)

Respondents

- -
- -

Charles Howard QC and Sarah O'Connor (instructed by the County Secretary) for the applicant (local authority)
Stephen Cobb QC (instructed by Harman & Harman) for the first respondent (mother)
Nicholas Baldock (instructed by Kingsfords) for the third respondent (child)
Joanna Dodson QC (instructed by Christian Khan) for Ms Sarah Harman
Angus Moon (instructed by Radcliffes Le Brasseur) for Dr Y
Adam Wolanski (instructed by the BBC Litigation Department) for the British Broadcasting Corporation
The second respondent (father) was neither present nor represented

Hearing date : 25 February 2004

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Judgment

The Honourable Mr Justice Munby

WARNING

This judgment is being handed down in public on the strict understanding that the anonymity of the children and the adult members of their family must be strictly preserved. There is no restriction on the identification of any person who is named in the judgment but attention is drawn to the terms of the injunction set out in paragraph [154] of the judgment.

Mr Justice Munby :

1. A mother who claims to be the victim of a miscarriage of justice in care proceedings brought by a local authority seeks to debate her case in public. The question is whether the law permits her to do so. The issue is one of great importance, which is why I am giving this judgment in public.

The setting

2. On 29 January 2003 the Criminal Division of the Court of Appeal (Kay LJ, Holland and Hallett JJ) quashed the conviction of Sally Clark: *R v Sally Clark* [2003] EWCA Crim 1020. She had been convicted at Chester Crown Court on 9 November 1999 of the murder of her two sons by, in the one case, smothering and, in the other, suffocation. Amongst the experts called at her trial by the Crown was Professor Sir Roy Meadow. An earlier appeal had been dismissed by the Court of Appeal (Henry LJ, Bracewell and Richards JJ) on 2 October 2000: *R v Sally Clark* [2000] EWCA Crim 54.

3. On 11 June 2003 Trupti Patel was acquitted by a jury at Reading Crown Court of the murder of her three children by suffocation. Amongst the experts called at her trial by the Crown was Sir Roy Meadow.

4. On 10 December 2003 the Criminal Division of the Court of Appeal (Judge LJ, Rafferty and Pitchers JJ) quashed the conviction of Angela Cannings: *R v Angela Cannings* [2004] EWCA Crim 1, [2004] 1 FCR 193. She had been convicted at Winchester Crown Court on 16 April 2002 of the murder of her two sons by smothering. Amongst the experts called at her trial by the Crown was Sir Roy Meadow.

5. These high profile cases – for each has understandably generated much media attention – have given rise to what is now a very anxious public debate. That debate is no longer confined to the possibility of further miscarriages of justice in the criminal justice system but extends also to the possibility of similar miscarriages of justice in the family justice system. The debate relates in particular to what is commonly called Munchausen's Syndrome by Proxy, a condition first identified and so described by Sir Roy Meadow. Much of the public's concern, whether justified or not, has focussed on

Sir Roy's research work and the expert evidence he has given down the years in many criminal and care cases.

6. On 19 January 2004 the Court of Appeal handed down judgment explaining why it had quashed Angela Cannings's conviction. In the course of giving the judgment of the Court, Judge LJ at para [22] highlighted what he said was a "problem which can arise in this case, and cases like Sally Clark and Trupti Patel":

> "We have read bundles of reports from numerous experts of great distinction in this field, together with transcripts of their evidence. If we have derived an overwhelming and abiding impression from studying this material, it is that a great deal about death in infancy, and its causes, remains as yet unknown and undiscovered. That impression is confirmed by counsel on both sides. Much work by dedicated men and women is devoted to this problem. No doubt one urgent objective is to reduce to an irreducible minimum the tragic waste of life and consequent life-scarring grief suffered by parents. In the process however much will also be learned about those deaths which are not natural, and are indeed the consequence of harmful parental activity. We cannot avoid the thought that some of the honest views expressed with reasonable confidence in the present case (on both sides of the argument) will have to be revised in years to come, when the fruits of continuing medical research, both here and internationally, become available. What may be unexplained today may be perfectly well understood tomorrow. Until then, any tendency to dogmatise should be met with an answering challenge."

7. He added this at para [178]:

> "With unexplained infant deaths, however, as this judgment has demonstrated, in many important respects we are still at the frontiers of knowledge. Necessarily, further research is needed, and fortunately, thanks to the dedication of the medical profession, it is continuing. All this suggests that, for the time being, where a full investigation into two or more sudden unexplained infant deaths in the same family is followed by a serious disagreement between reputable experts about the cause of death, and a body of such expert opinion concludes that natural causes, whether explained or unexplained, cannot be excluded as a reasonable (and not a fanciful) possibility, the prosecution of a parent or parents for murder should not be started, or continued, unless there is additional cogent evidence, extraneous to the expert evidence, … which tends to support the conclusion that the infant, or where there is more than one death, one of the infants, was deliberately harmed. In cases like the present, if the outcome of the trial depends exclusively or almost exclusively on a serious disagreement

> between distinguished and reputable experts, it will often be unwise, and therefore unsafe, to proceed."

8. The previous weekend, on 18 January 2004, the *Sunday Telegraph* newspaper had published as its front-page lead story an interview with the Rt Hon Margaret Hodge MBE MP, the Minister of State for Children in the Department for Education and Skills ("DfES"). The story was headlined "'We can't reunite thousands of mothers with children wrongly taken from them' – Minister admits that she cannot rectify mistakes caused by discredited expert". The story asserted that:

> "Ministers are to review as many as 5,000 civil cases of families affected over the past 15 years by Prof Meadow's now discredited theory of Munchausen Syndrome By Proxy."

It continued:

> "Mrs Hodge is likely to ask local authorities to search through their records to find all family law cases involving Meadow. … Another option being considered by Mrs Hodge is to appoint a judge to trawl through the records of each authority to identify possible miscarriages of justice, but this would prove costly."

The Minister was quoted as saying:

> "The Government is not running away from this issue. I hope the families understand that these are really, really difficult decisions we have to take."

9. On 20 January 2004, the day after the Court of Appeal had given judgment in the *Angela Cannings* case, statements were made in the House of Commons by the Solicitor-General, the Rt Hon Harriet Harman QC MP, and, a little later, in the House of Lords by the Attorney-General, the Rt Hon Lord Goldsmith QC. Those statements dealt with the possible implications of the *Cannings* judgment for the criminal justice system but did not address any implications there might be for the family justice system. However, in answer to a supplementary question, the Solicitor-General said this (Official Report, Commons, Sixth Series, Vol 416, col 1218):

> "We will ensure not only that injustices in the criminal justice system, but that any potential injustices in care proceedings are identified and acted on.
>
> We should recognise that for women who have lost a child and then had another child taken away, prison is no penalty compared with the terrible suffering that they have endured. As we deal straight away with those in prison and those involved in criminal processes, we must bear in mind the absolute and utmost gravity of the situation facing those whose injustice is at the hands not of the criminal justice system, but of the family justice system."

10. After a Member of Parliament had pointed out that she had not said whether there would be a review of family court cases as there would be for criminal cases, and asked "Will she confirm that such a review is either happening or is about to happen?", the Solicitor-General responded (col 1221):

> "The process of how to go about a review in family cases is now being considered. The judgment that I have quoted makes clear what is at issue, but the process of identifying cases – and the machinery that should be used to remedy miscarriages of justice – is not straightforward.
>
> Neither the Government nor the family division of the Court of Appeal, nor anyone else, are holding back in their attempts to ensure that any injustice is remedied. That is our absolute focus, but we have to determine what the best procedures are, and what the best machinery is. That is by no means straightforward, but I do not rule out any of the suggestions that the hon. Gentleman made."

11. The Attorney-General in answer to speeches from other Peers made this observation (Official Report, Lords, Fifth Series, Vol 656, cols 912-913):

> "DfES Ministers who are responsible for children at central government level, are considering the implications of this judgment for care and adoption cases. I am sure that as soon as they have reached a conclusion they will announce whether any – and, if so, what – steps need to be taken in relation to those cases. Noble Lords will know that it is not simply central government who have a responsibility in this area; indeed, if anything it is much more local authorities which have a responsibility in relation to child cases, and other cases are matters between private citizens. So, the role of central government is much more limited than in the case of prosecutions."

A little later in answer to further questions he added (col 913):

> "The matter has become one for local authorities which, having taken care proceedings, are under an obligation to review those orders with regularity. They are required to bring matters back to court if that is their opinion."

In response to further questions he added (col 914):

> " … the responsible Ministers in the DfES are considering the implications of this judgment and what, if any, steps need to be taken. I do not wish to prejudge what they may say."

12. The result of this ministerial activity was a belief in many parts of the media that, as it was put by the *Guardian* newspaper on 21 January 2004 under the headline "Care case review follows cot death ruling" – I take this example at random – "Thousands of parents whose children were taken into care on disputed medical evidence are to have their cases reviewed, the government confirmed yesterday."

13. In response, the Law Officers issued a statement later the same day (21 January 2004):

> "It has been widely reported in the media that the Attorney General's review of criminal cases of murder, manslaughter or infanticide of an infant under two by its parent, potentially involving Sudden Infant Death Syndrome, will be extended to include civil cases. This is a misunderstanding. The Attorney General's review is limited to criminal cases. DfES Ministers are considering the implications of the judgment for themselves. They will announce as soon as possible what, if any, steps are appropriate to be taken. Any enquiries about family cases should be directed to DfES."

In the event no further announcement was made until 23 February 2004 (see below).

14. On 28 January 2004 the President of the Family Division issued administrative directions to all Family Division Judges, all Designated Family Judges and the Senior District Judge, setting out the arrangements to be adopted by judges of the family courts in response to any applications arising as a result of the decision in *R v Angela Cannings*. So far as is material for present purposes these directions provide that (i) Court staff are to be instructed to receive all applications and allow them to be processed, (ii) where such applications are made, the case "shall" be listed as soon as possible before a Judge of the Family Division for directions as to the future conduct of the case and (iii) Designated Family Judges should in each care centre make appropriate arrangements with the Court staff for the facilitation of immediate transfer of all such cases to the High Court. The directions provide that in London all applications will in the first instance be seen by the Senior District Judge, who will then refer all applications as soon as possible to me for directions; that applications on the South East Circuit should be referred to Hogg J; and that in all care centres other than London or the South East, the Family Division judge to whom applications should be referred shall be the Family Division Liaison Judge with responsibility for that Circuit. Those judges are Coleridge J (Western Circuit), Hedley J (Wales and Chester Circuit), Kirkwood J (Midland Circuit), Black J (Northern Circuit) and Bodey J (North Eastern Circuit). Arrangements have also been made, in conjunction with Collins J (the lead judge of the Administrative Court) for any applications that may be made to the Administrative Court rather than to a family court to be dealt with by Wilson J or Charles J.

15. It was in accordance with these arrangements that on 5 February 2004 Sumner J transferred the application in the present case to me. The application had been issued

in the Principal Registry of the Family Division on 29 January 2004, before the distribution of the President's administrative directions had been completed.

The present case

16. B is now 4 years old. She was born on 28 October 1999. She has two older sisters.

17. On 18 October 2001 the local authority began care proceedings in relation to B. The basis of the local authority's case was (a) that B's mother had, by deliberately interfering with her, fabricated illness with B while she was a patient in hospital between 25 September 2001 and 1 October 2001 and (b) that the mother in September 2001 suffered from fabricated or induced illness syndrome or Munchausen's Syndrome by Proxy. A 12-day threshold criteria fact-finding hearing took place before Bracewell J starting in December 2002. She gave judgment on 10 January 2003: *Re B (a Minor)* [2003] EWHC 20 (Fam). She made what for present purposes are two crucial findings. First, she found that the cannula that had been attached to B in the hospital was deliberately interfered with – removed – by the mother. Secondly, she found that:

> "Mother deliberately administered some unidentified infected substance to [B], thereby causing the rigors which were potentially life-threatening whilst [B] was in hospital between September 25th and 1st October 2001."

18. Bracewell J had evidence from six medical experts, included amongst whom were Dr X and Dr Y. Dr X produced written reports dated 17 October 2001, 8 January 2002 and 9 May 2002. Dr Y produced written reports dated 29 March 2002, 15 April 2002, 9 May 2002 and 12 November 2002. He also, like Dr X, gave oral evidence. Amongst the twelve factors listed by Bracewell J as leading her to her conclusions, number 11 was:

> "The conclusion of [Dr Y and Dr X] that the most likely explanation for the rigors is deliberate interference with the cannula in the absence of any medical cause."

19. I should record that Bracewell J also found that:

> "Mother is undoubtedly a skilled and persistent liar, who over the years has sought to and succeeded in conning doctors, teachers and family in respect of illnesses which she claimed to be genuine but which were self-induced. She has wasted hospital resources and submitted to procedures she knew were unnecessary. Her reasons for this behaviour were given in evidence as difficulties at home in her relationship with her parents, their over-ambitious expectations for her, and her difficulties at school."

Amongst the factors Bracewell J listed as leading her to her conclusions, number 3 was:

> "Mother has a history of lying and deceiving others in respect of herself over a substantial period of time."

20. That was the causation hearing. The outcome hearing took place before Holman J in September 2003. He gave judgment on 12 September 2003. He said:

> "I make it clear that I must and do accept as accurate and reliable all the findings made by Bracewell J, and proceed from them as a starting point. There has been no new evidence which might indicate that in any significant respect her findings were mistaken."

Holman J made a final care order. B is now in the actual care of her paternal grandparents. Her two older sisters remain living at home with their parents.

21. Mother has never accepted Bracewell J's findings. She denies, and has consistently denied, that she has ever harmed B.

22. On 18 January 2004 mother wrote to the Professional Conduct Committee of the General Medical Council

> "to inform you that I intend to submit a full and detailed complaint about [Dr X] and [Dr Y]. I am a parent who has been accused of having Munchausen's Syndrome by Proxy and as a result, my youngest child has been removed from our home. I am aware that this may be viewed as a vexatious complaint but these doctors have not acted in my daughters best interests and I feel that their practice needs to be examined."

A copy of the letter was sent to the Minister of State for Children. The letter asserts, inter alia, that Dr X "failed to share vital information with Social Services and other professionals involved in my daughter's care" and "gave evidence in court that was either deliberately misleading or outside his area of expertise." She asserts that Dr Y "prepared a report for court … and gave evidence about our case having never met my daughter, myself or anyone else involved in the case", that he "made many errors in his report", that he "gave evidence outside his area of expertise and deliberately misled the court" and that he "referred to unpublished research to assist his argument".

23. On 19 January 2004, as I have said, the Court of Appeal gave judgment in *R v Angela Cannings*.

24. On 21 January 2004 (the day after the Law Officers had made their statements in Parliament) the *Daily Mail* newspaper printed a front-page story under the headline "The stolen childhoods". The strapline read "Cot death probe to look into 5,000 youngsters taken from parents." On page 5, under the headline "Will we see our children again?" a special report gave accounts of a number of cases, one, albeit under fictionalised names, being B's case, told from the mother's viewpoint. She was referred to as Sheila. The account of B's case included these paragraphs:

> "A paediatrician called as an expert witness at an initial family court hearing suggested, out of the blue, that Sheila might have deliberately injected her child with the water from a flower bowl or a lavatory. It was a claim considered ludicrous by one of the country's leading forensic toxicologists, who provided evidence for the police in Harold Shipman's case.
>
> He told the court it was a medical impossibility for Sheila to have done such a thing. But for the family courts – which do not require the standard of proof of a criminal court – this was not enough to save her. Sheila has had her daughter forcibly removed with little hope of appeal."

25. The publication of that story generated certain correspondence between the local authority and the mother's solicitor, Ms Sarah Harman, who is the sister of the Solicitor-General, Ms Harriet Harman. A letter from Ms Sarah Harman dated 22 January 2004 discloses that the mother was the source of the newspaper's information.

26. On 27 January 2004 the General Medical Council replied to the mother's letter, saying that it was treating the letter as an initial letter of complaint, inviting the mother to provide further details of her complaint by 17 February 2004 (this time limit has subsequently been extended), and saying that it would assist in considering her enquiry if she could by that date provide, inter alia, Dr X's and Dr Y's reports and copies of all documentation (including correspondence) relating to the legal proceedings.

27. On 29 January 2004 Ms Sarah Harman wrote to the local authority enclosing a copy of the present application (as then unsealed) and saying that she was seeking an urgent hearing. The same letter disclosed that the mother was proposing to appeal against Bracewell J's findings and enclosed her grounds of appeal and the skeleton argument in support of her application for permission to appeal.

28. I have been shown a copy of the mother's proposed grounds of appeal. The essential ground of appeal is summarised as being that Bracewell J's finding is manifestly unsafe, and/or that she erred in her evaluation of the evidence in making such a finding, having regard to the guidance contained in the judgments of the Court of Appeal in *R v Sally Clark* and *R v Angela Cannings*. In amplification of that a number of points are made, two of the most important being the assertion that

> "The medical evidence on which the learned judge's finding was based was controversial; there was no preponderance of medical opinion supporting the finding"

and the fact (so it is said) that

> "[Dr Y]'s opinion and conclusions had been primarily informed, on his own admission, on research he had carried out … with Professor Sir Roy Meadow, which, it is submitted, is now highly controversial."

It is to be noted that the grounds of appeal do *not* contain the more serious of the allegations made by the mother in her letter to the General Medical Council – there is no suggestion that either Dr X or Dr Y deliberately misled the court – and do *not* challenge the finding that the mother "is undoubtedly a skilled and persistent liar".

29. The mother's notice of application was issued on 29 January 2004 and sought an order that there be leave for the mother "to disclose appropriately edited specified documents in the proceedings into the public domain." As refined by the mother's counsel, Mr Stephen Cobb QC, in the skeleton argument prepared for the hearing before Sumner J on 5 February 2004, what was specifically sought was disclosure of the following documents: the reports of Dr X, the letter of instruction to and the report of Dr Y, the transcript of a telephone conversation (an experts' meeting) that took place on 9 October 2002, Mr Cobb's written closing submissions on behalf of the mother dated 4 January 2003 (he had appeared for the mother before both Bracewell J and Holman J), and the judgments of Bracewell J and Holman J. Leave was sought to disclose these documents for two different purposes:

i) to the General Medical Council "for the purposes of pursuing her complaint" against Dr X and Dr Y; and

ii) to the Solicitor-General, to the Minister of State for Children and to the mother's Member of Parliament "so that they may consider the same within the context of any Government review of cases of alleged miscarriage of justice."

30. The mother's application was supported by a witness statement by her solicitor, Ms Sarah Harman, dated 29 January 2004, which explained the basis of the application:

> "The … mother is most anxious to make submissions to the Secretary of State for Children that her case should be reviewed not only individually, but that it should be part of the evidence in any overall review of expert evidence in Munchausen by Proxy cases.
>
> She would wish to disclose some documents in these proceedings to the Secretary of State for Children and seeks

leave for general disclosure so that the Secretary of State can disclose such documents as are permitted by the Court to third parties for purposes of an individual review or an overall review of all of the Munchausen by Proxy family cases.

The [mother] also wishes to disclose documentation to the General Medical Council and has been asked to do so by 17th February 2004. I understand that consideration of [Dr Y]'s conduct is being undertaken at the behest of another party but I do not know the details. There appears to be concern about clinicians giving expert evidence without having seen either parent or child but I have no further information about this and I believe there are constrains on the GMC in disclosing more details.

Further than this, the … mother feels an affinity with other families who argue that their children have been separated from them through reliance by the Court on Munchausen by Proxy experts.

She would wish that the details of her case and the evidence on which it was based, so long as the child cannot be identified, be disclosed by her to other parents, legal representatives in other cases and to investigative journalists working on Munchausen by Proxy cases.

In this respect, reference is made both to Sally Clark and Angela Cannings appeals. Both women were convicted of murder and imprisoned on the basis that they had killed their children. As part of the process of preparing their appeals, both women were able to obtain supporting information from other experts and interested parties and in turn provide information to assist each other. They were able to do this in the criminal jurisdiction and much information about these two women, their background and the expert evidence given was circulated in the public domain, with the important proviso that the women's living children were not identified.

The … mother seeks leave so that she, as she sees it, is able to discuss with interested parties quite openly the basis of the Munchausen by Proxy theory as it pertains to her case.

The … mother plans to appeal Mrs Justice Bracewell's Judgment and the orders made by Mr Justice Holman consequent upon Mrs Justice Bracewell's findings. But this present application represents more than the [mother]'s own appeal. It also represents her desire to deal with what she perceives as a profound injustice suffered not just by her but by other parents. She sees this as a public interest issue and her case as one which should be considered by government ministers and their officers without delay. …

> She wishes to abide by the Court's rules and to protect the anonymity of the child, but at the same time to speak openly about her case.
>
> There can of course be no review by any government representatives or indeed any investigation by journalists of the [mother]'s case without specific reference to expert evidence which gives the [mother] such concern."

31. On 30 January 2004 the mother's Member of Parliament wrote to Ms Sarah Harman:

> "I understand that you are representing my constituent, [the mother], in her forthcoming appeal.
>
> As you know, [mother] approached me some time ago and sought help in correcting what she described as "an injustice" against her in respect of the judgement which led to the removal into care of her daughter, [B].
>
> I am continuing to help [mother] with her case in any way I am able and to this end it would greatly assist if there was full disclosure of information and release of all appropriate documentation pertaining to the judgement.
>
> In particular, my constituent's chances of obtaining a fair and just conclusion to her appeal would be enhanced by the early release of [Dr Y]'s report.
>
> I am sure you will be making your own application for these documents – in doing so I would be grateful if you would bring my request for disclosure to the High Court's attention."

32. Thus – seemingly – the state of affairs when the matter came before Sumner J on 5 February 2004. The children's guardian who had previously represented B had not been reappointed and was still awaiting public funding. Accordingly Sumner J adjourned the application and, as I have said, directed it to be listed before me.

33. Both the mother and Ms Sarah Harman were present in chambers and listened as Mr Cobb opened the case to Sumner J. They will have heard him say in the course of his submissions (I quote from the official Transcript):

> "you will see that the mother seeks leave " … to disclose the documents listed in the schedule below, edited or anonymised appropriately so that the documents do not contain any information which may lead to the identification of the child who is the subject of the proceedings, to the General Medical Council for the purposes of pursuing her complaint against [Dr Y] and [Dr X]."

> We also seek leave to disclose the documents in the same format to [the] Member of Parliament for the area in which my client lives, the Minister of State for Children and the Solicitor General, so that they may consider the same within the context of any government review of cases in relation to the miscarriage of justice."

He made clear a little later – still in the presence and hearing of the mother and her solicitor – that he was inviting the court to make the orders sought "today". Following a short adjournment he added this:

> "it had been my instructing solicitors' intention to write to Mrs Hodge and to indicate in that letter, without identifying anything about the child concerned, that there is a case which of course is going to be the subject of the appeal in the Court of Appeal, … which we believe falls within the ambit of cases which are likely to be reviewed, and ask her to indicate what, if any, information she would like from this case".

34. This was in fact all a charade, a charade doubtless all the more effective because Mr Cobb, of course, was wholly unaware of what had in fact been going on.

35. The first crack in the edifice appeared a little later during the hearing. Following the brief adjournment it was reported to Sumner J that, outside court, Ms Sarah Harman had used words to the effect (I reconstruct the oratio recta from the oratio obliqua of the official Transcript) that "I will talk about this case to my sister [the Solicitor-General] in any event, and if necessary you [the local authority] will have to apply against me so far as contempt of court is concerned." On 9 February 2004 the local authority's solicitor wrote to Ms Sarah Harman, drawing attention to these words and asserting that disclosure of information deriving from the care proceedings to anyone without the court's leave constitutes contempt of court. Thereafter much correspondence ensued, the local authority pressing Ms Sarah Harman for full details of all disclosures that had been made either by her or by the mother.

36. Eventually the true story emerged. What had happened was this:

i) In about March 2003 the mother gave her Member of Parliament a copy of Bracewell J's judgment. At some time she also gave him copies of the minutes of a professionals' meeting that had been held on 6 May 2003 and of a developmental assessment of B that had been prepared by a consultant community paediatrician on 22 May 2003.

ii) In July 2003 the mother sent a six-page summary of the case which she had prepared to a number of Members of Parliament.

iii) It will be recalled that on 18 January 2004 the interview with the Minister of State appeared in the *Sunday Telegraph*, on 19 January 2004 the Court of Appeal gave judgment in the *Angela Cannings* case, and on 20 January 2004 the Law Officers made their statements in Parliament. On 21 January 2001 the article about the mother appeared in the *Daily Mail*. The same day the mother sent to John Sweeney, at that time a freelance journalist working for the BBC (he is now an employee of the BBC), a copy of Dr Y's report of 9 May 2002. According to the mother, this had been redacted so as to delete all details that might identify B and most of the details that might identify Dr Y.

iv) Also on 21 January 2004 Ms Sarah Harman sent to the Solicitor-General a partially anonymised copy of Bracewell J's judgment and a case summary which was, I understand, a shortened version of a document that had originally been prepared by counsel for the purpose of supporting an application by the mother to the Legal Services Commission for public funding in relation to her proposed appeal. This case summary exists in two slightly different versions: version A, which contains Dr Y's name, and version B, which does not. It was version A that was sent to the Solicitor-General.

v) On 23 January 2004 Ms Sarah Harman sent copies of version B of the case summary to the Minister of State for Children, to a BBC journalist and to a GMTV journalist.

vi) On 25 January 2004 Ms Sarah Harman sent a copy of version B of the case summary to a journalist on the *Guardian*. It was accompanied by a letter which contained this illuminating comment:

> "I believe my client 'Sheila' who's details are attached and who was featured in the Mail on 21 January has a case which merits review and examination. The Court of Appeal is not the best or only place to do this. We shouldn't have to resort to the Mail! I hope you might be interested in pursuing this issue further. I would love to disclose [Dr Y]'s report to you but I can't! or if I did, I would risk being struck off."

vii) On 26 January 2004 the Solicitor-General sent the copy of Bracewell J's judgment she had received from Ms Sarah Harman on to the Minister of State for Children. The circumstances in which this happened have been described both by Ms Sarah Harman, in a letter to the local authority dated 11 February 2004, and by the Solicitor-General, in a letter to the local authority dated 23 February 2004. Ms Sarah Harman's account is that:

> "On receipt of the transcript Ms Harriet Harman discussed the matter with Ms Sarah Harman who believed that it would be permissible to pass the judgment on to Ms Margaret Hodge, Minister for Children which was done."

The Solicitor-General adds this:

> "Before sending the judgment to the Minister for Children I sought advice from a lawyer in the Legal Secretariat to the Law Officers. He looked quickly at the relevant law and believed that the prohibition on disclosure in Children Act proceedings without the leave of the court did not apply to the judgment. But he advised me to check with the Solicitor in the case that there was no specific ruling in this case prohibiting disclosure of the judgment. His advice was communicated to me. And on the basis I asked the solicitor if she was content for me to send the judgment to the Minister for Children. She assented and I sent the judgment to the minister for children. The lawyer in question in the Legal Secretariat now believes he was probably wrong on the advice he gave me."

viii) On 30 January 2004 Ms Sarah Harman sent a copy of version B of the case summary to the mother's Member of Parliament. It was accompanied by a letter from Ms Sarah Harman which in effect solicited the Member of Parliament to write the letter which in fact, as we have seen, he wrote her later the same day.

ix) On 6 February 2004 (the day after the hearing before Sumner J) Ms Sarah Harman spoke to the Solicitor-General, who indicated that she would speak to the Minister of State and arrange for all the documents that had been sent to be returned.

x) On 10 February 2004 the Minister of State returned to Ms Sarah Harman the copy of the case summary that had been sent to her on 23 January 2003 together with Ms Sarah Harman's original covering letter. Someone in the Minister's office had endorsed this letter

> "expidite [sic] verdict as will give a civil case judgement on which we can base review".

xi) On 12 February 2004, having retrieved the document from the Minister of State, the Solicitor-General returned to Ms Sarah Harman the copy of Bracewell J's judgment. Although the Solicitor-General's covering letter refers only to "the judgement" [sic], it appears that she also returned the copy of version B of the case summary that had been sent to her.

37. I say that the true story emerged eventually, for the disclosure, first by Ms Sarah Harman and then by the mother of what they had done, has been both gradual and piecemeal (the references in this paragraph are to the sub-paragraphs of paragraph [36] above):

i) In a letter dated 11 February 2004 Ms Sarah Harman made partial disclosure of the matters referred to in paragraphs (iv) and (vii). She disclosed that she had sent the copy of Bracewell J's judgment, but made no reference to the case summary also sent to the Solicitor-General. Nor did she make any reference to the matters referred to in paragraphs (v), (vi) and (viii).

ii) On 16 February 2004 the mother made a witness statement disclosing the matter referred to in paragraph (iii) and (in part) that referred to in paragraph (ii). She also disclosed that she had by then had a number of contacts with the media, including, in addition to the *Daily Mail* and the BBC, contacts with the *Sunday Times* and ITN. She had also given a filmed interview to another BBC reporter: this had not at that stage been broadcast. In her statement she said that she realised "I must be totally candid." Her statement was, in fact, very far from candid. It made no disclosure of the matters referred to in paragraph (i) and only partial disclosure of that referred to in paragraph (ii).

iii) On 20 February 2004 Ms Sarah Harman made a witness statement disclosing for the first time that she had sent the case summaries to the Solicitor-General and the Minister of State. She also gave details of various contacts she had had with the media in relation to B's case, her account being prefaced by the words "I detail below the various journalists I have spoken to". Anyone reading that statement would, in my judgment, have been entitled to assume that it was intended to constitute a full disclosure of everything Ms Sarah Harman had done. Her statement made clear that she wished to "apologise profusely" for what she called "the breach of the rules for which I take full responsibility" and for which, she said, she wished to "offer my sincere apologies to the Court." In fact she had still not disclosed the other matters referred to in paragraphs (v), (vi) and (viii) – the fact that she had sent copies of the case summary to various journalists and to the mother's Member of Parliament.

iv) One might be forgiven for thinking that by the time when the hearing before me began on 25 February 2004 both the mother and Ms Sarah Harman had made full and frank disclosure. But at a late stage during the hearing – in fact shortly after 3.30 pm on 25 February 2004 – Miss Sarah Harman's counsel, Ms Joanna Dodson QC, revealed that her client had sent a copy of the case summary to the mother's Member of Parliament. (There was no reference to the fact that Ms Sarah Harman had also, as we now know, sent copies of the case summary to various journalists.) That came as news both to me and to the local authority. I commented (and Ms Sarah Harman and the mother were in court as I said it) that I assumed that by now full disclosure had been made. Not a bit of it!

v) On 26 February 2004 – the day after the hearing – the mother made another witness statement in which for the first time she disclosed one of the matters referred to in paragraph (i) – the fact that she had sent a copy of Bracewell J's judgment to her Member of Parliament. I should make clear that this was not something known either to Ms Sarah Harman or to her partner until *after* the hearing before me had concluded: I am told, and I accept, that it was only after

the hearing that the mother for the first time told Ms Sarah Harman's partner of these matters.

vi) However, the full extent of the mother's disclosures as referred to in paragraphs (i) and (ii) became clear only on 27 February 2004, and even then only because the mother's solicitors obtained certain papers from her Member of Parliament.

vii) The full extent of Ms Sarah Harman's disclosures as referred to in paragraphs (v), (vi) and (viii) again became clear only on 27 February 2004, when Ms Sarah Harman made yet another witness statement. In her previous statement of 20 February 2004 she had said that "in none of these … contacts did I … discuss the evidence at the care proceedings". In her latest statement she was compelled to admit that she had in fact disclosed what she concedes were "considerable details of the evidence given at the care proceedings". She asserts her belief that version B of the case summary was an account of the mother's version of her case "which could be safely put in the public domain because it did not disclose any identifying features relating to the child", but fails to provide any convincing explanation as to why, even on that footing, the version of events set out in her earlier statement was so partial.

38. Not surprisingly, in the light of this history, Mr Charles Howard QC, on behalf of the local authority has been scathing in his condemnation of the conduct – misconduct might be a more appropriate word – of both the mother and Ms Sarah Harman. Essentially he has two complaints.

39. First, he says that the various disclosures by the mother and Ms Sarah Harman of the documents referred to in paragraph [36] above – that is, their disclosures of copies of Bracewell J's judgment, of Dr Y's report and the other documents, and of the case summaries, variously to the mother's Member of Parliament, to the Solicitor-General, to the Minister of State for Children and to Mr Sweeney and the other journalists – constituted contempts of court by virtue of section 12 of the Administration of Justice Act 1960. Likewise, he says, the transmission by the mother to the *Daily Mail* of the material that was published by it on 21 January 2004, particularly in the two paragraphs I have set out in paragraph [24] above, constituted a contempt of court for the same reason.

40. Secondly, he says, both the mother and Ms Sarah Harman have displayed a remarkable lack of candour with the court. He has three complaints:

i) Given the disclosure which we now know had, to her certain knowledge, already taken place by then it was disingenuous, to say the least, of Ms Sarah Harman to say in her witness statement of 29 January 2004 that the mother "would wish to disclose some documents in these proceedings to the Secretary of State [sic] for Children". The false impression thereby created was merely

compounded by the fact that three days earlier, on 26 January 2004, Ms Sarah Harman's partner had written a letter to the local authority saying:

> "Our client wishes the Children's Minister, Margaret Hodge, to have a copy of Mrs Justice Bracewell's Judgment and also [Dr Y]'s report of May 2002. *If we disclose those documents to the Minister*, it is likely that she will wish to disclose them to other third parties … Please could you consider both the Judgment and the report and indicate what parts of those documents need to be edited" (emphasis added).

It is not clear whether that letter was written before or after the telephone conversation that took place the same day between Ms Sarah Harman and the Solicitor-General. It seems to me to matter not.

ii) Both mother and Ms Sarah Harman sat through the proceedings before Sumner J on 5 February 2004 without disclosing anything of what had gone on: specifically, without disclosing that some of the documents, permission to disclose which to the Solicitor-General, the Minister of State and the mother's Member of Parliament was being sought from the judge, had, as they knew, already been disclosed to those persons. As Mr Howard observes, we can understand now why Mr Cobb had been instructed to make the submission to Sumner J that he should make the order sought then and there. That Sumner J was thoroughly misled is demonstrated, as Mr Howard points out, by the fact that, as the Transcript records, he said:

> "I am going to make a strong presumption that [the mother] is not going to do anything that might remotely be a contempt of court. That is where I start from."

If he had known the truth, Sumner J might more appropriately have taken as his starting point that the mother had been committing contempts of court for some months, as had her solicitor, albeit for a rather shorter period.

iii) Ms Sarah Harman and the mother did not make full and frank disclosure of what they had done until after the hearing before me on 25 February 2004 had concluded.

41. So much for the sorry events that took place before Sumner J on 5 February 2004. I pick up the narrative at that point.

42. The local authority did not, of course, know anything of what had been going on behind the scenes until it received Ms Sarah Harman's letter of 11 February 2004.

43. On 12 February 2004 the local authority wrote letters to both the Solicitor-General and the Minister of State for Children, setting out what Ms Sarah Harman had said in her letter of 11 February 2004 and seeking certain information. The local authority eventually received by way of reply from the Solicitor-General the letter dated 23 February 2004 to which I have referred. I am told that the local authority has not yet received even an acknowledgement of its letter to the Minister of State.

44. On 16 February 2004 the mother filed the witness statement to which I have already referred.

45. The revelations in Ms Sarah Harman's letter of 11 February 2004 and, five days later, in the mother's witness statement, generated a further flurry of correspondence in which the local authority sought various information and assurances from both Ms Sarah Harman and the BBC. Failing to obtain what it believed to be satisfactory assurances the local authority applied to me ex parte on 17 February for injunctive relief against the mother, Miss Sarah Harman and the BBC. I made an order against the mother but declined to make any orders at that stage against either Ms Sarah Harman or the BBC.

46. On 23 February 2004 the Minister of State for Children made a statement in the House of Commons (Vol 418, col 37) which included this important passage:

> "Although it is ultimately a matter for the courts to determine individual cases that come before them, it is right for me to give proper guidance to local authorities as to how they should proceed. I will therefore write shortly to councils with social services responsibilities to ask them to take the following action. First, I will ask them to consider those cases affected by the Attorney-General's review. In these cases, councils should stand ready to act in the light of the outcome of that review.
>
> Secondly, within the next four weeks, councils with social services responsibilities should identify and review current case. Those are cases in which they have commenced proceedings in relation to a child and in which the court has not yet made a final order. In those cases councils should consider with their lawyers the implications for those proceedings of the Court of Appeal's judgment in the Cannings case.
>
> Thirdly, within the next 12 weeks social services departments should, together with their lawyers, identify cases in which a final care order was made in the past which involved harm to the child or a sibling, and in which the grounds for the making of an order depended exclusively, or almost exclusively, on a serious disagreement between medical experts about the cause of the harm. In such cases councils should again consider, with their lawyers, whether there are now doubts about the reliability of the expert medical evidence. If that is so, they should – bearing in mind the child's current circumstances and

> current best interests – consider whether to apply to the court for the care order to be discharged, or whether to support any application that made be made by the parents or the child. When reviewing cases, councils will also need to take into account any fresh case law judgments from the Appeal Court that may be relevant.
>
> The number of case falling into the category that I am asking councils to review is likely to be manageable, although I do not intend to speculate about the precise number. Our best estimate is that it may number no more than the low hundreds, rather than thousands. I am not suggesting that it will be appropriate in every case, following a review, to apply for the discharge of the original care order. The decision must depend entirely on the circumstances of each case. Councils already have a duty to review the cases of children who are the subjects of care orders at least every six months. Given the range of public concerns that have been raised, it would not be right to impose an arbitrary limit on the types of cases that should be reviewed. The key determining factor is that the making of the care order depended exclusively, or almost exclusively, on a dispute between medical experts.
>
> When applications are made to the court, whether by the local authority, the parents or the child, it will be for the court to decide in all cases whether the care order should be discharged."

In answer to a question she added this (col 43):

> "She asked whether we would establish a national helpline. We considered that, but, as a range of support agencies is in situ, we decided it would be better to work through the helplines and organisations that already exist. All local authorities have adoption support facilities and a number of national organisations offer support to all the groups of people who might be involved. Such organisations include NORCAP – the National Organisation for the Counselling of Adoptees and Parents – the Family Rights Group, After Adoption and the Post-Adoption centre. There is a whole range of such groups and we thought it better to work through them."

47. The matter came on for hearing before me, as I have said, on 25 February 2004. I reserved judgment. I now (19 March 2004) deliver in open court the judgment which I handed down in private on 5 March 2004.

48. I understand that the mother's application for permission to appeal, with another case raising similar points, was listed for hearing by the Court of Appeal, Civil Division, on 3 March 2004, with the appeals to follow if permission was granted. On 4 March

2004 the Court of Appeal reserved judgment on the mother's application. Judgment has not yet been given.

The issues

49. It is important at the outset to make quite clear what this present application is *not* about. I am *not* concerned with whether criticism of Sir Roy Meadow is justified or not. I am *not* concerned with whether Bracewell J's conclusions in relation to B were right or wrong. I am *not* concerned with whether the mother's complaints about Dr X and Dr Y are justified or not. I am *not* concerned with whether the mother should or should not be given permission to appeal. On each of those matters I have, and express, no judicial views whatever. Those are all matters, however important and pressing, for another day. I am concerned, and concerned only, with a narrow question relating to the disclosure of documents. But the question, though narrow, is important, not merely intrinsically but also because it may, of its nature, arise in other cases such as this. That is why I reserved judgment, and that is why I am now delivering this judgment in open court.

The relief sought

50. Matters have moved on since the hearing on 5 February 2004 and, indeed, since the hearing on 17 February 2004. The mother no longer seeks leave to disclose copies of Bracewell J's judgment or of Dr Y's report into the public domain. The local authority no longer seeks specific relief against the BBC.

51. The mother seeks three things. In the first place she seeks leave to disclose the following documents to the General Medical Council for the purposes of pursuing her complaint against Dr X and Dr Y: the reports of Dr X, the letter of instruction to and the reports of Dr Y, the transcript of a telephone conversation (an experts' meeting) that took place on 9 October 2002, the transcripts of the oral evidence of Dr X and Dr Y, Mr Cobb's written closing submissions on behalf of the mother dated 4 January 2003, and the judgments of Bracewell J and Holman J. Secondly, she seeks leave to disclose into the public domain what Mr Cobb refers to as certain "facts". Thirdly, she seeks leave to disclose into the public domain an edited extract of a letter written to the mother by a local authority social worker on 11 February 2004. The letter expresses concerns "as to what the true motivations are concerning your desire to seek publicity and distribute what is highly sensitive information to other people" and about the possible impact of this on B and her two older siblings.

52. The "facts" which the mother seeks leave to disclose are (and I quote, having taken the liberty of re-arranging the sequence somewhat):

> "(a) The child suffered rigors while an in-patient in hospital in 2001.
>
> (b) The mother was found by the court to have deliberately administered an unidentified infected substance to the child,

> thereby causing the rigors which were potentially life threatening while the child was in hospital in 2001.
>
> (c) The evidence in support of that finding was circumstantial.
>
> (d) Nowhere was the substance identified.
>
> (e) [Dr Y] was the jointly instructed paediatric expert in the case.
>
> (f) [Dr Y] did not see the mother or the child for the purposes of his assessment.
>
> (g) [Dr Y]'s experience was based in part on research undertaken with Professor Sir Roy Meadow.
>
> (h) [Dr Y] had no expertise of fabricated disease in the field 'Fabricated or Induced Illness' syndrome / Munchausen Syndrome by proxy, but supported the finding.
>
> (i) Other experts were of the view that there was no known cause for the rigors.
>
> (j) Senior staff at the hospital considered it unlikely that the mother would have had the opportunity to administer the substance.
>
> (k) The judge found that the mother had lied about a number of matters."

Although I have referred to the expert as Dr Y, the mother in fact wishes to publish Dr Y's name.

53. Mr Cobb accepts, as does the mother, that what he calls the confidentiality of the proceedings and the protection of B should not be compromised. He therefore invites the court to make an order *contra mundum* in standard form, the effect of which would be to allow the mother to tell her story to the media (subject of course to the various restraints imposed upon her by the general law) whilst prohibiting the publication of information which would lead to B's identification.

54. Mr Howard on behalf of the local authority, Mr Nicholas Baldock on behalf of B's guardian and Mr Angus Moon on behalf of Dr Y, agree that there should be a *contra mundum* injunction. They differ in certain respects, however, from Mr Cobb as to how precisely the order should be drafted. Mr Howard submits that the order should prohibit identification of the local authority, Mr Moon that it should prohibit identification of Dr Y. Those restrictions are opposed both by Mr Cobb and by Mr Adam Wolanski on behalf of the BBC. Mr Howard would also seek to limit the media's ability to solicit information from the mother as well as from B's extended family.

55. Finally, the local authority seeks certain specific relief against both the mother and Ms Sarah Harman. Essentially the local authority seeks two things. First, it seeks injunctions to reinforce the prohibition on publication imposed on them by section 12 of the 1960 Act. Secondly, it seeks mandatory orders to compel both the mother and Ms Sarah Harman to provide full details of the various disclosures they have made to third parties.

The law: the statutory framework

56. Cases in family courts involving children are usually heard in private. Thus rule 4.16(7) of the Family Proceedings Rules 1991 provides that, "unless the court otherwise directs", a hearing of proceedings under Part IV of the Children Act 1989 "shall be in chambers". There is nothing new about this. Over ninety years ago the House of Lords recognised that cases involving children are an exception to the general principle that justice is to be done in public: *Scott v Scott* [1913] AC 417. The reason was explained by Lord Shaw of Dunfermline in a classic passage at p 483:

> "The affairs are truly private affairs; the transactions are transactions truly intra familiam; and it has long been recognized that an appeal for the protection of the Court in the case of such persons does not involve the consequence of placing in the light of publicity their truly domestic affairs."

57. That rule 4.16(7) is compliant with the European Convention for the Protection of Human Rights and Fundamental Freedoms has been accepted both by the European Court of Human Rights and by our domestic courts: *B v United Kingdom, P v United Kingdom* (2002) 34 EHRR 529, [2001] 2 FLR 261, *P v BW (Children Cases: Hearings in Public)* [2003] EWHC 1541 (Fam), [2004] 1 FLR 171.

58. This privacy of proceedings involving children is reinforced by a number of statutory provisions. Section 97(2) of the Children Act 1989 makes it a criminal offence to

> "publish any material which is intended, or likely, to identify … any child as being involved in any proceedings before [a family court] in which any power under [the 1989] Act may be exercised by the court with respect to that or any other child".

Section 12(1)(a) of the Administration of Justice Act 1960 has the effect of making it a contempt of court to publish

> "information relating to proceedings before any court sitting in private … where the proceedings (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors; (ii) are brought under the Children Act 1989; or (iii) otherwise relate wholly or mainly to the … upbringing of a minor."

Rule 4.23 of the Family Proceedings Rules 1991 provides, subject to certain narrow exceptions, that

> "no document, other than a record of an order, held by the court and relating to proceedings [under the Children Act] shall be disclosed … without the leave of the judge or district judge."

59. I need not discuss all these provisions in great detail, but I do need to address two matters.

The law: rule 4.23

60. The first relates to the ambit of rule 4.23. The rule applies only to documents which have actually been filed with the court and "protects only the pieces of paper and not the contents": *Re W (Disclosure to Police)* [1998] 2 FLR 135 at pp 139-140 per Butler-Sloss LJ. The rule does not prevent disclosure of the existence of such documents: *Vernon v Bosley (No 2)* [1998] 1 FLR 304 at p 319C per Stuart-Smith LJ.

61. In the present case a question has arisen as to whether or not rule 4.23 applies to the letter written to the mother by the social worker on 11 February 2004 to which I referred in paragraph [51] above. The letter has never been filed with the court: it was merely included in a bundle of party and party and other correspondence that was prepared for the purpose of the hearing on 25 February 2003. In my judgment rule 4.23 does not apply to this letter. More generally, rule 4.23 does not apply to such letters merely because they are included in a bundle of correspondence prepared for use in the proceedings, nor merely because they are included in an exhibit to an affidavit or witness statement filed with the court.

The law: section 12

62. The other matter relates to the ambit of section 12(1)(a), a crucially important topic that lies of the heart of the dispute in the present case.

63. The learning on this can be found mapped out in *Re de Beaujeu's Application* [1949] Ch 230, *In re F (orse A) (A Minor) (Publication of Information)* [1977] Fam 58, *Re L (A Minor) (Wardship: Freedom of Publication)* [1988] 1 All ER 418, *Re W (Wards) (Publication of Information)* [1989] 1 FLR 246, *P v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370, *Official Solicitor v News Group Newspapers* [1994] 2 FLR 174, *Re G (Minors) (Celebrities: Publicity)* [1999] 1 FLR 409, *X v Dempster* [1999] 1 FLR 894 and *Kelly v British Broadcasting Corpn* [2001] Fam 59.

64. I begin with what I said in *Kelly* at pp 71-72:

> "At one time it was believed that the mere publication of information about a ward of court was contempt of court.

> Although that heresy was exploded by the Court of Appeal in *In re F* … , the belief seems to have lingered on well into the 1980s … Let it be said clearly, once and for all: the publication of information about a ward, even if the child is known to be a ward, is not, of itself and without more ado, a contempt of court … At one time, and even after the Court of Appeal's decision in *In re F*, there was widespread misunderstanding as to the ambit of section 12 and, in particular, as to the meaning of the critical words "information relating to proceedings before [the] court sitting in private". For long it was thought that the effect of section 12 was to prevent publication of any information whatever about wardship proceedings. Again it was only in the late 1980s that a true understanding of the limited ambit of section 12 emerged … It suffices for present purposes to say that, in essence, what section 12 protects is the privacy and confidentiality: (i) of the documents on the court file; and (ii) of what has gone on in front of the judge in his courtroom. … In contrast, section 12 does not operate to prevent publication of the fact that wardship proceedings are on foot, nor does it prevent identification of the parties or even of the ward himself. It does not prevent reporting of the comings and goings of the parties and witnesses, nor of incidents taking place outside the court or indeed within the precincts of the court but outside the room in which the judge is conducting the proceedings. Nor does section 12 prevent public identification and at least some discussion of the issues in the wardship proceedings."

65. Of crucial importance in the present case is Wilson J's decision in *X v Dempster*. Analysing the previous authorities, he summarised matters at p 898 (this has now, of course, to be read subject to section 97(2) of the Children Act 1989):

> "[E]vents in the lives of the children in the present case which are already in the public domain or which do not relate to the proceedings can be the subject of publication.
>
> Furthermore certain material which might well qualify in a loose sense as information relating to the proceedings can be published because the prohibition is to be construed not loosely but strictly and by direct reference to the mischief at which it is directed. Thus, in the absence of a specific injunction, the following can be published:
>
> (a) the fact, if it be the case, that a child is a ward of court and is the subject of wardship proceedings or that a child is the subject of residence or other proceedings under the Children Act 1989 or of proceedings relating wholly or mainly to his maintenance or upbringing … ;
>
> (b) the name, address or photograph of such a child as is mentioned in (a) … ;

> (c) the name, address or photograph of the parties (or, if the child is a party, the other parties) to such proceedings as are mentioned in (a) … ;
>
> (d) the date, time or place of a past or future hearing of such proceedings … ;
>
> (e) the nature of the dispute in such proceedings … ;
>
> (f) anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing in private is taking place … ; and
>
> (g) the text or summary of the whole or part of any order made in such proceedings … "

66. So much for what *can* be published notwithstanding section 12. What is it that *cannot* be published? In the first place it is quite clear that the effect of section 12 is to prohibit the publication of accounts of what has gone on in front of the judge sitting in private, as also the publication of documents such as affidavits, witness statements, reports, position statements, skeleton arguments or other documents filed in the proceedings, transcripts or notes of the evidence or submissions, and transcripts or notes of the judgment. (I emphasise that this list is not necessarily exhaustive.) Section 12 likewise prohibits the publication of extracts or quotations from such documents: *Official Solicitor v News Group Newspapers*; also the publication of summaries: *X v Dempster* at p 898. It is also quite clear in my judgment that the prohibition in section 12 applies equally whether or not the information or the document being published has been anonymised.

67. Thus far matters are clear – or clear enough. Three matters require further consideration:

i) The meaning of the word "publication" in section 12.

ii) Whether section 12 prohibits the identification of witnesses.

iii) The extent to which section 12 prohibits discussion of the details of a case.

I shall deal with these in turn.

68. First, the meaning of "publication". Prima facie one might expect the word here to have the same meaning as in the law of defamation: see *Arlidge, Eady & Smith* on Contempt (ed 2) para 8-79, suggesting that the publication contemplated by section 12 is not confined to information communicated through the media but includes private communications to individuals.

69. The point arose in *In re M (A Child) (Children and Family Reporter: Disclosure)* [2002] EWCA Civ 1199, [2003] Fam 26, where one argument was founded on the views expressed in *Arlidge, Eady & Smith*, and the other on the definition of "publication" in the *Shorter Oxford Dictionary*. Unhappily the Court of Appeal – it was a two judge court – did not speak with one voice. Thorpe LJ said this at para [21]:

> "Both section 12 of the 1060 Act and section 97 of the 1989 Act raise the same question: what is meant by publication? Mr Spon-Smith offers us the definition in the *Shorter Oxford Dictionary*. Mr Everall counters with *Arlidge, Eady & Smith on Contempt*, 2nd ed (1999), para 8–79. The authors there submit that the statutory language should be given the wide interpretation of the law of defamation: it should not be confined to information communicated through the media but should extend to private communications to individuals. I do not read a narrower sense in the dictionary definition and would accept that a conversation between the CFR and another individual might amount to publication, but I cannot accept that a CFR publishes, and thereby exposes himself to a risk of contempt, when he reports concerns to the relevant statutory authority charged with the collection and investigation of material suggestive of child abuse. Such a communication between two professionals exchanging information in the course of their respective functions, each acting in furtherance of the protection of children, does not constitute a publication breaching the privacy of contemporaneous Children Act proceedings."

70. Wall J expressed himself rather differently at paras [66]-[68]:

> "[66] In my judgment the second, and fatal weakness in Mr Everall's argument lay in its reliance on a wide construction of the word "publication". Mr Everall acknowledged that in the instant case, the mother could have communicated the identical information to social services without seeking the judge's permission. She would not, he accepted, have been in breach of either section 12 of the Administration of Justice Act 1960 or section 97 of the 1989 Act. But the concession prompts the inevitable question: why would the CFR be in contempt and the parent not? Why might the CFR have committed a criminal offence and the parent not? It is, of course, no answer that the information provided by the parent is not related to the proceedings, and Mr Everall did not attempt so to argue. The only logical answer to this question, therefore, in my judgment, is that neither is "publishing" the information. Each is communicating information to a statutory body charged with responsibility for child protection. That is neither a criminal offence nor a contempt of court.

> [67] Like Thorpe LJ, accordingly, I would accept Mr Spon-Smith's primary submission. The word "publication" should be given its everyday meaning. Responsible inter-disciplinary communication in proceedings relating to children is not "publication" of that information within either the Administration of Justice Act 1960 or the 1989 Act.
>
> [68] As I indicated in para [61] above, I do not see our decision on this point as weakening the true basis of confidentiality or undermining the court's resistance to publication of information in the sense in which it is likely to be harmful to children. Children need to be protected from publicity in the usually understood meaning of that term, where public knowledge of their plight or the activities of their parents in relation to them would be harmful. In my judgment, therefore, giving the word "publication" its ordinary meaning is consistent with the framework of the 1989 Act and does nothing to obstruct the court's ability to protect children from harm."

Earlier in para [61] Wall J had said:

> "I would not wish to be thought in any way to be seeking to water down or diminish the need for confidentiality in proceedings relating to children. Mr Everall's argument is historically well rooted and honourably designed to afford the maximum protection for children against unwarranted or unauthorised disclosure of information. The only question is whether the prohibitions which he submits are universal do in fact apply to inter-disciplinary communication between CFRs and child protection social workers. In my judgment, for that to be the case, the statutory language would have to be clear and unambiguous, and the court would need to be driven to the conclusion that no alternative construction of it was permissible."

71. The authors of *Arlidge, Eady & Smith* comment on this divergence of opinion, observing in the Third Cumulative Supplement that:

> "the difficulty remains that there may come a time when a communication takes place of material, falling within the categories defined in section 12, but which does not serve such a positive and useful purpose, as a matter of public policy. It seems unnecessary to define "publication" purely in the light of these rather special facts. Thus, it may be that the greater flexibility acknowledged by Thorpe LJ has more to commend it."

I respectfully agree. If Wall J is correct, it means that any party could, with impunity, send the whole of the papers in a care case to a journalist, for that would not, on his approach, be a publication. Surely that cannot be right. Furthermore, and with all respect to him, Wall J's approach seems to be inconsistent with cases such as *A County Council v W and others (Disclosure)* [1997] 1 FLR 574, where Cazalet J proceeded on the footing that, absent leave of the court, section 12 would have prevented the disclosure of papers to the General Medical Council, and *In re C (A Minor) (Care Proceedings: Disclosure)* [1997] Fam 76, where the Court of Appeal proceeded on the footing that, absent leave of the court, section 12 would have prevented the disclosure of papers to the police. I suspect there are many other such cases.

72. The Court of Appeal having been evenly divided, I am, I think, free to come to my own conclusion on the point. It seems to me that Thorpe LJ's approach is to be preferred. In my judgment, and subject only to the exception, recognised by Thorpe LJ and Wall J, where there is a communication of information by someone to a professional, each acting in furtherance of the protection of children, there is a "publication" for the purposes of section 12 whenever the law of defamation would treat there as being a publication. I recognise that this means that most forms of dissemination, whether oral or written, will constitute a publication, but I do not shrink from that. After all, the purpose of section 12(1)(a) is surely to protect what Lord Shaw called "truly private affairs", what Balcombe LJ in *In re Manda* [1993] Fam 183 at p 195 referred to as the "curtain of privacy" imposed by the family court for the protection of the particular child.

73. In the light of what has happened in the present case I need to emphasise that there is a "publication" for this purpose whether the dissemination of information or documents is to a journalist or to a Member of Parliament, a Minister of the Crown, a Law Officer, the Director of Public Prosecutions, the Crown Prosecution Service, the police (except when exercising child protection functions), the General Medical Council, or any other public body or public official. Specifically, I wish to make it clear that, whatever the position of the police may be when exercising child protection functions, the Minister of State for Children cannot for this purpose be taken as exercising such functions. The Minister of State is not, within the meaning of what Thorpe LJ and Wall J had in mind, a child protection professional. Disclosure to the Minister of State cannot therefore be justified on the footing of the exception to the general principle.

74. I turn next to the question of whether or not section 12 prohibits the identification of witnesses. This was considered by Wilson J in *X v Dempster* at p 901:

> "At (f) above, I noted that it is permissible to publish anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing is taking place. …
>
> I am clear that, were a journalist to station himself outside the courtroom at the forthcoming hearing of these residence proceedings, it would be permissible for him to publish the

> identity of the witnesses whom he saw go in and out. It therefore becomes particularly anomalous if the identity of the witnesses cannot be published before the hearing.
>
> I hold that it is not a contempt of court to identify a witness, even in the types of proceedings in private specified as exceptional in s 12(1) of the 1960 Act."

75. So it is not a contempt of court to identify a witness in children proceedings. Wilson J continued:

> "However, in my view, the analysis becomes more difficult when one moves to [the] second feature, namely that, in Mr Dempster's piece, the witnesses were identified as giving evidence for the father. When one asserts that a witness is giving evidence for one party against the other, one is moving from the formal shape of the proceedings towards what, in … *Pickering* … , Lord Bridge called 'the substance of the matters which the court has closed its doors to consider'. The assertion does not reveal the substance of those matters but it cannot be made other than by reference to the stance taken by the witness in relation to them. Put another way, it is the content of his affidavit or statement which determines the assertion. I consider this to be a grey area but, in the light of what follows, I do not regard it as necessary for me to reach a concluded view upon it."

It is, however, necessary for me now to decide the point.

76. In my judgment, section 12 does not of itself prohibit publication of the bare fact that an identified witness has given evidence for, or against, a particular party to the proceedings.

77. I turn finally to the question of the extent to which section 12 prohibits discussion of the details of a case. Now as Wilson J accepted in *X v Dempster*, and with respect I entirely agree, whilst section 12 does not prohibit publication of "the nature of the dispute", it does prohibit publication of even summaries of the evidence. Where is the line to be drawn? In *Kelly*, as we have seen, I said that section 12 does not prevent "public identification and at least some discussion of the issues in the … proceedings." That is not very helpful. More helpful is the light thrown on the matter by Wilson J's analysis in *X v Dempster*. There the question (see at p 896) was whether there was a breach of section 12 by publishing the words:

> "Says a friend of [the mother]: "She has been portrayed as a bad mother who is unfit to look after her children. Nothing could be further from the truth. She is wonderful to [them] and they love her. She wants custody of [them] and we will see what happens in court"."

immediately preceded by the statement that the mother was said to be distraught that four people, who were named, had provided affidavits – they were in fact signed witness statements – in support of the father's case.

78. Wilson J said this at p 901:

> "I turn to the third alleged feature, namely that in the piece Mr Dempster recounts an allegation to the effect that the mother has been portrayed in the proceedings as a bad mother who is unfit to look after the children."

He continued at p 903:

> "I am satisfied that the reference to the portrayal of the mother in the proceedings as a bad mother went far beyond a description of the nature of the dispute and reached deeply into the substance of the matters which the court has closed its doors to consider. If the reference could successfully be finessed as a legitimate identification of the nature of the dispute, the privacy of the proceedings in the interests of the child would be not just appropriately circumscribed but gravely invaded."

I agree with Wilson J's analysis and, if I may respectfully say so, with the particular conclusion to which he came in that case.

79. Every case will, in the final analysis, turn on its own particular facts. The circumstances of the human condition, and thus of litigation, being infinitely various, it is quite impossible to define in abstract or purely formal terms where precisely the line is to be drawn. Wilson J's discussion in *X v Dempster*, if I may respectfully say so, comes as close as anyone is likely to be able to illuminating the essential distinction between publication of "the nature of the dispute", which is permissible, and publication of even summaries of the evidence, which is not.

80. Reverting to the circumstances of the present case, it seems to me that the material published in the two paragraphs of the *Daily Mail* to which the local authority has taken objection, whilst fairly close to the line, was almost certainly on the wrong side of the line. Beyond that provisional view it would not be proper to go in the absence of any representations from the editor and publisher of the *Daily Mail*. On the other hand, it would not seem to me to be a breach of section 12, for example, to identify the issues in a case as being whether the mother suffered from Munchausen's Syndrome by Proxy and whether she had killed (or attempted to kill) her child(ren) by, for instance, smothering or poisoning, and to identify the various medical experts who have given evidence in relation to those issues, and to state which of the parties each expert has given evidence for or against. To go beyond that might well, however, involve a breach of section 12.

The law: section 12 – summary

81. Since it is apparent that there is still widespread misunderstanding as to the precise ambit of section 12 it may be helpful if I attempt to summarise the learning. In doing so I wish to emphasise that what follows is not to be treated as if it were a statutory formulation – it is not – nor as a substitute for applying the words of section 12 itself. Moreover, any attempt to summarise an extensive and subtle jurisprudence will inevitably suffer from the inherent difficulties and defects of the exercise. There is no substitute for a careful study of the reported cases. That said, I hope that what follows may provide some practical assistance to those, unfamiliar with all the nuances of the jurisprudence, who may lack the time or opportunity to study the case-law.

82. For present purposes the relevant principles can, I think, be summarised as follows:

i) Section 12(1)(a) of the Administration of Justice Act 1960 has the effect of prohibiting the publication of:

> "information relating to proceedings before any court sitting in private … where the proceedings (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors; (ii) are brought under the Children Act 1989; or (iii) otherwise relate wholly or mainly to the … upbringing of a minor."

ii) Subject only to proof of knowledge that the proceedings in question are of the type referred to in section 12(1)(a), the publication of such information is a contempt of court.

iii) There is a "publication" for this purpose whenever the law of defamation would treat there as being a publication. This means that most forms of dissemination, whether oral or written, will constitute a publication. The only exception is where there is a communication of information by someone to a professional, each acting in furtherance of the protection of children.

iv) Specifically, there is a "publication" for this purpose whether the dissemination of information or documents is to a journalist or to a Member of Parliament, a Minister of the Crown, a Law Officer, the Director of Public Prosecutions, the Crown Prosecution Service, the police (except when exercising child protection functions), the General Medical Council, or any other public body or public official. The Minister of State for Children is not a child protection professional. Disclosure to the Minister of State cannot therefore be justified on the footing of the exception to the general principle.

v) Section 12 does not of itself prohibit the publication of:

a) the fact, if it be the case, that a child is a ward of court and is the subject of wardship proceedings or that a child is the subject of residence or other proceedings under the Children Act 1989 or of proceedings relating wholly or mainly to his maintenance or upbringing;

b) the name, address or photograph of such a child;

c) the name, address or photograph of the parties (or, if the child is a party, the other parties) to such proceedings;

d) the date, time or place of a past or future hearing of such proceedings;

e) the nature of the dispute in such proceedings;

f) anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing in private is taking place;

g) the name, address or photograph of the witnesses who have given evidence in such proceedings;

h) the party on whose behalf such a witness has given evidence; and

i) the text or summary of the whole or part of any order made in such proceedings.

vi) Section 12 prohibits the publication of:

a) accounts of what has gone on in front of the judge sitting in private;

b) documents such as affidavits, witness statements, reports, position statements, skeleton arguments or other documents filed in the proceedings, transcripts or notes of the evidence or submissions, and transcripts or notes of the judgment (this list is not necessarily exhaustive);

c) extracts or quotations from such documents;

d) summaries of such documents.

These prohibitions apply whether or not the information or the document being published has been anonymised.

vii) (By way of example of how the principles in (v) and (vi) inter-relate) in a case such as the present case section 12 does not of itself prohibit the publication of:

a) the issues in the case as being whether the mother suffered from Munchausen's Syndrome by Proxy and whether she had killed (or attempted to kill) her child(ren) by, for instance, smothering or poisoning;

b) the identity of the various medical experts who have given evidence in relation to those issues; and

c) which of the parties each expert has given evidence for or against.

viii) Irrespective of the ambit of section 12 of the 1960 Act, section 97(2) of the 1989 Act makes it a criminal offence to

> "publish any material which is intended, or likely, to identify … any child as being involved in any proceedings before [a family court] in which any power under [the 1989] Act may be exercised by the court with respect to that or any other child".

ix) This is all subject to any specific injunction or other order that a court of competent jurisdiction may have made in any particular case.

The law: the inherent jurisdiction

83. Thus the 'automatic' restrictions. But it is clear that the High Court has jurisdiction both to relax and to increase these restrictions. A judge can authorise disclosure of what would otherwise be prohibited. And a judge can impose additional restrictions.

84. The principles upon which these jurisdictions (which for convenience I shall refer to as the "disclosure jurisdiction" and the "restraint jurisdiction") were exercisable before the Human Rights Act 1998 came into force were well established. The leading authorities in the Court of Appeal were, in relation to the disclosure jurisdiction, *In re C (A Minor) (Care Proceedings: Disclosure)* [1997] Fam 76 and, in relation to the restraint jurisdiction, *In re Z (A Minor) (Identification: Restrictions on Publication)* [1997] Fam 1.

85. In relation to the disclosure jurisdiction Mr Cobb has directed attention to what I said in *Re X (Disclosure of Information)* [2001] 2 FLR 440 at para [23]. From the judgments of Sir Stephen Brown P in *Re D (Minors) (Wardship: Disclosure)* [1994] 1 FLR 346, of Balcombe LJ in *Re Manda* [1993] Fam 183 and of Swinton Thomas LJ in *Re C (A Minor) (Care Proceedings: Disclosure)* [1997] Fam 76, I derived the following propositions:

> "(1) The exercise of the judicial discretion which arises in these cases requires consideration of a very wide range of factors. In the final analysis it involves a balancing exercise in which the judge has to identify, evaluate and weigh those factors which point in favour of the disclosure sought against those factors which point in the other direction.
>
> (2) The interests of the child (which … typically point against disclosure) are a 'major factor' and 'very important' … But … it is clear that the child's interests are not paramount.
>
> (3) In the typical case the most important factor pointing against disclosure, other than the interests of the child involved, is what Sir Stephen Brown P in *Re D (Minors) (Wardship: Disclosure)* [1994] 1 FLR 346, 351A, referred to as 'the importance of confidentiality in wardship proceedings and the frankness which it engenders in those who give evidence to the wardship court'."

86. I continued at para [24]:

> "Wrapped up in this concept of confidentiality there are, as it seems to me, a number of different factors and interests which need to be borne in mind:
>
> (i) First, there is the interest of the particular child concerned in maintaining the confidentiality and privacy of the proceedings in which he has been involved, what … Balcombe LJ referred to as the 'curtain of privacy'.
>
> (ii) But there is also, secondly, the interest of litigants generally that those who, to use Lord Shaw of Dunfermline's famous words in *Scott v Scott* [1913] AC 417, 482, 'appeal for the protection of the court in the case of [wards]' should not thereby suffer 'the consequence of placing in the light of publicity their truly domestic affairs'. It is very much in the interests of children generally that those who may wish to have recourse to the court in wardship or other proceedings relating to children are not deterred from doing so by the fear that their private affairs will be exposed to the public gaze – private affairs which often involve matters of the most intimate, personal, painful and potentially embarrassing nature. As Lord Shaw of Dunfermline said: 'The affairs are truly private affairs; the transactions are transactions truly intra familiam'.

> (iii) Thirdly, there is a public interest in encouraging frankness in children's cases, what Nicholls LJ referred to in *Brown v Matthews* [1990] Ch 662, 681C, as the frank and ready co-operation from people as diverse as doctors, school teachers, neighbours, the child in question, the parents themselves, and other close relations, including other children in the same family, on which the proper functioning of the system depends. … it is very much in the interests of children generally that potential witnesses in such proceedings are not deterred from giving evidence by the fear that their private affairs or privately expressed views will be exposed to the public gaze.
>
> (iv) Fourthly, there is a particular public interest in encouraging frankness in children's cases on the part of perpetrators of child abuse of whatever kind …
>
> (v) Finally, there is a public interest in preserving faith with those who have given evidence to the family court in the belief that it would remain confidential. However, as both Ralph Gibson LJ in *Brown v Matthews* [1990] Ch 662, 672B, … and Balcombe LJ in *In re Manda* [1993] Fam 183, 195H, … make clear, whilst persons who give evidence in child proceedings can normally assume that their evidence will remain confidential, they are not entitled to assume that it will remain confidential in all circumstances … "

87. Mr Moon has drawn my attention to certain material, bearing on the points I made in paragraphs (iii) and (v) above, which is as worrying as it is disturbing. Professor Alan Craft is the President of the Royal College of Paediatrics and Child Health. On 2 February 2004 *The Times* published a letter from Professor Craft in which he drew attention to the fact that "Many medical posts in the field of child protection remain unfilled and paediatricians are, not surprisingly, increasingly reluctant to act as expert witnesses in these complex cases." He continued: "Unless confidence is restored, the present crisis in child-protection work will worsen. The present state of affairs cannot be allowed to continue."

88. On 11 February 2004 Professor Craft sent a letter to all members and fellows of the College in which he said:

> "The last few months have seen an unprecedented number of media attacks on paediatricians. Although this has largely been around high-profile court cases, the impact on the whole of child protection has been enormous. The public, and indeed many professionals, are confused. Paediatricians are deeply concerned, both for themselves and for their families. The purpose of this letter is to let you know that we do recognise this as a major issue, and to let you know what we are doing about it.

> That this is causing a major problem is evident from the fact that paediatricians are becoming reluctant to become involved in child protection unless they absolutely have to. A substantial number of designated and named doctor posts are unfilled. Our recent survey of all paediatricians, for which we thank you for the 75+% response rate, has shown us that in the last five years one in ten have had a complaint against them relating to child protection work. Increasing numbers are reported to the GMC by aggrieved parents. Many of our trainees say they don't want to do child protection work. In the midst of this the College continues to receive a large number of requests from solicitors to suggest the names of paediatricians who will give second and expert opinions – something it is becoming increasingly difficult to do as people become more unwilling to undertake this kind of work."

He continued:

> "We are not on our own in being under pressure. Australia and New Zealand have experienced similar difficulties, and only last week I had a letter signed by many of the leading child protection experts in the United States. I quote:
>
> > We are aware of the continuing and massive backlash in the United Kingdom against child protection, which uses as a strategy the promulgation of disinformation and vilification of certain doctors through sensational and convincing media campaigns. As President of the Royal Collage of Paediatrics and Child Health, you are doubtless concerned that such campaigning poses a great risk to maltreated children, has a chilling effect upon paediatricians' willingness to involve themselves in these cases, and sets back the gains that have been made on behalf of abused and neglected children during the past 40 years.
> >
> > We are writing to you now because we deeply share that concern, and with the hope that we can begin a dialogue about a problem that is mutual even if currently manifested somewhat differently in our different countries. These are difficulties that, on both sides of the Atlantic, promise to endure and enlarge unless there is a heightened corrective response both immediately and over time. The response must come from those who understand the issues and what is at stake for the children.
>
> The judiciary is also aware of our concerns. A recent letter from Dame Elizabeth Butler-Sloss, President of the Family Division, stated:

> Paediatricians are probably feeling very bruised and vulnerable at the moment. The judiciary, however, have a clear appreciation of the immensely valuable work you do and the enormous importance of your contribution to child welfare and protection."

89. These are not concerns generated merely by recent events. As Mr Moon points out, Wall J in *Expert Evidence 10 years after the implementation of the Children Act 1989: Where are we?* recognised that there is a shortage of doctors with appropriate expertise to assist the court in family proceedings. And in the aftermath of the *Climbie* report the then President of the Royal College of Paediatrics and Child Health made this observation in (2003) 326 BMJ 293 at p 294:

> "Lord Laming heard evidence that child protection is an unpopular specialty of paediatrics. He chose not to address the reasons in detail. There are many, but one issue that increasingly inhibits high quality child protection work is the fear of complaints and litigation. No one condones poor clinical practice, but some complaints are malicious and are intended to obstruct social work and police investigations, and some arise from orchestrated campaigns."

90. I shall return to the implications of this below.

The law: the Human Rights Act 1998

91. The old learning has now to be reappraised in the light of the Human Rights Act. The Court of Appeal has said as much in relation to the restraint jurisdiction: *Re S (Identification: Restrictions on Publication)* [2003] EWCA Civ 963, [2003] 2 FLR 1253. The same, in my judgment, must be so in relation to the disclosure jurisdiction: cf *A Health Authority v X (Discovery: Medical Conduct)* [2001] 2 FLR 673, on appeal [2001] EWCA Civ 2014, [2002] 1 FLR 1045, and *Clibbery v Allan* [2001] 2 FLR 819, on appeal [2002] EWCA Civ 45, [2002] 1 FLR 565.

92. In the present case I am invited to exercise both the disclosure jurisdiction and the restraint jurisdiction. Three provisions in the Convention are relevant. Article 6 guarantees the right to a fair trial. Article 8 guarantees the right to "respect for … private and family life", subject to any limitation which can be shown to be "in accordance with the law and … necessary in a democratic society" inter alia "for the protection of health … or for the protection of the rights and freedoms of others." Article 10 guarantees the right to "receive and impart information and ideas", subject to any limitations which can be shown to be "prescribed by law and … necessary in a democratic society" inter alia "for the protection of health … , for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

93. Now putting the point at its simplest what has to be struck in the present case is the proper balance between publicity and privacy. But in fact in a case such as this the interplay of these various rights is quite complex. There are various rights and interests, both private and public, which have to be weighed and balanced. In the present case the analysis can perhaps be summarised as follows:

i) The mother seeks to assert her rights under Articles 8 and 10 to impart information about the proceedings to the media and others, to tell her story to the world through the medium of the *Daily Mail* and the BBC. She also seeks to assert her rights under Article 6 to a fair trial, rights which she says point in favour of at least some degree of publicity for the proceedings.

ii) B seeks to assert her rights under Article 8 to respect for her private and family life – her right to keep her private life private – rights which she seeks to vindicate by preserving the confidentiality of her personal data and the privacy of the proceedings. She also seeks to assert her rights under Article 6 to a fair trial, rights which she says point in favour of protecting her private life by maintaining the privacy of the proceedings.

iii) There are also the rights under Article 10 of the media and others to receive from the mother the information about the proceedings she wishes to impart and to publish or broadcast her story.

iv) There are wider public interests – the interests of the community as a whole – both in preserving freedom of expression and, as recognised in *Z v Finland* (1997) 25 EHRR 371, in protecting the confidentiality of personal data and other information received in confidence.

v) There is also the public interest – an interest of the community as a whole – in promoting the administration of justice, in maintaining the authority of the judiciary and in maintaining the confidence of the public at large in the courts. This crucially important public interest may pull in different directions:

a) The mother points to the vital importance, if the administration of justice is to be promoted and public confidence in the courts maintained, of justice being administered in public – or at least in a manner which enables its workings to be properly scrutinised – so that the judges and other participants in the process remain visible and amenable to comment and criticism.

b) Both B and Dr Y, on the other hand, albeit from their different perspectives, point to the vital importance, if the administration of justice is to be promoted and public confidence in the Family Division maintained, of preserving the privacy of proceedings such as those with which I am concerned. There is, as Mr Moon puts it on behalf of Dr Y, an important public interest in preserving faith with those who have

> given evidence to the family court in the belief that their evidence would remain confidential and in encouraging co-operation from independent experts such as Dr Y.

94. Three parts of this analysis merit elaboration.

95. In the first place I have referred to the mother's rights under Article 8. Why is this? It is because, as I pointed out in *Re Roddy (a child) (identification: restriction on publication), Torbay Borough Council v News Group Newspapers* [2003] EWHC 2927 (Fam), [2004] 1 FCR xxx, at para [36]:

> "Article 8 … embraces both the right to maintain one's privacy and, if this is what one prefers, not merely the right to waive that privacy but also the right to share what would otherwise be private with others or, indeed, with the world at large. So the right to communicate one's story to one's fellow beings is protected not merely by Article 10 but also by Article 8."

96. Secondly, and consistently with Articles 6 and 8, the Strasbourg court, as I have already pointed out, recognises the legitimacy of the practice in this country under which the Family Division regularly sits in private in cases where, to use the language of Article 6, this is "required" in the interests of children: *B v United Kingdom, P v United Kingdom* (2002) 34 EHRR 529, [2001] 2 FLR 261. The core of the court's decision is to be found in the following observations at paras [38], [46]:

> "such proceedings are prime examples of cases where the exclusion of the press and public may be justified in order to protect the privacy of the child and parties and to avoid prejudicing the interests of justice. To enable the deciding judge to gain as full and accurate a picture as possible of the advantages and disadvantages of the various residence and contact options open to the child, it is essential that the parents and other witnesses feel able to express themselves candidly on highly personal issues without fear of public curiosity or comment … to pronounce the judgment in public would, to a large extent, frustrate these aims."

This, I emphasise, remains the case: see *P v BW (Children Cases: Hearings in Public)* [2003] EWHC 1541 (Fam), [2004] 1 FLR 171, esp at paras [48] and [60].

97. Thirdly, however, and of great importance, as it seems to me, in the present context, is what I have referred to as the public interest in maintaining the confidence of the public at large in the courts. Article 6 is intended, amongst other things, to promote confidence in the judicial process. This is a point that has repeatedly been stressed by the Strasbourg court. In *Prager and Oberschlick v Austria* (1996) 21 EHRR 1 at para [34] the court said:

> "Regard must … be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties."

In *Worm v Austria* (1998) 25 EHRR 454 at para [40] the court said:

> "The phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence on a criminal charge; further, that the public at large have respect for and confidence in the court's capacity to fulfil that function. "Impartiality" normally denotes lack of prejudice or bias. However, the court has repeatedly held that what is at stake in maintaining the impartiality of the judiciary is the confidence which the courts in a democratic society must inspire in the accused, as far as criminal proceedings are concerned, and also in the public at large. It follows that, in seeking to maintain the "authority and impartiality of the judiciary", the Contracting States are entitled to take account of considerations going – beyond the concrete case – to the protection of the fundamental role of courts in a democratic society."

Earlier in *Axen v Germany* (1984) 6 EHRR 195 at para [25] the court had said:

> "The public character of proceedings before the judicial bodies referred to in Article 6(1) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6(l), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention."

98. The need to maintain public confidence in the family justice system is particularly important at present when, as I have said, recent high profile cases within the criminal justice system have given rise to a very anxious debate which is no longer confined to the possibility of further miscarriages of justice in the criminal justice system but extends also to the possibility of similar miscarriages of justice in the family justice system.

99. There are many voices raised in this debate, and they often stand in stark conflict. Parents – like the mother in the present case – often want to speak out publicly. I repeat in this context the point I made in *Re Roddy* at para [83]. In my judgment, the workings of the family justice system and, very importantly, the views about the

system of the mothers and fathers caught up in it, are, as Balcombe LJ put it in *Re W (Wardship: Discharge: Publicity)* [1995] 2 FLR 466 at p 474, "matters of public interest which can and should be discussed publicly". Many of the issues litigated in the family justice system require open and public debate in the media. I repeat what I said in *Harris v Harris, Attorney–General v Harris* [2001] 2 FLR 895 at paras [360]-[389] about the importance in a free society of parents who feel aggrieved at their experiences of the family justice system being able to express their views publicly about what they conceive to be failings on the part of individual judges or failings in the judicial system. As Lord Steyn pointed out in *R v Secretary of State for the Home Department ex p Simms* [2000] 2 AC 115 at p 126,

> "freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. … It facilitates the exposure of errors in the governance and administration of justice of the country."

That was a case involving prisoners who alleged that they had been wrongly convicted. They sought with the assistance of journalists to make public the wrongs which they allegedly suffered. Lord Steyn commented at p 127:

> "They wish to challenge the safety of their convictions. In principle it is not easy to conceive of a more important function which free speech might fulfil."

And I repeat in this context what I said in *Harris* at para [368]:

> "The freedom to publish things which judges might think should not be published is all the more important where the subject of what is being said is the judges themselves. Any judicial power to punish such publications requires the most cogent justification. Even more cogent must be the justification for giving the judges a power of prior restraint."

100. That is one vital part of the debate. Another part of the debate is reflected in Professor Craft's concerns. But even here, the competing arguments pull in different directions. On the one hand there are the public interest arguments so compellingly identified by Professor Craft, arguments which might be thought to favour preserving the confidentiality of care proceedings. On the other hand, there is the equally important public interest, especially pressing in a jurisdiction where scientific error can have such devastating effects on parents and children, of exposing what Sedley LJ memorably referred to recently as "junk science": see *Re C (Welfare of Child: Immunisation)* [2003] EWCA Civ 1148, [2003] 2 FLR 1095, at para [36].

101. As I pointed out in *Re L (Care: Assessment: Fair Trial)* [2002] EWHC 1379 (Fam), [2002] 2 FLR 730, at para [150]:

> "it must never be forgotten that, with the state's abandonment of the right to impose capital sentences, orders of the kind

> which judges of this Division are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make. It is a terrible thing to say to any parent – particularly, perhaps, to a mother – that he or she is to lose their child for ever."

When a family judge makes a freeing or an adoption order in relation to a twenty-year old mother's baby, the mother will have to live with the consequences of that decision for what may be upwards of 60 years, and the baby for what may be upwards of 80 years. We must be vigilant to guard against the risks. And we must have the humility to recognise – and to acknowledge – that public debate, and the jealous vigilance of an informed media, have an important role to play in exposing past miscarriages of justice and in preventing possible future miscarriages of justice.

102. I repeat, and I wish to emphasise, that I am not here concerned with whether criticism of Sir Roy Meadow is justified or not. I am not here concerned with whether the mother's complaints about Dr X and Dr Y are justified or not. On each of these matters I have, and express, no judicial views whatever. I am certainly not to be taken as suggesting, or even hinting, that the views espoused by Sir Roy Meadow, or by Dr Y in the present case, could ever properly be described as junk science, or anything remotely approaching it. But the Family Division is certainly not immune to the perils of unreliable science in the context of care proceedings. The judgment of Singer J in *Re X (Non-Accidental Injury: Expert Evidence)* [2001] 2 FLR 90 is demonstration enough of that.

103. We cannot afford to proceed on the blinkered assumption that there have been no miscarriages of justice in the family justice system. This is something that has to be addressed with honesty and candour if the family justice system is not to suffer further loss of public confidence. Open and public debate in the media is essential.

104. I should add this. Under the heading "Public Judgments" the President's administrative directions to which I earlier referred said this:

> "In light of the attention which the Court of Appeal's judgment in *Cannings* has attracted, and the level of public concern it has generated, it is highly desirable that the public be given appropriate information about the resulting impact in family cases.
>
> Where applications for the variation, discharge or revocation of final orders are made, judges should consider issuing in public at the conclusion of the case suitably anonymised judgments. Due consideration will of course be given to any concurrent proceedings, particularly criminal proceedings, upon which publicity may have a bearing.
>
> It is also worth giving consideration to increasing the frequency with which anonymised family court judgments in general are

> made public. According to current convention, judgments are usually made public where they involve some important principle of law which in the opinion of the judge makes the case of interest to the law reporters. In view of the current climate and increasing complaints of 'secrecy' in the family justice system, a broader approach to making judgments public may be desirable."

I respectfully, and emphatically, agree.

The law: the balancing exercise

105. So much for the various competing, and conflicting interests that are in play. How is the court to weigh and balance all these claims? This was the question considered by the Court of Appeal in *Re S (Identification: Restrictions on Publication)* [2003] EWCA Civ 963, [2003] 2 FLR 1253: see esp per Hale LJ at paras [52]-[60], Latham LJ at para [75] and Lord Phillips of Worth Matravers MR at para [108]. The proper approach is for the court to identify the various rights that are engaged and then to conduct the necessary balancing exercise between the competing rights, considering the proportionality of the potential interference with each right considered independently: see *Re Roddy* at para [18]. Thus, considering at para [64] the proper balancing of conflicting rights under Articles 8 and 10, Latham LJ described the exercise 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."

106. In *Re S* the balancing exercise was not particularly complicated. Although Article 6 was also implicated the essential contest was between the rights of the child under Article 8 and the rights of the media under Article 10. In the present case, as in *Clibbery v Allan* and as in *Re Roddy*, the exercise is more complicated. But although the exercise may be more complicated the essential task remains that identified in *Re S*.

107. So much for the basic legal framework. I turn to consider its application in the largely unprecedented circumstances of the present case.

Discussion: past disclosures

108. I do not propose to describe or summarise the contents of the case summary prepared by the mother or the contents of versions A and B of the case summary distributed by Ms Sarah Harman. To do so would defeat the very purpose of section 12. Suffice it to say that, whatever Ms Sarah Harman may have thought, both the case summary

prepared by the mother and versions A and B of the case summary distributed by Ms Sarah Harman quite plainly, in my judgment, fall foul of the prohibition on publication in section 12. Both contain detailed summaries of the course of the hearing before Bracewell J and of the medical and other evidence she heard. I do not understand how any competent lawyer who had considered Wilson J's judgment in *X v Dempster* could come to any other view.

109. In my judgment, and applying the principles as I have set them out in paragraph [82] above, each of the various disclosures which I have listed in paragraph [36] above amounted to a publication prohibited by section 12. Each of those disclosures therefore constituted a prima facie contempt of court. Specifically, it was, prima facie, a contempt of court for the mother or Ms Sarah Harman, as the case may be, to disclose copies of Bracewell J's judgment, of Dr Y's report and the other documents, and of the case summaries, variously to the mother's Member of Parliament, to the Solicitor-General, to the Minister of State for Children and to Mr Sweeney and the other journalists. It was also, as I have already pointed out, almost certainly a contempt of court for the mother to disclose the material published in the two paragraphs of the *Daily Mail* to which the local authority has taken objection.

Discussion: proposed disclosure to the General Medical Council

110. The materials which the mother wishes to disclose to the General Medical Council are plainly caught by section 12. Accordingly she needs permission from the court to make such disclosure.

111. There is much previous authority showing how this particular aspect of the disclosure jurisdiction ought to be exercised: see *A County Council v W and Others (Disclosure)* [1997] 1 FLR 674, *Re A (Disclosure of Medical Records to the GMC)* [1998] 2 FLR 641 and *A Health Authority v X (Discovery: Medical Conduct)* [2001] 2 FLR 673, affirmed [2001] EWCA Civ 2014, [2002] 1 FLR 1045. I do not propose to rehearse this learning. Suffice it to say that the cases consistently point to the compelling public interest in authorising the disclosure of documents to the General Medical Council if, as Cazalet J put it in *Re A* at p 644, they "are or may be relevant to the General Medical Council carrying out its statutory duties to protect the public against possible medical misconduct". As Thorpe LJ said in *A Health Authority v X* at para [19],

> "There is obviously a high public interest, analogous to the public interest in the due administration of criminal justice, in the proper administration of professional disciplinary hearings, particularly in the field of medicine."

He added at para [20]:

> "The balance came down in favour of production as it invariably does, save in exceptional cases."

In the present case it is the General Medical Council itself which, albeit by way of response to the mother's complaint, has indicated that it wishes to have access to the papers.

112. In principle, therefore, there should be disclosure to the General Medical Council. The balance, in my judgment, comes down clearly in favour of disclosure. Mr Moon, on behalf of Dr Y, says that disclosure at this stage, and before the Court of Appeal has adjudicated, would be premature. I do not agree. There is a complaint to the General Medical Council. The General Medical Council has asked to see the papers. It should be permitted to do so. Obviously, once the judgment of the Court of Appeal is available that also should be sent to the General Medical Council.

113. In *A Health Authority v X* I explained, by reference to the relevant Strasbourg jurisprudence, that disclosure of documents to the General Medical Council should be subject to what at para [71] I referred to as "effective and adequate safeguards against abuse, including effective and adequate safeguards of the particular patient's confidentiality and anonymity." I said at para [53] that typically what will be required is:

> "(i) the maintenance of the confidentiality of the documents themselves – the documents should not be read into the public record or otherwise put in the public domain;
>
> (ii) the minimum public disclosure of any information derived from the documents; and
>
> (iii) the protection of the patient's anonymity, if not in perpetuity then at any rate for a very long time indeed."

That approach, endorsed by the Court of Appeal, is the approach I propose to adopt in the present case. I shall accordingly make an order permitting disclosure of the relevant papers to the General Medical Council. The order will be based on the orders which I made in *A Health Authority v X (Discovery: Medical Conduct)* [2001] 2 FLR 673 and *A Health Authority v X (Discovery: Medical Conduct) (No 2)* [2002] EWHC 26 (Fam), [2002] 1 FLR 383.

114. In its letter to the mother dated 27 January 2004 the General Medical Council asked for disclosure of "all" the documents and correspondence relating to the care proceedings. There is, as I understand it, an immense mass of such papers, the vast bulk of which, I imagine, will be of very little, if any, use or interest to the General Medical Council. I propose, therefore, to confine disclosure in the first instance to the documents identified by Mr Cobb. In my judgment this is a case for what Cazalet J in *A County Council v W* at p 589 called a "stage by stage process". There will, of course, be nothing to prevent the General Medical Council seeking more extensive disclosure if it wishes.

Discussion: proposed disclosure of matters into the public domain

115. I have set out in paragraphs [51] and [52] above the matters which the mother seeks permission (if she needs it) to disclose into the public domain. The first question is whether she needs permission. In my judgment she does. I can take the matter quite shortly. The "facts" set out in paragraph [51] under (a) and (e) are not within the section 12 prohibition. But the "facts" in paragraphs (b), (c), (d), (f), (g), (h), (i), (j) and (k) are all matters culled either from the evidence that Bracewell J heard or from her judgment, they are sought to be put into the public domain as part of a discussion of the proceedings, and they all, in my judgment, fall foul of the prohibition on publication in section 12. The letter from the social worker refers to B by name, and in the context of the care proceedings, and discusses her current placement. As it stands, therefore, the letter also is caught by section 12.

116. The mother's case, as articulated by Mr Cobb, is very simple. He says that there is a significant current public interest in the developing debate in the media particularly about (a) the workings of the family court system, carried on behind closed doors, (b) the reliability of expert witnesses in family cases, in particular the opinions of Sir Roy Meadow and his colleagues, (c) Munchausen's Syndrome by Proxy, and (d) false findings of 'guilt' in child abuse cases. This debate, he says, has been generated recently, and pointedly, by the flawed convictions of women alleged to have killed their children. The mother, he says, wants to enter that debate in the media. She has relevant information to impart. She wishes to disclose at least part of the letter written to her by the social worker, as I understand it, to show the way – as she would have it the inappropriate, unfair and heavy-handed way – in which she has been treated by the local authority.

117. The local authority and the guardian assert that any such disclosure will prejudice B. Referring in this context to the letter from the mother's Member of Parliament, Mr Howard submits that the mother's wish to impart information into the public domain is only to assist in some way in her appeal and possibly to put pressure on the Court of Appeal and/or the lower courts. He says that the mother's approach in this way is entirely self-interested and that she is not considering the paramount interests of her child B. Mr Baldock makes a similar point on behalf of B's guardian, submitting that the mother's openly stated position that she wishes to deal with what she sees as a profound injustice suffered by her and other parents, raises the question as to whether the mother is capable of balancing her desire for publicity against the risks to B. The guardian's view, shared by the local authority, is that there should be no relaxation of the restraints which the general law, and section 12 in particular, impose on the mother. The guardian fears that any relaxation of the usual safeguards would only increase the dangers to B. The guardian, of course, as she says, puts B's interests at the forefront of her concerns and submits that they weigh very heavily in this case. Mr Howard puts forward a further reason why, as he would have it, I should refuse the mother permission to disclose any part of the letter into the public domain. Its publication, he says, particularly if accompanied by critical comment from the mother or the media, is likely to imperil any future working relationship between the mother and the author of the letter.

118. There is obviously here an acutely difficult balancing exercise to be performed, made all the more difficult because on one view – the mother of course would not agree – B's interests conflict very sharply with the mother's. And the balancing exercise is made none the easier because there are also in play, and requiring to be brought into the balance, not merely the interests – themselves starkly conflicting – of Dr Y and the media, as represented before me by the BBC, but also the various wider and public interests – themselves pulling in different directions – which I referred to in paragraph [93] above.

119. Mr Howard submitted that it is "quite impossible" to carry out the necessary balancing exercise under the Convention until the outcome of the mother's appeal is known. At this stage, he says, the court cannot decide whether interference with any Convention rights is appropriate: this, he says, can only be done when the outcome of the appeal is known. Mr Cobb, on the other hand, insists that the mother should be able – if need be, be permitted by the court – to participate in the public debate now, to participate in the debate, that is, before, during and after the hearing of her appeal by the Court of Appeal and without having to hold back pending delivery of judgment by the Court of Appeal. On this point I agree with Mr Cobb. I disagree profoundly with Mr Howard's approach.

120. Of course, the balancing exercise at this stage is not necessarily the same as it will be after the Court of Appeal has pronounced. It may be that the balancing exercise at this stage is more difficult to perform than it will be later on. But that cannot be a reason for not embarking on the exercise now. This is a variant of the arguments which I heard and rejected in *Kelly*. I reject Mr Howard's arguments for much the same reasons. Today, of course, following the coming into force of the Act, he faces the additional difficulty presented by section 12(3) of the Human Rights Act 1998 (see below). News is an inherently perishable commodity. The mother's story today is of a mother who perceives herself as the victim of a miscarriage of justice seeking justice in the Court of Appeal. *That* story will die when the Court of Appeal gives judgment. Once judgment is given the mother will have a new and different story, whatever it may be (depending upon the outcome of her appeal), but that is not the point. She wants to be able today to tell her story as it is today. I must decide her application now.

121. Taking into account all the relevant rights and interests as I have identified them above, in the light of all the evidence I have read (including much that I have deliberately omitted from this judgment), having regard to all the arguments I have heard, including but not limited to those which I have set out above, 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 exercise both the disclosure jurisdiction and the restraint jurisdiction.

122. Specifically I have concluded that the overall balance can fairly and justly be held only if I make two orders:

i) The first is an order *contra mundum*, made in exercise of the restraining jurisdiction, and designed:

a) to prevent the public identification of B, her mother, and her carers;

b) to prevent the public identification of Dr X and Dr Y; and

c) to protect B and her carers from being approached by the media; whilst

d) permitting the public identification of the local authority; and

e) permitting the mother (subject of course to the restraints of section 12 of the 1960 Act) to talk to and be interviewed by the media if she wishes.

ii) The other is an order, made in exercise of the disclosure jurisdiction, permitting the mother (but without identifying Dr Y) to put into the public domain the various matters which I have listed in paragraph [52] above and also permitting the mother to put into the public domain a suitable edited extract of the letter from the social worker.

123. The effect of those two orders will be to permit the mother, subject only to the *contra mundum* injunction and section 97(2) of the 1989 Act, to disclose both (1) those matters which are *not* caught by section 12 of the 1960 Act and in addition (2) the specific further matters listed in paragraph [52] above and (3) an edited extract of the letter. Put more simply, and in non-technical language, the effect of the two orders will be to permit the mother, albeit anonymously, to participate in the ongoing public debate and to do so essentially in the way she wishes.

124. I agree with Mr Howard that there are overwhelming arguments, based on B's welfare and her own rights under Article 8 of the Convention, why neither B nor those caring for her should be identified, and why B and her carers should all be protected from the direct attentions of the media. Hence the need for the injunction *contra mundum*.

125. I do not agree with Mr Howard, however, that the identity of the local authority needs to be protected. He says that there is no public interest in naming the local authority. That may or may not be so, but it is, I think, largely beside the point. It is for the local authority to establish a convincing case for an injunction to restrain the media publishing something which is prohibited neither by the general law nor by section 12. It cannot establish such a case merely by demonstrating – even assuming it can – that there is no public interest in the identity of the local authority, for that is to put the boot on the wrong foot. His real case is that the local authority's identity needs to be protected in order to ensure that B's identity is protected. That argument, if it could be justified on the facts, might well weigh heavily in the balance. But in my judgment

Mr Howard fails to make good the factual premise. I do not accept his argument that identification of the local authority is likely to lead to the identification of either B or her carers. I do not accept his argument that a combination of the disclosure sought and "tittle-tattle" will serve to identify B, certainly not to the world at large or even to her local community.

126. There is of course the risk that identification of the local authority will make it easier for those who are already in the know, or for those who are part of B's close family, domestic or social circle, to realise that something being published is in fact about her, rather than about some other child. But that is not of itself, nor is it in the particular circumstances of this case, a sufficient reason to keep the identity of the local authority a secret. I repeat what I said in *Re Roddy* at para [40]:

> "There is also, of course, the reality which has to be faced that those who are within X's "inner circle" will recognise that the story is about him, even if he is not named or otherwise directly identified. As Butler–Sloss LJ (as she was then) said in *In re M and N (Minors) (Wardship: Publication of Information)* [1990] Fam 211 at pp 225, 226:
>
> > "unless there is a total ban … someone somewhere may put the story to the person. That seems to me to be inevitable … to those who know the facts any description, for instance from this judgment, will lead to identification."
>
> But as Neill LJ said in *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100 at p 103:
>
> > "It is to be anticipated that in almost every case the public interest in favour of publication can be satisfied without any identification of the ward to persons other than those who already know the facts. It seems to me, however, that the risk of some wider identification may have to be accepted on occasions if the story is to be told in a manner which will engage the interest of the general public.""

127. The position of Dr Y (and indeed of Dr X) is very different. I have referred already to the worrying background material that Mr Moon has produced. He submits that if the court were to agree that doctors in the position in which Dr Y currently finds himself should be named, this would be likely to lead to a further drain on the pool of doctors willing to do child protection work. As he correctly points out, that work, though very important, is voluntary. He voices the fear that doctors may be yet further disinclined to do such work if they see that the evidence they give to the court on the understanding that it is confidential can be the subject of public examination in the kind of circumstances which the mother now asks me to permit.

128. As against that, Mr Wolanski on behalf of the BBC directs attention to what he submits is the strong public interest in being informed of failings or potential failings in the family court system. He also reminds me that Dr Y has available to him legal remedies in respect of defamatory and false publications and points out that reports of proceedings which, like the proceedings before Bracewell J, are not held in public do not attract qualified privilege. There is also the important point that the expectation of confidentiality cannot be absolute. As I said in *Re X* at para [24], and I repeat the key passage:

> "whilst persons who give evidence in child proceedings can normally assume that their evidence will remain confidential, they are not entitled to assume that it will remain confidential in all circumstances."

129. There is here, I think, an especially acute and difficult dilemma. On the one hand there is a powerful public interest, particularly at a time when public concerns are as great as they are at present, in knowing who the experts are whose theories and evidence underpin judicial decisions which are increasingly coming under critical and sceptical scrutiny. On the other hand, it is scarcely an exaggeration to say that Sir Roy Meadow has been pilloried and almost demonised in the media. And even whilst I have been preparing this judgment the media have been full of stories about how another expert who has given evidence in Munchausen's Syndrome by Proxy cases, Professor David Southall, has been under investigation by the General Medical Council.

130. My concern is not so much for Dr Y. My concern is that if Dr Y is to be named in this case, then why not every medical expert in every Munchausen's Syndrome by Proxy case where a mother, whether with justification or not, turns to the media with the story that she has been the victim of a miscarriage of justice at the hands of Professor F or Dr G or whoever. Were that to happen then the concerns articulated by Mr Moon would, I very much fear, all too soon become the reality: the already inadequate number of experts willing to assist the courts in vitally important child protection cases might well be even further reduced. In other words, what tips the balance is not so much Dr Y's personal interests, real and important as they undoubtedly are, as the important public interest to which Mr Moon has very properly and so compellingly drawn attention.

131. The balance at this stage comes down, in my judgment, in favour of permitting the mother to make her allegations in public whilst at the same time protecting the identities of Dr X and Dr Y. I emphasise that this is how the balance requires to be struck at this stage. There may come a time when the balance requires to be struck differently. That time may come once the Court of Appeal has given judgment. The judgment of the Court of Appeal may, for all I know, turn out to be inconclusive: it is at least theoretically possible that the Court of Appeal will order a re-trial. But the Court of Appeal might dismiss the mother's appeal altogether, or it might allow her appeal and set aside the care order. There is a very wide range of possible outcomes. I am not going to go through them all one by one, for the point I am here considering may well arise for decision on some future occasion. All I would observe here is that, were the mother to be wholly vindicated, and Dr Y's evidence totally discredited, the

balance might – I emphasise the word might – swing in favour of Dr Y being identified; so too the balance might swing in favour of him being identified if the mother was wholly discredited and he was wholly vindicated. In the first case, there might be a powerful public interest in a discredited expert being identified; in the other case, there might be a powerful public interest in the public vindication of an expert who had been unjustifiably and unjustly attacked. I put these as purely hypothetical examples to show that the balance may shift and to show that how it shifts may depend upon the outcome in the Court of Appeal. For the moment, at least, the balancing exercise requires that Dr Y's identity (like that of Dr X) is not to be disclosed.

132. Before I leave this part of the case there is one final thing I ought to add. I have not the slightest idea whether the mother's complaints have any foundation. Apart from Bracewell J's judgment I have seen very little of the material from the care proceedings. I have not, for example, seen any of Dr X's or Dr Y's reports. It may be that the mother is indeed the victim of a miscarriage of justice. If she is, then she has a powerful argument for saying that she should not be gagged. Indeed, even if she turns out not to be, in the meantime she can still pray in aid Lord Steyn's powerful dictum. But it may be, for all I know, that mother is not the victim of any miscarriage of justice and that she is indeed everything that Bracewell J found her to be. In that event there may be a powerful public interest in exposing her for what she is found to be: a woman who falsely cast herself in the role of victim and sought, by use of the media, to persuade the public that she was something which in truth she turns out not to have been.

133. One of the disadvantages of the "curtain of privacy" to which Balcombe LJ referred – what some campaigners would prefer to characterise as the cloak of secrecy surrounding the family courts – has become apparent. Those who without justification attack the family justice system can all too easily do so by feeding the media tendentious accounts of proceedings whilst hypocritically sheltering behind the very privacy of the proceedings which, although they affect to condemn, they in fact turn to their own advantage. It is all too easy to attack the system when the system itself prevents anyone correcting the misrepresentations being fed to the media: see *Harris* at para [386].

134. I make the point for two reasons. In the first place it suggests that too relentless an enforcement of the privacy of family court proceedings may be counter-productive and that the courts should perhaps in future be more willing than they have been in the past to exercise the disclosure jurisdiction so as to permit matters such as these to be put into the public domain. Secondly, if disclosure is to be permitted, the person seeking disclosure – here the mother – may have to be prepared to take the rough with the smooth. The mother is not necessarily entitled to set the media agenda. If she wants to put some parts of the case into the public domain, then she may have to accept that other less appealing parts of the case are also put into the public domain. Hence, in the present case, my reference to Bracewell J's unchallenged finding that the mother is a liar and my reference to the intriguing differences between the allegations the mother makes against Dr X and Dr Y in her grounds of appeal to the Court of Appeal and those she makes in her complaint to the General Medical Council. And hence, likewise, my permission to the others involved in these

proceedings to put those matters more generally into the public domain if the mother chooses not to.

Discussion: disclosure to the Minister of State, the Solicitor-General and the member of Parliament

135. This part of the application is no longer pursued but there are some points that I should nonetheless make.

136. The first is to emphasise, as I have already pointed out, that section 12 of the 1960 Act applies equally whether the dissemination of information or documents is to a journalist or to a Member of Parliament, a Minister of the Crown, a Law Officer, or any other public body or public official, that the Minister of State for Children is not a child protection professional, and that disclosure to the Minister of State cannot therefore be justified on the footing of the exception to the general principle recognised in *In re M*. Put shortly, a government department has no right to see a family court file and needs leave from a judge to do so.

137. Secondly, the application in the present case for leave to disclose papers to the Minister of State and the Solicitor-General was made at a time when Ministers were still apparently debating whether or not there should be any, and if so what kind, of review. There had been no request for such disclosure, so far as I am aware, from either the Minister of State or the Solicitor-General. In these circumstances the application, insofar as it was put on this basis, was in my judgment inappropriate and premature. If Ministers felt that it was appropriate to see individual case papers before deciding what if any kind of review to set up, then it was, as it seems to me, for Ministers so to indicate and for a Minister, not some individual parent, to make an application to the court. And in this context I should add that I agree with Sumner J's comment on 5 February 2004 that it is not for the courts to start inviting people to write to government departments. Matters might, of course, have been quite different if a Ministerial review had been set up of a type which made it appropriate for individual case papers to be submitted. In such circumstances it might have been appropriate for a parent to make the application for permission to disclose. But that was not the position when this application was first mounted on 29 January 2004 nor, in the light of the statement made by the Minister of State on 23 February 2004, is it likely to the position in future, at least not within the near future.

138. So far as the application for the disclosure of papers to the mother's Member of Parliament is concerned, that is not something that I would have been minded to order. Quite apart from what we now know of the circumstances in which his letter of 30 January 2004 came to be written, it is, as Mr Howard pointed out, a little difficult to see how the disclosure to the mother's Member of Parliament of Dr Y's report could, as he put it in his letter, "enhance" her "chances of obtaining a fair and just conclusion to her appeal".

Discussion: the position of the BBC

139. As I have said, on 17 February 2004 I refused to grant the local authority ex parte relief against the BBC. The relief sought on that occasion was two-fold: first, an order restraining the BBC from "publishing or transmitting in any form whatsoever a television programme or interview with the [mother] or her solicitor Ms Sarah Harman relating to these proceedings, without first giving 14 days notice in writing" to the local authority; and, secondly, an order restraining the BBC from "publishing or seeking to publish or transmit in any form whatsoever any part of parts of the report of [Dr Y] or of any other documents provided to them from these proceedings".

140. The local authority's application was made not merely ex parte (or without notice) in the formal sense but without having given the BBC any prior warning or notice of what was being done. When I queried why no notice of any kind had been given to the BBC I was told that the local authority feared that if it notified the BBC of the application the BBC might put the programme out. I confess I found that a surprising submission.

141. I declined to make any order against the BBC at that stage. Subsequently, as I have already said, the local authority decided not to pursue its application against the BBC.

142. I can summarise very briefly why I declined to grant the local authority the relief it was seeking.

143. In the first place, there was nothing in the correspondence which had been passing between the local authority and the BBC since 5 February 2004 to suggest that the BBC would "try and pull a fast one" if notified of the hearing. On the contrary, the BBC had made it clear in correspondence, as it was put in a letter dated 11 February 2004, that "the BBC has no intention of committing breaches of the Children Act or of behaving in a manner likely to constitute a contempt of court". It added, in a letter dated 13 February 2004, that "it is fully intended that the welfare of any children involved in such disputes will be protected by the BBC and its staff." Insofar as the BBC had refused to give the local authority the assurances that were being sought, it was perfectly entitled to adopt that stance, and its decision to do so could not, in my judgment, found any complaint or give rise to any justified concern on the part of the local authority. The assurances sought went far beyond anything that the local authority could reasonably have demanded, and in those circumstances the BBC's refusal to comply was not something to be held against it. The BBC, in my judgment, could and should have been given notice of the hearing. Moreover, and in the light of that same correspondence, there seemed to me to be no very apparent need for any injunctive relief against the BBC at all.

144. Secondly, there was in my judgment no basis in law for seeking to impose a blanket restraint on *any* interview with the mother merely because the interview "related to" the proceedings.

145. Furthermore, the first part of the order sought seemed to me to be fundamentally objectionable. It is wrong in principle to require the media to give prior notice of some proposed publication or broadcast. That is, on the face of it, a wholly unacceptable form of prior restraint. Worse than that, it is, on the face of it, a wholly unacceptable attempt at censorship. That may seem a strong word, but that is in reality what was being attempted here. When I questioned what would happen if I made the order and the BBC then called the local authority's bluff by immediately giving notice, the answer was that the local authority would hope to "negotiate" with the BBC, it would hope to arrange to view the tape and to obtain a transcript of the interview. Ms Sarah O'Connor, appearing on that occasion for the local authority, was disarmingly frank, saying words to the effect that the local authority was asking for 14 days' notice "in order to give us an opportunity to negotiate". The truth is that what the local authority was seeking was the opportunity to approve in advance what the BBC broadcast or, failing agreement, the opportunity to apply to the court for an injunction.

146. This, I am afraid, will not do. Licensing in advance what may be published or broadcast is simply censorship under a different name. It is not for the BBC to explain or seek permission to broadcast. As I had earlier had occasion to emphasise in *Kelly* at p 81, a case which, as it happens, also involved the BBC:

> "unless injuncted by the court, the BBC is entitled to broadcast. It is for those seeking to obtain an injunction to establish their case and to do so convincingly. If they cannot establish that case then the BBC is entitled to broadcast."

And that, as I have pointed out, is now underscored by section 12(3) of the Human Rights Act 1998: see *Re Roddy* at paras [23]-[24], [75].

147. In this connection I repeat here what I said in *Re Roddy* at para [88]:

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

148. The point is now academic, because the local authority no longer seeks any specific relief against the BBC, but I think it right to indicate that I would not in any event have been prepared to grant any relief going beyond that in the *contra mundum* injunction.

Discussion: the position of the mother and Ms Sarah Harman

149. In my judgment Mr Howard's criticisms of the mother and Ms Sarah Harman as I have recorded them above were entirely justified. The fact is that both of them have disseminated documents containing information within the ambit of section 12 of the 1960 Act and in circumstances amounting, prima facie, to a whole series of contempts of court. Both the mother and Ms Sarah Harman have displayed a remarkable and disquieting lack of candour with the court. Ms Sarah Harman's witness statement of 29 January 2004 was disingenuous to say the least. They misled Sumner J on 5 February 2004 by a mixture of suppressio veri and suggestio falsi. They both filed witness statements (the mother on 16 February 2004 and Ms Sarah Harman on 20 February 2004) asserting, explicitly in the case of the mother and implicitly in the case of Ms Sarah Harman, that they were giving full and candid accounts of what had happened when in fact their accounts were neither full nor candid. Indeed, neither of them made full and frank disclosure of what had been going on until after the hearing before me on 25 February 2004 had concluded. It is neither a pretty nor an edifying picture.

150. It is made all the worse in the case of Ms Sarah Harman by the fact that, at a time when it subsequently transpired that she had not in fact made full disclosure, she permitted Leading Counsel on her behalf to file a skeleton argument containing not merely an apology but also an assurance "that she will disclose without the Court's leave no other material for the disclosure of which leave is required" and then permitted Leading Counsel to offer the court, in her presence, an "unreserved apology" for what had happened. Again, the clear impression was being given that full disclosure had taken place when in fact it had not.

151. Amongst the relief being sought by the local authority at the ex parte hearing on 17 February 2004 were orders against both the mother and Ms Sarah Harman (a) restraining them, in effect, from doing those things which section 12 would in any event have prohibited, (b) restraining them from publishing "any information of whatever nature relating to the legal proceedings herein" and (c) requiring them to make certain disclosures in relation to what they had been doing. I made an order against the mother in the terms of (a) and a limited order against her in relation to (c), but otherwise adjourned the local authority's applications for hearing on 25 February 2004. I refused to make an order in the terms of (b), because that would have gone far beyond the effect of section 12 and made it a contempt of court for the mother and Ms Sarah Harman to say anything at all to anybody about the proceedings. Furthermore, I was not persuaded that there was generally any need for urgent ex parte relief in the terms of (c). I made an order in the terms of (a) against the mother, but not Ms Harman, largely because the mother had already indicated in correspondence that she would not object to such an order being made.

152. The mother agrees to offer undertakings broadly speaking in the terms of (a). Those undertaking are acceptable to the local authority. Ms Sarah Harman indicated to me that she was prepared to offer whatever undertakings the court might think appropriate. She may wish, in the circumstances, to offer the same undertakings as those proffered by the mother.

153. So far as concerns contempt, the local authority has indicated that it does not seek to take any step, subject to obtaining a full explanation of what has happened. I have expressed such views as seem to me, in all the circumstances, to be appropriate.

Orders

154. It was for these reasons that on 1 March 2004 I made a *contra mundum* order in the following terms:

> "UPON considering and without prejudice to
>
> Section 12 of the Human Rights Act 1998,
>
> Section 12 (1) of the Administration of Justice Act 1960;
>
> Section 97 (2) of the Children Act 1989
>
> Duration of order
>
> (1) This order is to have effect until 28th October 2017 (the eighteenth birthday of the child whose details are set out in the first Schedule) ("the child") or until further order in the meantime.
>
> Who is bound by this order
>
> (2) This order binds all persons including the First and Second Respondents (whether acting by themselves or by their servants or agents or otherwise howsoever) and all companies (whether acting by their directors or officers, servants or agents or otherwise howsoever) who know that this order has been made.
>
> Restrictions
>
> (3) Subject to paragraph (4) this order prohibits the publishing in any book, magazine or newspaper or broadcasting in any sound or television broadcast or by means of any cable or satellite programme service or public computer network ('publishing') of:
>
> (a) the name and/or address of:
>
> (i) the child;
>
> (ii) any school or other establishment in which the child is residing or being educated or treated (an 'establishment'); or

(iii) any natural person having the day-to-day care of the child (a 'carer'); or

(iv) the paternal grandparents of the child being the persons whose names and addresses are set out in the second Schedule;

(b) any picture being or including a picture of either (i) the child or (ii) either of the grand parents;

(c) any other matter calculated or likely to lead to the identification of the child as being the child of the First and Second Respondents and the grandchild of the paternal and/or maternal grandparents and the niece of ……;

(d) any matter calculated or likely to lead to the identification of any doctor who has given evidence in these proceedings (a 'doctor').

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

(a) of the child as being a child involved in proceedings before the Court in which powers under the Children Act 1989 were exercised by the Court with respect to the child; or (as the case may be)

(b) of a doctor as having given evidence in proceedings before the Court in which powers under the Children Act 1989 were exercised by the Court with respect to the child.

(5) Save for service of this order in accordance with para (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 para (3) above.

(6) This order prohibits soliciting any information relating to the child (other than information already in the public domain) from:

(a) the child;

(b) any carer;

(c) the parents or either of them;

(d) either of the paternal grandparents;

(e) either of the maternal grandparents;

(f) any of the child's siblings or half-sibling;

(g) the maternal aunt of the child …

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;

(b) publishing anything which at the date of publication by that person has previously been published (whether inside or outside the jurisdiction of the court) in any newspaper or other publication or through the Internet or any other broadcast or electronic medium to such an extent that the information is in the public domain (other than in a case where the only publication was made by that person);

(c) enquiring whether a person is protected by para (6) above;

(d) seeking information from any person who has previously approached that person with the purpose of volunteering information;

(e) soliciting information relating to the child while exercising any function authorised by statute or by any court of competent jurisdiction.

Service

(8) Copies of this order endorsed with a penal notice be served by the Applicant Local Authority.

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

(b) on such other persons as the Applicant may think fit in each case by personal service.

Further applications about this order

(9) The parties and any person affected by any of the restrictions in paras (3) to (6) above are at liberty to apply on no less than 48 hours notice to the parties."

155. On 3 March 2004 I made a further order:

"THE JUDGE stating

(1) that it is an express condition of the disclosure of the documents listed in the First Schedule to this order permitted by paragraph 1 of this order that the General Medical Council shall unless otherwise authorised or directed by order of this court at all times comply with the provisions of the Second Schedule to this order;

(2) that the fact that the mother is being given leave to disclose into the public domain the matters referred to in paragraph 2 of this order is not to be understood as any recognition by the court of the accuracy of what the mother is saying; and

(3) that this order is made without prejudice to (a) section 12 of the Administration of Justice Act 1960, (b) Section 97 of the Children Act 1989 and (c) the order made in these proceedings by Mr Justice Munby on 1st March 2004

AND UPON the mother undertaking to the Court:

(1) that she will not, by herself or by encouraging or instructing any other person to do so publish or cause to be published or transmitted:

(a) any information leading to the identification of the child concerned as being a child who is the subject of the legal proceedings herein;

(b) any part of the evidence filed in the case herein, including any oral evidence given in the proceedings;

(c) any part of any reports filed or judgments given in the proceedings herein;

(d) any part of any skeleton arguments, case summaries or précis of any court documents or evidence

SAVE as specifically permitted by the order herebelow;

(2) to serve a copy of this order on the General Medical Council at the same time as she discloses any documents in accordance with paragraph 1 of this order;

IT IS ORDERED THAT:

1 There be leave to the mother (and insofar as she does not do so leave also to either of the doctors) to disclose the documents listed in the First Schedule below to the General Medical Council for the purposes of pursuing her complaint against [Dr Y and Dr X].

2 There be leave to the mother (and any other person who may wish to do so) to disclose the following matters into the public domain:

(a) The child suffered rigors while an in-patient in hospital in 2001.

(b) The mother was found by the court to have deliberately administered an unidentified infected substance to the child, thereby causing the rigors which were potentially life threatening while the child was in hospital in 2001.

(c) The evidence in support of that finding was circumstantial.

(d) Nowhere was the substance identified.

(e) [Dr Y] was the jointly instructed paediatric expert in the case.

(f) [Dr Y] did not see the mother or the child for the purposes of his assessment.

(g) [Dr Y]'s experience was based in part on research undertaken with Professor Sir Roy Meadow.

(h) [Dr Y] had no expertise of fabricated disease in the field 'Fabricated or Induced Illness' syndrome / Munchausen Syndrome by proxy, but supported the finding.

(i) Other experts were of the view that there was no known cause for the rigors.

(j) Senior staff at the hospital considered it unlikely that the mother would have had the opportunity to administer the substance.

(k) The judge found that the mother had lied about a number of matters.

PROVIDED that (i) nothing in this order shall authorise the mother or anyone else to publish or disclose the name of [Dr Y] and (ii) in any disclosure made pursuant to this paragraph [Dr Y] shall be referred to as "Dr Y".

3 There be leave to the mother to disclose the document appended to this order marked [LB1] (being an edited extract of a letter from the key social worker to the First and Second Respondents dated 11th February 2004) into the public domain.

4 There be leave to any of the parties and to [Dr Y] [Dr X] and the General Medical Council to apply (a) to vary this order and (b) generally.

THE FIRST SCHEDULE

(a) The judgment of Mrs Justice Bracewell DBE (10th January 2003).

(b) The judgment of Mr. Justice Holman (12th September 2003).

(c) The letter of instruction to [Dr Y] dated 4th December 2001.

(d) The reports of [Dr Y] dated 29th March 2002, 9th May 2002, 12th November and his e-mail of 15th April 2002.

(e) The Transcript of the oral evidence of [Dr Y] given on 16th December 2002.

(f) The reports of [Dr X] dated 17th October 2001, 8th January 2002, 9th May 2002.

(g) The transcript of the oral evidence of [Dr X] given on 10th and 11th December 2002.

(h) Transcript of telephone conversation (experts meeting) 9th October 2002.

(i) The Closing Submissions of Counsel for the mother dated 4th January 2003.

(j) The mother's notice and grounds of appeal to the Court of Appeal from the judgment of Mrs Justice Bracewell DBE.

THE SECOND SCHEDULE

(1) The documents listed in the First Schedule to this order are and shall remain at all times confidential.

(2) Save with the prior leave of this court:

(a) no part of the documents shall be read into the public record or otherwise put in the public domain;

(b) nothing shall be published that might lead to the identification of any of the persons (other than the doctors) referred to in the documents;

(c) the General Medical Council shall not disclose any of the documents or communicate any information contained in them to any other person; and

(d) no information contained in the documents shall be disclosed at any public hearing or published in any public record of the proceedings of the General Medical Council."

156. It will be noted that neither order provides for any further explanations by either the mother or Ms Sarah Harman of the various disclosures they have made to third parties. I will hear Mr Howard on this point if he seeks any further relief. It may be – but it is entirely a matter for him – that he will think that we have now, even if we did not have at the time of the hearing on 25 February 2004, as much information as either the mother or Ms Sarah Harman can give.