



Neutral Citation Number: [2024] EWFC 50

Case No: ZE23C50364

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/03/2024

Before:

MS JUSTICE HENKE

Between:

Tortoise Media Limited

Applicant

- and -

(1) A Local Authority

Respondents

(2) The Mother

(3) The Father

(4) X and (5) Y

(via their Children's Guardian)

(Reporting Restriction Orders; Transparency; Duration)

Chris Barnes (directly instructed) for the **Applicant**
Christopher Poole (instructed by the **Local Authority**) for the **First Respondent**
Dr Charlotte Proudman (instructed by **Morgan Wiseman**) for the **Second Respondent**
Cherry Harding (instructed by **Duncan Lewis**) for the **Third Respondent**
Ramanjit Kang (instructed by **Covent Garden Family Law**) for the **Fourth and Fifth Respondents**

Hearing date: 24 January 2024

Approved Judgment

This judgment was handed down remotely at 4:30pm on 8 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MS JUSTICE HENKE

This judgment was delivered in private and a reporting restrictions order is in force, the last order having been made on 4 March 2024. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Henke J :

1. This is an application made on behalf of Tortoise Media Ltd (“Tortoise”) to report on the proceedings currently pending before me in a case which it says involves an issue of considerable public interest.
2. The application on behalf of Tortoise has been made principally by Phoebe Davis who has been supported by her colleague Louise Tickle. Ms Davis and Ms Tickle hold recognised press cards and fall within FPR rule 27.11(2)(f). Putting it shortly, they are duly accredited news reporters. Ms Davis, sometimes with Ms Tickle, has attended each of the hearings before me. I am very grateful to them for the manner in which they have presented the application and the assistance they have given this court.
3. The application I am dealing with arises in the context of public law proceedings under Part IV of the Children Act 1989. As part of those proceedings, it will be necessary for me to determine the factual matrix which may or may not satisfy the threshold criteria which provides the legal gateway to public law orders. If the threshold criteria are not met, the proceedings will be dismissed. If they are met, the court can proceed to consider which future welfare orders including public law orders are in the best interests of the subject children in this case. Whether or not the threshold criteria have been met and if so, on what basis and whether I should make a public law order, are all issues for a future hearing. The proceedings before me are at the case management stage. Unlike in other recent cases where an application to report is made, in this case there is currently no judgment on the facts or about the future welfare outcome. The application before me is to permit reporting now before those determinations have been made and before I have given any judgment.
4. There is an ongoing police investigation running in parallel to the Children Act proceedings before me. The parents were served with notices of discontinuance in October 2023. However, they have been notified that they remain under investigation, with the possibility of the same or other charges being brought in the future. The investigation by the police arises out of the discovery of the body of a baby. In a Position Statement on behalf of the police and the CPS filed at court on 2 February 2024, this court is told that ‘*it is the position of the MPS and the CPS that the charge of murder should remain under consideration pending through investigation including receipt of a full pathology report, review of digital devices and witness accounts*’. At the time of delivering this judgment, it is not known whether that remains their stance in the light of a very recently received post-mortem report.
5. Whilst the discovery of the body and the parents’ arrest precipitated the Children Act proceedings before me, the threshold criteria asserted on behalf of the local authority does not rely on a single issue. The local authority asserts that there are intertwined issues including: the circumstances of the baby’s death; the relationship between these parents; the use of alcohol by the father; alleged domestic abuse by mother to father, and by father to mother; and failing to protect the children. It thus seems to me that the findings the local authority invites me to make in these proceedings are much wider than those that are the focus of the

police investigation. The parents in this case have yet to respond to the most recent threshold document placed before the court by the local authority. In the absence of any admission by the parents, I therefore proceed as if all allegations are at issue. They are allegations to be determined - nothing more, nothing less.

6. The subject children are placed outside of parental care but within their extended family under interim care orders. The interim care orders have been made by the Family Court. They are distinct from bail conditions. They are governed by a separate legal framework. In the context of police bail conditions no longer being in place, the mother sought to discharge the interim care orders and proceedings were timetabled to enable both the interim threshold conditions and the welfare determination to be re-heard. In the event, the mother decided not to continue her challenge of the interim care orders. The hearing set up on 7 February 2024 to enable that challenge was vacated. A significant quantity of information and evidence was released by the police shortly before the hearing was due to take place and the parties needed time to read and analyse that disclosure. Very understandably, a C2 was issued on behalf of the mother on 5 February 2024 which asked that the hearing on 7 February 2024 be vacated. The application also asked that, if the advocates could agree an order, whether it could be approved administratively by the Court. I acceded to that application and accordingly the hearing of 7 February 2024 was vacated. The case is now listed before me at 2pm on 4 March 2024 for case management, namely, directions towards a final hearing.
7. This judgment was handed down in draft by 11am on 4 March 2024. I will hear and determine any matters arising from it at the hearing at 2pm on 4 March. Subject to any submissions or observations made on behalf of the parties as to appropriate redaction, I intend to publish this judgment.

Representation

8. On behalf of Tortoise, I have received written submissions prepared by Mr Barnes, instructed on a Direct Access basis. I have also received further written submissions on behalf of Tortoise prepared by Ms Tickle. Before me, the oral argument has been powerfully advanced by Ms Davis and supported by Ms Tickle.
9. The children's parents are represented before me by: -
 - a. Dr Proudman and Ms Chhina who represent the mother.
 - b. Ms Harding who represents the father.
10. The local authority is represented by Mr Poole.
11. The children are represented before me through their Guardian by Ms Kang.
12. The police and CPS, although not parties, have attended the hearings to assist the court with issues of disclosure. They have given their views on publication and most pertinently the timing of any publication, orally and in the written

submissions they have been permitted to submit. The police have been ably represented by Mr Sheridan and the CPS by Ms Oakley.

Relevant Background

13. Care proceedings were initially issued in August 2023 and interim care orders were made. The proceedings were transferred for hearing before a High Court Family Division Judge the same month and listed at the conclusion of the vacation on 13 October 2023.
14. There was a case management hearing on 13 October 2023 before Ms Markham KC, sitting as Deputy High Court Judge. A representative of Tortoise, Ms Phoebe Davis, was in attendance, and an order was made prohibiting the publication of details of the case.
15. The case first came before me on 20 December 2023. Ms Davis and Ms Louise Tickle attended and served a draft Transparency Order. The application was adjourned to be dealt with at the hearing on 15 January 2024 to give the parties and the police the opportunity to consider the draft order and provide a view.
16. On 15 January 2024, Ms Davis attended the case management hearing but chose not to pursue her application on that day. Instead, it was agreed that the parties would set out their positions in relation to the Transparency Order in a schedule, which Ms Davis could then have legal advice upon. By this time, there still had been no police disclosure of any substance.
17. In the circumstances, I directed a Transparency Order hearing on 24 January 2024. The application was listed at 2pm. I heard oral argument on that occasion from all parties to the proceedings before me and on behalf of Tortoise. At the conclusion of the hearing (after standard court hours), it became clear to me that there were two issues which had been raised that afternoon which if I was to achieve fairness for all required further argument. I thus gave directions for the filing of further skeleton arguments.
18. In the meanwhile, the Reporting Restriction Order made by Hannah Markham KC has remained in force.

The Application and The Issues between the Parties

19. Ms Davis has kindly submitted a draft of the order she asks me to make. The draft order is based upon the transparency order that is now routinely granted in the reporting pilot courts (the “standard” transparency order). The case before me is not included in the reporting pilot but the home court from which it was referred is within the pilot.
20. No party before me objects to me making a standard transparency order although it is fair to record that the father has not given instructions upon the application despite the significant passage of time. It is understood that there are significant doubts about the father’s capacity to be able to participate in these proceedings

and steps are being taken to address that issue within the overarching proceedings before me.

21. No party before me objects to the mother being able to share information from the proceedings with accredited reporters, nor do they object to the application for disclosure of documents from these proceedings by the mother to the accredited reporters.
22. There are, however, several important and distinct differences between the order Ms Davis asks me to make and what I have described as the standard transparency order. Those differences are in issue before me. The matters that are in issue are: -
 - a. The ability to be able refer to the children as being within a specific class of children by their age.
 - b. The ability to be able to publish the name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the children being identified. Linked to that is an application to be able to publish photographs or images of the parents.
 - c. The ability to be able to name any person who is a party to or who is intervening in the proceedings. The Guardian specifically opposes the naming of the local authority and their Head of Service in this case on the basis that that would lead to the identification of the children. There is no intention in this case to publish the name of the social workers or the Guardian.
 - d. The ability to be able to report these proceedings during (a) the currency of the application before me and (b) during the currency of a parallel police investigation.
23. There is a further and interrelated issue. In the skeleton argument on behalf of the mother at paragraph 4, it is said that the mother '*seeks an order against the media outlet who have already named the children publicly, ordering them to remove the children's identifying details from the internet*'. Tortoise take a principled stance against the making of such an order which would require a reputable media outlet to take down a perfectly lawful article published well before the family proceedings or the criminal investigation in this case.

The Submissions of the Parties before me

Tortoise Media Ltd.

24. Tortoise argue that central to the fact-finding I will undertake are issues which are of '*very significant and current public proceedings*'. The parents were originally charged with concealing the birth of a child contrary to s.60 of the Offences Against the Person Act 1861 ("the OAPA"). There is an ongoing debate about the use of ss.58-61 OAPA. There is significant public and media scrutiny of

prosecutions brought under these sections of the Act and proposals in Parliament to decriminalise abortion.

25. The original criminal charges brought against the parents have been discontinued once and although the parents have now been notified that they remain under investigation for that and associated offences, there is no timeframe for the conclusion of that ongoing investigation. I am asked to, and do, take note of the significant delays in police investigations of this kind which can result in it taking years before a charging decision is taken and any subsequent criminal case is heard. The police and the CPS are not parties to the proceedings before me, but they have expressed a view. They consider that reporting should not be permitted until the conclusion of the investigation and any subsequent criminal investigation. Ms Davis responds that the police have already put information in the public domain and now through the backdoor seek to restrict publication in these proceedings. In any event, it is said that the integrity of the investigation is principally protected by non-disclosure by the police of information and that any restriction should be to protect and not restrict the subject of the investigation. In this case the parents have already been named publicly by the police.
26. It is argued that the timeliness of reporting is important and part and parcel of Article 10.
27. There is a public interest in the handling of this case which is said to include: the approach of the police to such offences; the use of the police's protective powers in this case; the removal of children from parental care; and the making of interim care orders under which they remain placed away from their parents. There is a public interest in the public scrutiny of the decision-making of public authorities in such cases, in particular the actions of the police and the impact that has on families. In this case there is an issue of the use of covert recordings made, the mother says, to evidence what she says is misreporting by a social worker.
28. This case is unusual in that there has already been publicity arising from the criminal investigation of the parents which, it is said, is of significance to my determination and is said to '*substantially elevate*' the weight I should give to the mother's wish to be able to speak to the press and to put her side of the story into the public domain. It is said that there is a '*real value in the public gaining a deeper, and more nuanced, understanding of the issues in the case. That might have particular significance where, as it appears, there is local knowledge of the case, but that knowledge is one sided*'. The publicly available information is said to be misleading and partial. I am reminded that the Family Court should not seek to exercise editorial control over the reporting arising from any permission to publish. It is said that by adjourning the issue of publication to my factual determination, I am effectively asserting editorial control. Likewise, the mother acknowledges the reality that she will not have editorial control.
29. Ms Davis does not wish to name the subject children, but she does wish to be able to name their parents. Given the previous publicity and the unusual circumstances of the case, it would be artificial to suggest the parents should not be named. It is said that to provide an anonymous account would undermine meaningful

information and ‘*erode the very basis upon which a transparency order is sought*’. The mother wishes to tell her own story in her own name. The potential for jigsaw identification of the children and any harm that arises therefrom is outweighed by other considerations including Article 10 consideration.

30. In relation to any potential impact on the children from publication, it is argued that there should be an intense focus on the particular circumstances of this case rather than general arguments about children’s welfare. There has already been publicity and the potential for harm is already in existence. Nuanced, balanced and accurate reporting may enhance public understanding and generate sympathy. There is no reason to suppose that the reporting of this case will cause the children harm.
31. Ms Davis and Ms Tickle actively oppose the mother’s application to order another media outlet to take down an article published before the criminal investigation even started. They do so as a matter of principle and regardless of the effect that material being in the public domain may have on their application. That publication was and remains lawful. The jurisdiction to have it removed is questioned but, in any event, the article remains lawful notwithstanding the restrictions which apply in the context of the subsequent Children Act proceedings before this court and there are no grounds to order its removal. Procedurally, the application is deficient. It would need to be an application for a RRO on notice to all the media requiring them to remove all material published about these children prior to the Children Act proceedings. The mother’s application to take down an article relates to a particular article which it is acknowledged gives rise to a jigsaw identification point, but that must be weighed against the other factors in this case which they raise and which they say outweigh that risk.

The Local Authority

32. The local authority object, in effect, to two aspects of the proposed draft. They are (i) the naming of the parents and publishing of their photographs, and (ii) the timing of publication.
33. In relation to naming the parents and publishing their photographs, the argument is that that will lead to jigsaw identification of the children. It is accepted that information about the police investigation is already in the public domain, but it is emphasised that the information about the proceedings before me in relation to the children is not. The local authority assert that this is not a single-issue case. There are intertwined issues including the circumstances of the baby’s death, the concealment of the body, issues about the relationship between these parents, issues about domestic abuse of the mother by the father and of the father by the mother, issues about the father’s mental health and use of alcohol, and issues about failing to protect the children from those behaviours. The parents have yet to respond to the revised threshold and the local authority say that their responses should not come first in the media and latterly to this court.
34. Whilst the children’s best interests are not paramount in this application, the local authority remind me that they are engaged. They have suffered significant

upheaval. There is no evidence that the children's welfare would benefit from publication.

35. In relation to the timing of publication, what is sought by Tortoise is immediate publication. The local authority say that nothing should be done to prejudice the investigation which includes an investigation into the death of a child and the cause of that child's death. This court has yet to make findings in relation to the revised threshold criteria and in relation to the many issues within it.
36. The local authority agrees with the position of Tortoise in relation to an application to require the removal of already published information.

The Mother

37. The mother supports the application made by Tortoise. She seeks an order that the children are not named and an order against the media outlets who have already named one of the subject children and published their image, albeit in a different context. At paragraph 4 of the skeleton argument filed on her behalf, she seeks an order against the media outlet who have already published information totally unrelated to this case which link the mother and the children. In submissions, that was modified to asking me to invite the media outlet to remove the article in question from the internet.
38. It is submitted on behalf of the mother that description by the police/CPS of their investigation as '*potential offences of murder to administering drugs to procure an abortion and/or concealing the birth of a child*' is disproportionate on the evidence that has been disclosed. It is argued that the evidence would not found a case for murder. There are long and inordinate delays in the police investigation, and they are likely to continue and be significant. The police and CPS are not parties to these proceedings. It is argued that they are using a reporting restrictions order in these proceedings as a shield behind which they seek to conceal their failings and to silence the mother. It is argued that they know that they would not get such an order in the criminal courts.
39. The mother's name and address were published all over the news without her consent when she was arrested. It is said that the police and their actions at the time of arrest are responsible for the parents' names and addresses being in public. It is asserted that the police have spoken directly to the press and provided them with information before the mother has received it. Much of that allegation is denied by the police and is in issue. Prior to the making of an application to vary the reporting restriction order made by Ms Markham KC, the police had not sought to prevent her speaking to the press. It is submitted that publication in this case would not prejudice any criminal proceedings because there are none at the moment, only an investigation without time limit.
40. The mother adopts Ms Davis' public interest argument and through Dr Proudman provides context and detail to it.
41. It is said that '*it is imperative that [the mother's] right to speak is acknowledged and her right to personal autonomy and agency is respected*'. I am reminded to

place in the balance the harm the mother may suffer if she is denied the right to speak out. The inability to express her trauma, I am told, can have psychological and emotional impact and may impeded trauma recovery. Being silenced can lead to her feeling alone and isolated. Victims of domestic abuse, especially controlling and coercive behaviours, may feel that the restriction by this court of their right to tell their story mirrors their abuse.

The Father

42. No submissions of substance have been made on behalf of the father because he has not engaged effectively with these proceedings and has not given any specific instructions in relation to this application.

The Children through their Guardian

43. The Guardian recognises the public interests in transparency, but her primary interests is in protecting the anonymity of these children. This is a case in which facts and evidence are the subject of the application. This is not a case about generic and systemic issues. The Guardian acknowledges the mother's right to speak out and tell her story but argues that that must be balanced against the '*highly important right*' of the children to remain anonymous in these proceedings. The naming of the parents and the publication of their photographs will lead to the identification of at least one of the subject children. If the mother's name is typed into an internet search engine, the image and name of one of the subject children comes up straight away. The naming of the local authority is likely to put the identification of the children in jeopardy because of the publicity surrounding the parents' initial arrest which included their address. The parents have already received death threats as a result of the media coverage of their arrest. The mother has previously expressed fear for her safety.
44. The Guardian invites me to consider whether there should be no reporting until the conclusion of the police investigation and/or any criminal proceedings whichever is the later.

The Police and CPS

45. Although not parties, I have their views. They seek a delay in reporting until the conclusions of the criminal investigation/proceedings, whichever is the later.

The Law

46. I have re-read *Confidence and Confidentiality: Transparency in The Family Courts (28 October 2021)* in which the President of the Family Division sets out the need for greater openness in the Family Court. Paragraphs 5-7 capture the necessary balance between confidence and confidentiality.
47. The legal framework has been helpfully and extensively set out by Dame Victoria Sharp P in *Griffiths v Tickle [2021] EWCA Civ 1882* at paragraphs 27-48. I have read it with care.

48. Further, I agree with Mr Barnes that the decision of Mrs Justice Lieven in *Tickle v Father* [2023] EWHC 2446 (Fam) provides a helpful summary of the present position concerning transparency and the law. Accordingly, I have specifically reminded myself of paragraphs 22-34 of her judgment.
49. My task is to strike a balance between the rights that favour publication and the rights of the subject children to respect for their private and family life, applying the principles set out by the House of Lords in *Re S (A Child) (Identification: Restriction on Publication)* [2004] UKHL 47. Neither the asserted Article 8 nor the Article 10 rights take precedence. I must conduct an intensive and fact sensitive scrutiny of the competing considerations. I must evaluate various factors that tend to favour publication. I must list and consider various aspects of the rights and interests of the child. Section 97 of the Children Act applies to this case and I have accordingly reminded myself of paragraph 71 of *Griffiths v Tickle*, namely:

'71. The critical question, therefore, is whether the best interests of the child, treated as a primary consideration, are weighty enough to justify maintaining that fetter, during the course of the proceedings under s 97(2) Children Act, and indefinitely as a consequence of s 12 AJA. Put another way, do the child's best interests make it necessary and proportionate to impose those restrictions on the Article 8 and 10 rights relied on by the applicants and the mother?'

50. I must balance all the competing factors against one another and apply a proportionality test to each before making the ultimate balance and reaching my conclusion.

My Conclusion

51. I begin with the mother's informal application for an order that an article published before the criminal investigation even started and which links a subject child to their mother should be taken down. The publication is lawful. No law to support my said jurisdiction to have it removed is cited before me in any depth. In any event, the article in question is lawful in the context of the Children Act proceedings before this court and there are no grounds to order its removal. Further, I agree with Tortoise that procedurally, the application is deficient. It would need to be an application for a RRO on notice, to the media outlet in question and potentially to all the media requiring them to remove all material published about these children prior to the Children Act proceedings. There are, as I see it, practical difficulties with removing the article from the internet in any event. The original poster of the information may wish, upon invitation, to take it down, but they cannot now control the many iterations of that article which once posted on the internet may have "travelled" beyond the original host site.
52. In the proceedings before me, it remains non-contentious that the mother, if she continues to wish to do so, should be permitted to share information from the proceedings with accredited reporters. However, I am rightly reminded that it is a matter for me whether I should permit it. In the circumstances of this case and given the mother's Article 10 and Article 8 rights to which I refer below and the

evaluation I have made, I agree that there is no reason why the information should not be shared by the mother, if that remains her wish.

53. Similarly, the disclosure of documents such as case summaries, position statements, skeleton arguments, threshold documents and chronologies are not opposed. I agree that such disclosure is necessary for the sake of accurate reporting and understanding of the issues in this case. It enables informed reporting. It is part of and enhances the Article 8 and 10 rights of all the parties, including the children. It is in the children's best interests (which are a primary consideration but not paramount) that any reporting should be accurate and fair. Having access to all parties' documents prepared for appearing before any court by the respective lawyers in the case will enable a balanced view of the issues from all perspectives. Disclosure of the index will enable the accredited reporters to make specific application, if necessary and proportionate, for individual documents filed in the proceedings. The disclosure of the index is not opposed in the circumstances, and I approve it.
54. Subject to the restrictions of s.97 of the Children Act, s.12 of the Administration of Justice Act 1960 permits the disclosure of the text or summary of a court order of a court sitting in private unless expressly prohibited. There is no application before me to restrict that which is already permissible in accordance with statute.
55. Turning then to the substantive issues before me, I begin by consideration of Article 10. Open justice is of vital importance to a democratic society and a properly functioning judicial system. Any infringement of that principle needs to be carefully justified. I agree with Mrs Justice Lieven that Article 10 rights are held by the Applicant to protect the public interest in the knowledge of what happens in the court system. With public scrutiny comes a greater knowledge and understanding of the work of the Family Courts and that is in the public interest. I consider that scrutiny is an important aspect of accountability in a democratic society. It holds our court system and the Family Court, in this instance, up to the light. It has a high value.
56. The initial charge faced by the parents in this case was of concealing the birth of a child contrary to s.60 OAPA. I acknowledge and factor in that there is current and important public debate concerning the reliance on ss.58-60 OAPA. The criminal proceedings for such offences are in open court and open justice has enabled informed debate. The Royal College of Obstetricians and Gynaecologists has recently published guidance for healthcare staff about the Involvement of the Police and External Agencies following Abortion, Pregnancy Loss and Unexpected Delivery. The Guidance has been issued in response to concerns raised regarding the increasing numbers of police investigations, following later gestation abortion and pregnancy loss and the impact this can have on patients who may be especially vulnerable and who have suffered distress at a later gestation loss. It is argued by the mother, supported by the Applicant, that this case falls within that class of cases. There is public debate around later gestation abortion and that debate is being raised in Parliament. I factor in that there is a weighty and legitimate public interest in the approach of public authorities, particularly the police, to such offences under the OAPA. They are offences which are said to be outdated and draconian. Summarising the argument briefly, it is said

that they have no place in modern society. In that context, the use by the police of their powers to protect children to initially remove the subject children from their parents' care in this case is of considerable public interest. The children having been removed, there is public interest in considering whether the then existence of police bail conditions initially denied the parents the ability to fully argue against the making of interim care orders. There is legitimate and weighty public interest in the public observing how the Family Court procedurally and evidentially manages a case where the local authority asserts that the proceedings before the court are multifaceted, and the mother argues that this is a single-issue case in which a local authority have reacted to a police investigation which she says has no child protection implications. Covert recordings have been taken in this case by the mother and that too is of public interest. It is the subject of draft FJC Guidance. There is public interest in the impact of these sections of the OAPA which criminalise parents and cause a family to be fractured when what it is said to be needed is compassion and support. The debate is current.

57. Adjourning an application to report or delaying reporting represents interferences with the rights enjoyed under Article 10. A marginal delay in reporting is unlikely to materially advance the Article 8 rights of the children but it does represent a substantial continuing interference in the ability of the responsible media to report on a matter which I accept is of significant public interest. Any interim period also represents a period in which the mother's own Article 10 and 8 rights are interfered with.
58. That leads me to consider the mother's Article 10 and Article 8 rights. The mother has been contacted by interested media outlets to give her story. They have offered her a right to reply. She has a right under Article 10 to her own freedom of expression, and this includes the right to speak to whomever she pleases about her own experiences. The restriction on the mother's right to speak is limited solely to the facts and details on the Children Act proceedings. She can speak freely about anything else including her treatment by the police. The mother has an Article 8 right to tell her own story, and thus have autonomy, as explained by Munby J in Re Roddy [2003] EWHC 2927 (Fam). The reporting to date has necessarily been partial because it has emanated from the police. The mother in this case wishes to tell her own story. In expressing that wish, she acknowledges that both the criminal proceedings and these proceedings are continuing and that whilst she has her story, she will have no editorial control. From her perspective, what has already happened and what has already been put into the public domain cannot get any worse. The level of interference with the mother's Article 8 and Article 10 rights is thus very significant if the restrictions continue.
59. The father's views on the application are unknown. He may support the mother's argument. He like the mother may want to tell his own story, but he may not. There is evidence before me that his is vulnerable. His Article 8 right to privacy may be important to him, it may not. Whilst he continues not to engage, it seems to me the arguments in relation to his Article 8 and Article 10 rights can go both ways and ultimately in the exercise I am conducting outweigh each other.
60. Section 12(4) of the Human Rights Act 1998 provides that:

“The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appear to the court, to be journalistic, literary or artistic material (or to conduct connected with such material) to (a) the extent to which (i) the material has, or is about to, become available to the public, or (ii) it is, or would be, in the public interest for the material to be published, [and] (b) any relevant privacy code.”

61. In this case, there has already been substantial reporting in relation to the parents' arrest, the charges, and the later discontinuance of the parallel criminal investigationⁱ. The information came from the police. Given that which is already in the public domain and the unusual facts of the case, I agree it is likely to be artificial to suggest that the parents could not be identified if there was anonymous reporting. In terms of Article 10, there is importance in terms of impact and public engagement. Naming the parents will provide human interest. It will enhance impact and public engagement with issues of significant public interest.
62. Given that the parents have already been named in connection with the criminal investigation, any reporting that tells their story needs to be able to identify them to address the balance. However, any reporting of these proceedings now is likely to lead to the identification of the subject children. A report by the media before the criminal proceedings began and which is totally unrelated to that investigation and the Children Act proceedings identifies the mother with one of the subject children in this case. Typing the parents' family name into an internet search engine automatically brings up the article and the child is discovered. That said, that would have been the position at the time of the reporting around the parents' arrest and charge. I consider that the risk of jigsaw identification has been present since the parents were named on arrest and thereafter. Although that has been a risk, there is no evidence to date that the subject children have been identified by jigsaw identification in the public arena as linked to this case. Equally, if they have been identified there is nothing to suggest that they have suffered any repercussions from it.
63. Article 10(2) ECHR states:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, 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.”

64. I now turn to consider the Article 10 and Article 8 rights of the subject children. The case as presented to this court is not a single-issue case. The threshold as pleaded covers a broad canvas. Section 97(2) of the Children Act is applicable in this case. That prohibition comes to an end when the proceedings are concluded. However, S97(4) provides the court with the power to dispense with the S97(2) prohibition wherever the Convention rights require it. When exercising the

jurisdiction to relax the automatic restraints, the court must conduct the balancing exercise required by *Re S (a child)* [2004] UKHL 47. No one before me wishes the children in this case to be named publicly. The s.97(2) restriction will thus remain in place. The question in this case is that of jigsaw identification by reason of a previous unrelated media article. As already stated, the risk of jigsaw identification arose in this case when the parents' names, addresses were published at the time of arrest and charge. The risk is no greater now.

65. The best interests of the children subject to the proceedings are a primary consideration but they are not the paramount consideration. The mere fact that a child is too young to understand does not mean that there is no impact. Impact on the child of publication must be objectively measured. I do not assume or treat it as inevitable that publicity will adversely impact on the children. The publicity surrounding the police investigation resulted in the parents, but not the children, receiving threats. I have considered whether sympathetic reporting might lead to the public showing more understanding and empathy and sympathy for the facts of the case. It may do for the mother and the father, but it may not once the whole threshold contended for is known. Publicity of all the allegations in the case may cause an adverse reaction from the public. The children, if they are identified by the jigsaw being constructed, will be identified as children subject to care proceedings in which broad ranging allegations were made against their parents.
66. I factor in that these children, like all children, have a strong interest in ensuring the public's view of their parents is one that is balanced, informed and fair. I have purposely reminded myself of the express views of children in general and I accept, probably these children, as stated in paragraph 6 of *Confidence and Confidentiality*.
67. This case is fact-specific. The breadth of the threshold contended for means that significant and personal details about the children's family life and the impact of that upon them will be examined in these proceedings. There are facts about the mother's pregnancy and about the circumstances in which the body were found which may or may not be known to the children. There may be distressing facts which fall into the public domain and about which the children will come to know through the media. Whilst there is concern about the public making jigsaw identification, the greater and much weightier factor for me is that the children will identify themselves from the facts. Given the publicity surrounding their parents arrest, that remains the case whether or not their parents are actually named.
68. Given the age of at least one of the children subject to the proceedings before me, I take into consideration the likely impact of social media and of watching and reading coverage of the case. I factor in that the media interest will die down and ultimately pass, but I weigh in the balance also that in the internet age, matters once reported remain on the internet and may be accessed by the subject children in the future. If they were to do so without the necessary emotional support around them, the effect could be significant and detrimental. That is mitigated by the fact that they are currently well placed with family members who will know already of the criminal investigation and the previous reporting. With the support of the local authority, they should be able to provide these children with the day-to-day

comfort and support they need. I also factor in, and it is another significantly weighty factor, that it is likely that these children already know their parents had previously been arrested for murder. That knowledge will have increased their vulnerability, but the harm cannot now be undone. Further reporting, of an informed and balanced nature contains a risk of further harm but that is balanced by the fact that they will know there is another, more nuanced side of the story which may place their parents in a better light in the eyes of the world and indeed in the children's eyes.

69. In conclusion and on balance, I consider that in this case, the accredited media should have the ability to publish the names of the parents and any photographs of the parents that the parents consent to being published. No one suggests - I consider rightly so - that the children in this case should be identified, and the balance falls against their identification in any publication. The arguments that have been advanced before me have been argued on the basis of the identifying of the parents and the potential jigsaw identification of the children. Given the parents' names are already in the public domain and linked to murder in the mother's home of a baby, that risk it seems to me is real, but it will exist whether the parents are identified in the reporting of these proceedings or not. I take the view that that risk is balanced against the other competing factors, the significant weight I attach to Article 10 rights in general, and the Article 10 and 8 rights of the mother I have already evaluated above. However, I consider that that risk should not be heightened or aggravated by the reporting of the names of any other family member who is, or becomes, a party to the case or who is mentioned in the case. That is not necessary nor proportionate. There is no need to publish their identities and actually, there has been no reasoned argument before me that they should be so published. That means that the people with whom they are placed will not be mentioned in any public reporting. That should assist them to provide these vulnerable and already exposed children with the support and care they need.
70. I am specifically asked to permit publication of the age of the subject children by reference to a class of children. It is argued that will add impact and underscore the seriousness of the impact on these children and all children in general of police investigations into the OAPA offences in this case. I do not agree. Any child removed from their parents is impacted regardless of age. The expression of that impact may be age appropriate but there will be harm. The issue for me will be whether the significant harm from which it is said by the local authority to require their removal for their protection outweighs that harm. I consider the intended descriptor of the children adds nothing but potentially aggravates jigsaw identification. Accordingly, it is not permitted.
71. Given the proceedings arise in the area where the children live and the parents' address is already in the public domain, there is, in reality, no reason why the local authority should not be named. As part of that, the Head of Service can be named but the social work personnel and the Guardian should not be named. There is no justification for them to be named and there is public interest in enabling them to proceed with their duties without unwarranted publicity.
72. That leads me to the issue of when there should be publication. Criminal proceedings proceed in public, but the investigatory process does not. That is

because here is a considerable public interest in criminal proceedings before a judge and/or jury being determined on the evidence before the court and before a tribunal whose perceptions are not already formed by what they have seen and heard in the media. I balance against that strong and significant public interest that in this case, some details are already in the public domain and that the police have put that material there. I have listed in an endnote what is already in the public domain. It includes that the parents who are named have been arrested on suspicion of murder. It seems to me that the potential prejudice which it is in the public interest to avoid, has in this case already occurred but not to the extent that would occur if the full evidential landscape was exposed to publication. The evidential material which I have had disclosed by the police into these proceedings is much wider than the already prejudicial but bare information that is in the public domain. Further, there are avenues of investigation that are still being pursued. There is a strong and very significant public interest in criminal investigations and the evidence-gathering process not being subject to public scrutiny. There is a substantial public interest in maintaining the integrity of the investigation and ensuring that any criminal case that comes before a court is judged on the evidence before it and has not been prejudged in the media. The evidence as presented to the criminal court, if that is where the investigation leads and I do not prejudge that issue, must be exactly that. The proceedings before me are likely to conclude well before this criminal investigation, the delay in which is to be deprecated. Any findings I may or may not make or any assessment of any common witness that I make should not prejudice a potential future jury's determination.

73. I factor in that the mother wishes to waive her right to silence and speak to the press. She does so for personal reasons, wanting, as she sees it, to put the record straight. I have already evaluated her Article 10 and Article 8 rights to tell her own story. In due course she will, but the issue is when. Timeliness is part of Article 10 and I factor that in. The relevant public debate is now. I take more than judicial note of the delay in the police investigation in this case already and I have already deprecated it.
74. It has been submitted on behalf of Tortoise and the mother that the integrity of the police investigation is principally protected by the non-disclosure of information from the police. However, I consider that there is a very significant and weighty public interest in the Family Court having full and frank disclosure from the police and I factor that in. The Court, when conducting public law proceedings such as this, should have the best and fullest evidence before it. The aim of public law proceedings is to protect children from significant harm or the risk thereof. Any reticence or failure on behalf of the police to make full disclosure of the investigation into this case would significantly hamper this court's function. There would be a real risk of the Article 6 rights of the parents and the children being breached. It could lead to potential breaches of the Article 8 rights of the parents and the children when decisions are made on a false premise because the full evidential package has not been disclosed by the police. It is for those reasons that when the police fail to make full and frank disclosure, the Family Court makes disclosure orders against them as Third Parties to ensure that the full evidential picture is before the court.

75. Standing back and looking at all the factors, I consider that at this stage and on the information I currently have before me, there should be no publication until the conclusion of the police investigation or the conclusion of any criminal proceedings which may be brought, whichever is the latter. I will, however, keep that under review. I acknowledge that there will come a time when the delay is such and the prospect of proceedings so remote that it may no longer be necessary nor proportionate to delay publication as I have done today.
76. That is my judgment.
77. Today at 2pm I shall consider case management of the public law proceedings before me. Any issues about the publication of this judgment or issues arising from it can be addressed at that hearing.

i Schedule of References in the Media

- a. date of discovery of body and address where found
- b. sex of body found
- c. Parents names with ages and address charged with concealing the birth of a child under S60 OAPA 1861
- d. arrest at scene of parents on suspicion of murder
- e. post mortem did not reveal cause of death
- f. No formal cause of death revealed by post mortem
- g. charges against parents discontinued
- h. a photograph of the home
- i. arrest on suspicion of murder
- j. infant death being treated as unexplained.
- k. baby's death being treated as unexplained and a post mortem examination will take place at the earliest opportunity to help us determine what may have happened and to confirm how long the baby's body had been there
- l. age (new born) and sex of child revealed