Neutral Citation Number: [2023] EWHC 330 (Fam)

Case No: FD23P00003

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2023

Before :

MR JUSTICE MOSTYN

- -

Re PP (A Child)

Between :

Mid Yorkshire Hospitals NHS Trust	**Applicant**
- and -	
(1) PP (through her Children's Guardian)	**Respondents**
(2) APPELLANT	

- -

The Trust was excused from attendance
Mr Brian Farmer attended on behalf of PA Media
Mr Shaun Robins, solicitor, appeared on behalf of the Local Authority
Ms Helen Hendry, counsel, appeared on behalf of the Child's Guardian, Gillian France
AP attended in person

Hearing date: 6 February 2023

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Approved Judgment

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MR JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The judge has made a reporting restriction order which secures the anonymity of the child and her family but which authorises certain disclosures to be made in any report of the proceedings. The reporting restriction order must be complied with. Failure to do so will be a contempt of court. This judgment should be reported as
Re PP (A Child: Anonymisation) [2023] EWHC 330 (Fam)

Mr Justice Mostyn:

1. Before me is PA Media's ("PA") application to vary the Reporting Restriction Order ("RRO") I made on 18 January 2023.

2. On that day the Mid Yorkshire Hospitals NHS Trust ("the Trust") sought the Court's authorisation of their plan to carry out surgery on 23 January 2023 on PP, aged 15. The intended surgery was a C-section, PP having reached the full term of pregnancy.

3. PP has complex physical and psychological needs. She was made subject to a child protection plan on 11 October 2022.

4. Competence assessments of PP did not lead to the conclusion that she was Gillick competent. As such, the Trust was of the view that PP's consent alone could not be relied upon to authorise the surgery.

5. PP's father has chosen not to engage in these proceedings although he provided his written consent to the C-section. Likewise, PP's mother ("AP") provided her consent however, the Trust formed the view that lawful parental consent could not be guaranteed at all critical points in time. It was not realistic to rely on the father's consent alone. Equally, AP's consent could not be relied upon as there was a real risk that she would either withdraw her consent or be unable to remain at the hospital to provide her consent as necessary. The Trust referred to AP finding it difficult to support PP to attend all her medical appointments, to their volatile relationship and that AP was reported by staff as "exceptionally agitated" on a recent occasion.

6. The Trust therefore made the application to the High Court for authorisation under the common law (or the inherent jurisdiction of the court) and also for a reporting restriction order.

7. I declared on 18 January 2023 that PP lacked Gillick competence and that was is in her best interests to receive care and treatments in accordance with her birthing plan. I ordered that in the event that AP withdrew her consent the Trust was authorised to provide all treatment necessary in accordance with the birthing plan. I also authorised a deprivation of liberty to facilitate and administer the treatment provided that any such deprivations of her liberty were the least restrictive necessary and that appropriate steps were taken to minimise any distress to her.

8. Mr Brian Farmer of PA Media was given notice and attended that hearing. The application for a RRO was made in circumstances where the statutory prohibition on identification of PP under s. 97 of the Children Act 1989 did not operate as the application did not seek in respect of PP the exercise of a power under that Act or the Adoption and Children Act 2002. Therefore the only statutory prohibition was that laid out in s.12 of the Administration of Justice Act 1960. This prohibits "the publication of information relating to [the] proceedings". In *X v Dempster* [1999] 1 FLR 894 at 898 Wilson J listed what could then be published where section 12 alone operated. When he gave his judgment on 9 November 1998 the s.97 prohibition on identification only applied to proceedings under the Children Act 1989 in the Magistrates' Court. If a case under the Act was proceeding in the High Court then, in the absence of a RRO, the child in question could be identified in the press. The reach of s. 97 was extended to all courts on 27 September 1999. Therefore, from that point, if a case sought in respect of

a child the exercise of a power under the Children Act 1989 or the Adoption and Children Act 2002 then that child could not be identified, and additionally s.12 prevented any information relating to the proceedings being published. In the light of the extension of the reach of s.97, Munby J updated the list in *Re B (A Child)* [2004] EWHC 411 (Fam) at [65] – [66].

9. Accordingly, this being a case where s. 97 does not apply and where s. 12 operates alone, the updated list allows the following matters to be reported:

> "(a) that the proceedings relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
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> (b) the name, address or photograph of PP;
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> (c) the name, address or photograph of the other parties;
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> (d) the date, time or place of the hearing on 18 January 2023 and of all future hearings of the proceedings;
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> (e) the nature of the dispute in the proceedings;
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> (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
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> (g) the text or summary of the whole or part of any order made in the proceedings."

10. Therefore, in the absence of a RRO, PP could have been identified and her photograph published. Clearly, a RRO was going to be necessary.

11. At the hearing on 18 January 2023 Ms Kohn on behalf of the Trust emphasised that in the next week PP was due to give birth and the Trust's focus was on the healthy delivery of her baby. The order should therefore provide, first, for a blanket of silence until PP's discharge from hospital. This was not opposed. I agreed to make that part of the order.

12. Ms Kohn submitted that once PP was discharged, a press report about the case would inevitably lead not only to PP identifying herself, with unhappy results, but being identified by those in her world. Further, she submitted, there was no legitimate interest in identifying the Trust or the local authority (' LA'); it would merely "add colour" to who PP is.

13. Ms Megyery on behalf of the Child's Guardian submitted that there was a risk of harm to PP should a public report be released naming the Trust or the LA, as PP is very vulnerable and in a crucial period of her life. She referred to the fact that when emotionally dysregulated PP may become violent.

14. Mr Farmer submitted that the most important point was one of local democracy but did not seriously oppose the proposed RRO being made provided that it was soon reconsidered.

15. I was told that the C-section surgery was scheduled for Monday 23 January 2023 and that it was expected that she would be discharged no later than 09:00 on Thursday 26 January 2023. I was also informed that as a result of PP's pregnancy she was on a local authority child protection register and that the local authority intended to commence care proceedings in respect of PP's baby immediately following its birth. In the light of this I made a Reporting Restrictions Order which prohibited the reporting of:

> "(a) any information (including any photograph) at all concerning this case before 09:00 on Thursday 26 January 2023, and
>
> (b) thereafter of any information (including any photograph) which could reasonably lead to the identification of the name and/or address and/or geographical location within England and Wales (other than by referring to the geographical location as within the North of England) of the first and second respondent, known as PP and AP respectively, insofar as this identifies PP as a party to these proceedings in respect of a serious medical treatment order. This includes any reference to the county in which she resides, her relevant local authority, her specific age (save that she is a teenager below the age of consent) or any reference her health save that it may be reported that (i) PP suffered a brain injury in a motor accident when aged 9, (ii) PP is expected to be delivered of, or, as the case may be, was delivered of a baby on Monday 23 January 2023, (iii) as a result of her pregnancy PP is on a local authority child protection register, (iv) the local authority intends to commence, or, as the case may be, has commenced care proceedings in respect of the baby."

16. I directed that on 6 February 2023 I would hear the PA's application to relax these restrictions to include naming the Trust and the LA.

17. By email on 1 February 2023 the Trust wrote to the Court to confirm that PP's child was delivered safely on 23 January 2023 and that my anticipatory order did not need to be invoked. The Trust submitted that its involvement in this application had concluded. It stated that it did not oppose the application by the PA to name it. It further confirmed that care proceedings were commenced by the local authority at the Family Court in Leeds on 23 January 2023.

18. In his written submission filed on 2 February 2023 Mr Farmer set out what he wished to report on behalf of the PA and why. The Guardian responded the following day and the local authority on the morning of the hearing. I set out in the following table the PA's submissions and the responses

What PA seeks to report and why:	Guardian's (G) submission	LA's submission
To identify the child as a teenage girl below the age of consent	This is permitted by the existing order	Agree with G
To say that PP has become pregnant and given birth. **To explain when her pregnancy was discovered**	This is permitted by the existing order It is unnecessary to report when PP's pregnancy was discovered. This would will likely increase the risk of local reporting making PP identifiable to those who know her	Agree with G Agree with G
To outline the order of 18 January 2023 including that the PP has a brain injury	This is permitted by the existing order which allows a report to say that a serious medical treatment order was made and that PP has a brain injury	Agree with G
To name the trust which made the application – (the trust has since confirmed it does not oppose this)	It is accepted that naming the trust is unlikely to increase the risk of jigsaw identification and therefore the G does not oppose this	Agree with G
Name the council involved. Councillors and local MPs should know so that they can ask questions and invoke a discussion – this is about local democracy As to naming the council rather than just saying that it is in the North of England: the child may well recognise herself either way. This will not likely make national news. The question should not be 'will anyone identify the child?' otherwise the media would never be able to report a family case or COP case.	This would increase the risk of jigsaw identification of PP It risks causing PP substantial worry and upset. PP is a very young mother with substantial vulnerabilities who has very recently been separated from her baby The public interest in reporting is met by identifying the trust – councillors and taxpayers in the trust area can ask	If identified, PP will suffer emotional harm and possible physical harm. The level of harm is likely to be high. If identified (i) the contact between PP and her baby is likely to be negatively impacted due to PP's likely responses to the stressors caused by being identified; (ii) the assessment of PP's ability to care for her baby is likely to be negatively impacted; (iii) the assessment of

	questions without needing the council to be named 'a local authority in West Yorkshire' is a proportionate balance	AP as a possible alternative carer for the baby is likely to be negatively impacted and (iv) the baby is more likely to be at risk of adoption. If local authority is referred to as a West Yorkshire local authority PP is likely to be identified. local authority will concede reference to it as a "Yorkshire Local Authority" given the Trust consents to being identified.
To give a brief outline of PP's involvement with the council PP was known by social services in September 2019 Mr Farmer spoke to a council official who confirmed that they discovered she was pregnant 3 weeks after the initial child protection conference on 11 October 2022	Reporting of these facts are not opposed, save that, for the reasons above it is not necessary to report when her pregnancy was discovered.	Agree with G
To give a brief explanation of what has happened to PP's baby	Any issue regarding reporting of the care proceedings should be dealt with by the judge dealing with the care proceedings on notice to the baby's guardian and the baby's father. Leeds is a pilot court within the transparency pilot and it would be open to the judge to make a transparency order	Naming the local authority now is not necessary, and should be delayed until care proceedings conclude to ensure the care proceedings are conducted justly

19. As prefigured in its written submissions, at the hearing Mr Robins on behalf of the local authority clarified that PP became subject to a child protection plan under the categories of emotional and physical abuse following disclosures by her. The initial child protection conference took place on 11 October 2022. On 2 November 2022, PP attended hospital with UTI symptoms and back pain. She was found to be pregnant and in the 25th week of gestation. It follows that the local authority were unaware of PP's pregnancy at the time she was made subject to a child protection plan.

20. Mr Robins reiterated that the PA should make its application to name the local authority in the concurrent care proceedings where the baby's father and the baby's guardian would be able to be heard. He pointed out that Leeds is a pilot court within the Transparency Reporting Pilot Scheme which was launched on 30 January 2023 and it would be open to the Family Court to make a transparency order under the terms of the Pilot Scheme.

21. Mr Robins' submissions as to the risks of identification followed those of his skeleton argument.

22. PP's mother, AP, addressed me on the likely impact of naming the local authority publicly. She informed me that only a handful of PP's close friends and her cousin are aware that she was pregnant and had since given birth. She fears that a report in the local newspaper may identify her to her peer group leading to her being subjected to ridicule and gossip.

23. Ms Hendry for PP submitted that those few friends that are aware may read a published report and view the fact that it has become public information as a green light to talk about PP, which in turn may further fuel distress to PP.

24. In response, Mr Farmer submitted that the likelihood of the average person identifying PP as the subject of a public report was extremely low. He further submitted that a 15-year-old child in PP's peer group would unlikely put together such a complicated jigsaw. He argued that by naming the local authority local democracy will be enhanced. Every single penny expended on the case before me, on the care proceedings, and on the medical care given to PP was provided by tax-payers. Tax-payers have the a right to know, as far as reasonably possible, on whom their money is being spent and for what purposes. Councillors and local MPs have a right to know what public bodies are doing, for what purposes and at what expense.

The applicable principles

25. A case about the best interests of a child has long been an exception to the principle of open justice. In *Scott v Scott* [1913] AC 417, each speech emphasises that a case about a ward of court is a special process on a different footing to general litigation. In general litigation the over-arching, governing principle is, in the words of the Earl of Halsbury, that "**every Court of justice is open to every subject of the King**". Lord Shaw of Dunfermline explained the reason for this exception thus:

> "The jurisdiction over wards … is exercised by the judges as representing His Majesty as parens patriæ. 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"

26. For this reason Section 39 of the Children and Young Persons Act 1933 was passed. It provided:

> "(1) In relation to any proceedings in any court … the court may direct that - (a) no newspaper report of the proceedings shall reveal the name, address, or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein; (b) no picture shall be published in any newspaper as being or including a picture of any child or young person so concerned in the proceedings as aforesaid; except in so far (if at all) as may be permitted by the direction of the court."

27. And, as has been seen, by s12 of the 1960 Act, it is a contempt of court to publish any information about a proceeding under the inherent jurisdiction or the 1989 or 2002 Acts. Hence, CPR 39.2 allows a court to sit in private inter alia to protect the interests of any child. The exception is justified, so the theory goes, because wardship proceedings apparently relate to "truly private" affairs and to transactions which are truly "intra familiam". The identification ban has since been extended to public law child protection proceedings, where an organ of the state is the applicant for protective measures. The character of such a case is of course totally different to a private law dispute, as was pointed out by Munby J in *Norfolk County Council v Webster* [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, at [73]- [75]. Nonetheless the unspoken convention is that no distinction is to be drawn between different types of cases about children or as to how they should be classified for the purposes of the law of contempt.

28. Nowadays courts rarely sit in camera. The judiciary website displays no recent orders for cases to be heard in camera. In contrast many anonymity orders are displayed there. The secrecy battleground is now whether the case's participants should be anonymised rather than whether the court's doors should be closed .

29. It is a canonical principle that identification of the children who are the subject of family proceedings is seriously contrary to their interests and is to be avoided at all costs; and that therefore any report of those proceedings must be anonymised. The anonymisation may well be extended to anyone involved in the case the revelation of whose identity could materially increase the risk of the identification of the subject child.

30. I can recall only a handful of cases where a child has been identified. For sure, there have been some where a child has gone missing and publication of the child's name and photograph has been necessary to seek to locate the child. There have been a few very high profile cases like Charlie Gard and Alfie Evans where continued anonymity has become impossible. And there are other examples. But subject to such exceptions, anonymity in children's cases is the general rule.

31. Plainly, where professionals are proposed to be anonymised in order to bolster the ban on identification of the child the court has to make an assessment of how much additional risk of identification of the child would in fact arise if the professionals can be named as per normal. In the usual way, the assessment weighs the consequence of the happening of harm against the degree of risk. If the consequence of identification of the child were judged to be especially grave it would not take proof of much additional risk to justify anonymising the professionals. I shall refer to this reason for anonymising professionals as "the special reason".

32. The special reason aside, the question of anonymisation of the professionals must surely be decided by reference to the normal rules for derogating from the principle of open justice (i.e. no anonymisation) as set out in *In re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47; and *A v BBC* [2014] UKSC 25. Although there are legion cases on the topic it is these two iconic authorities that rule the roost.

33. It is critical to have in mind what Lord Steyn says in *Re S* at [18]:

> "*VI. The general rule*.
>
> In oral argument it was accepted by both sides that the ordinary rule is that the press, as the watchdog of the public, may report everything that takes place in a criminal court. I would add that in European jurisprudence and in domestic practice **this is a strong rule**. **It can only be displaced by unusual or exceptional circumstances.** It is, however, not a mechanical rule. **The duty of the court is to examine with care each application for a departure from the rule by reason of rights under article 8**." (emphasis added)

Obviously, that ordinary rule applies equally in civil proceedings. We know this to be true because it was said so repeatedly in the family/civil case of *Scott v Scott*. For example, Viscount Haldane LC said;

> "As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with by the judge as resting in his mere discretion as to what is expedient. The latter must treat it as one of principle, and as turning, not on convenience, but on necessity.
>
> ….
>
> He who maintains that by no other means than by such a [closed] hearing can justice be done … must make out his case strictly, and bring it up to the standard which the underlying principle requires. … he must satisfy the Court that by nothing short of the exclusion of the public can justice be done."

34. So the default rule is complete openness and the famous balancing exercise to which Lord Steyn refers in the preceding paragraph [17] has to be seen in that context. There he says:

> "First, neither article has *as such* precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. " (original emphasis)

35. The formal test on an anonymisation application is set out in CPR 39.2(4). This states:

> The court must order that the identity of any person shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that person.

36. For reasons unknown to me this test is only formally applied in family proceedings to those cases which all members of the public may observe (see FPR 7.30(5) and 37.8) and not to those cases which only some members of the public, namely journalists and bloggers, may observe (see FPR 27.11). I think it must be an oversight. It is obvious to me that this formal test should be treated as applying where anonymisation is sought in any type of family proceeding.

37. Therefore, it seems to me that when anonymisation of a professional – let me call him Mr X - is proposed, the correct question is not:

> "Mr X asks that his identity should not be disclosed. Should my intensely focussed weighing of the importance of freedom of expression by the press and Mr X's right to a private life lead me to conclude that in order to secure the proper administration of justice and to protect his interests I should grant his request?"
>
> But rather:
>
> "Mr X asks that his identity should not be disclosed. The freedom to report Mr X's identity is the ordinary rule. It is a strong rule which can only be displaced by unusual or exceptional circumstances. Should my intensely focussed weighing of the importance of freedom of expression by the press and Mr X's right to a private life lead me to displace that ordinary rule and to conclude that to secure the proper administration of justice and to protect his interests I should grant his request?"

38. In *Abbasi & Anor v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2021] EWHC 1699 (Fam) Sir Andrew McFarlane P considered applications to anonymise professionals in two separate cases. He stated at [94] –[95]:

> "It is to be noted that Sir James Munby's conclusion, that 'compelling' reasons are required before anonymity could be afforded to the class of individuals involved in providing treatment to a child, is not supported by reference to any domestic or Strasbourg authority. Moreover, it is a conclusion which is at odds with the express stipulation made by Lord Steyn in *Re S* that neither Art 8 nor Art 10, as such, has precedence over each other. The importation of the need to establish compelling reasons would automatically afford precedence to Art 10 in every such case.
>
> Standing back and looking at the issue as it is presented now, in 2021, the time has come to draw a line under *A v Ward* [2010] EWHC 16 (Fam) insofar as it purported to establish that anonymity is not to be afforded to a class of professionals unless there are compelling reasons for doing so. The approach in law is that set out by Lord Steyn in *Re S* and in respect of the requirement for 'compelling reasons' the judgment in *A v Ward* must be regarded as *per incuriam* and should not be followed. In accordance with *Re S*, there should be no default position, or requirement for 'compelling reasons', in such cases. Any such application should turn on its own facts, including the overall context, where that is made out, as to the significant negative impact that the unrestricted and general identification of treating clinicians and staff may generate."

39. I entirely agree that a group of professionals involved in treating an individual child in a specific case can be anonymised. Lord Steyn's stipulation that "an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary" does not mean that each professional in a case has to be considered individually and separately.

40. I have to say that it strikes me as very unlikely that Sir James Munby, of all people, somehow forgot about *Re S* when he decided *A v Ward.* Indeed, at the very outset of his judgment (at [3]) he made prominent reference to it. Surely, when he said that "'compelling reasons" are required before anonymity could be afforded to the class of individuals involved in providing treatment to a child, he was merely conveying that (in the words of Lord Steyn) the freedom to report the identities of those people is the ordinary rule which can only be displaced by unusual or exceptional circumstances.

41. Given that Lord Steyn explicitly stated that an intense focus on the comparative importance of the specific rights being claimed **in the individual case** has to be undertaken it is equally inconceivable that it could ever be claimed that generic classes, such as all social workers, or all clinicians, in all cases have an ace-of-trumps right to privacy with the corollary of routine anonymisation. This surely was the point being made, and correctly underscored, by Sir James Munby. It seems to me that it is for this

reason that Sir Andrew McFarlane P emphasised that an application for anonymisation of a group of professionals involved in particular case must "turn on its own facts"[1].

42. In *A v British Broadcasting Corporation (Scotland)* [2014] UKSC 25 Lord Reed at [29] stressed that the default position where anonymisation was sought was open justice and that a "compelling justification for any departure from [that] principle" had to be shown. To reinforce the point he cited Lord Devlin in *In re K (Infants)* [1965] AC 201where he stated at 238 – 239:

> "But a principle of judicial inquiry, whether fundamental or not, is only a means to an end. If it can be shown in any particular class of case that the observance of a principle of this sort does not serve the ends of justice, it must be dismissed; otherwise it would become the master instead of the servant of justice. Obviously, the ordinary principles of judicial inquiry are requirements for all ordinary cases and it can only be in an extraordinary class of case that any one of them can be discarded. This is what was so clearly decided in *Scott v Scott.*
>
> …
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> That test is not easy to pass. It is not enough to show that dispensation would be convenient. It must be shown that it is a matter of necessity in order to avoid the subordination of the ends of justice to the means."

43. He also cited Lord Neuberger PSC in *Bank Mellat v Her Majesty's Treasury* [2013] UKSC 38; [2013] 3 WLR 179 where he stated at [2]:

> "The idea of a court hearing evidence or argument in private is contrary to the principle of open justice, which is fundamental to the dispensation of justice in a modern, democratic society. However, it has long been accepted that, in rare cases, a court has inherent power to receive evidence and argument in a hearing from which the public and the press are excluded, and that it can even give a judgment which is only available to the parties. Such a course may only be taken (i) if it is strictly necessary to have a private hearing in order to achieve justice between the parties, and, (ii) if the degree of privacy is kept to an absolute minimum – see, for instance *A v Independent News & Media Ltd* [2010] EWCA Civ 343, [2010] 1 WLR 2262, and *JIH v News Group Newspapers Ltd* [2011] EWCA Civ 42, [2011] 1 WLR 1645. Examples of such cases include litigation

[1]For this very reason it seems to me that Sir Andrew McFarlane P is not saying at para 21 of his Amended Guidance dated 26 January 2023 for those taking part in the (very welcome) Transparency Pilot, that without any serious consideration of the facts of the case in hand, all social workers, all Cafcass reporting officers and all Guardians should, as generic classes, 'normally' or 'usually' should have their identities withheld. Rather, he must be referring to the truism that naming them may well increase the risk of identification of the children and so, for that special reason, anonymisation may well be necessary on the facts of the individual case.

> where children are involved, where threatened breaches of privacy are being alleged. ”

44. He explained that the domestication of the Convention Rights on 2 October 2000 did not alter this approach. He stated at [56]:

> “It is apparent from recent authorities at the highest level, including *Al Rawi and others v Security Service and others (JUSTICE and others intervening)* [2011] UKSC 34; [2012] 1 AC 531, *Bank Mellat v Her Majesty's Treasury* [2013] UKSC 38; [2013] 3 WLR 179 and *Kennedy v The Charity Commission* [2014] UKSC 20, that the common law principle of open justice remains in vigour, even when Convention rights are also applicable.”

And at [57]:

> “That approach does not in any way diminish the importance of section 6 of the Human Rights Act, by virtue of which it is unlawful for the court to act in a way which is incompatible with a Convention right, unless subsection (2) applies. As was made clear in *Kennedy*, however, the starting point in this context is the domestic principle of open justice, with its qualifications under both common law and statute. Its application should normally meet the requirements of the Convention, given the extent to which the Convention and our domestic law in this area walk in step, and bearing in mind the capacity of the common law to develop as I have explained in para 40.”

45. He explained that it was open to a state formally to provide in its laws that the principle of open justice does not apply to a certain type of proceeding, giving as an example the generic derogation (in effect) made by the UK Parliament of proceedings about children under the Children Act 1989. He also explained that anonymisation can be ordered in current proceedings to ensure that the interests of justice are not defeated in the future.

46. He then proceeded to cite a number of examples of situations where anonymity had, exceptionally, been ordered:

i) Police officers had been allowed to give evidence while screened from the sight of the general public, and without public disclosure of their identities, in order to avoid jeopardising their effectiveness in future investigations (at [38]).

ii) A prisoner serving a sentence for sexual offences was permitted to bring proceedings, challenging the notification requirements applicable to sexual offenders, without disclosing his identity publicly, because of the danger to his safety if the nature of his offending became known to his fellow prisoners (at [39]).

iii) The publication was prohibited of the identity of a woman who was due to be the principal witness at the trial of a person charged with having recklessly infected her with HIV. There was evidence before the court that the woman's

mental health would be endangered if her identity became publicly known. There was also a risk that the woman would otherwise be unable to give evidence, in which event the prosecution could not proceed (at [39]).

iv) On an action of damages arising from the deployment of the SAS to end a prison siege, the soldiers were permitted to give evidence while screened from the view of the general public, and without disclosing their names publicly. The judge did so on the basis that while their evidence was essential to the proper presentation of the defence, the Army's ability to deploy them in future operations would otherwise be compromised. In such a case, their appearance and identities were of such peripheral, if any, relevance to the judicial process that it would have been disproportionate to require their disclosure (ibid).

v) In the actual case before the Supreme Court a sex offender challenged a First Tier Tribunal ('FTT') deportation judgment and order which had anonymised him to limit the risk of vigilante harm on his return to his country of origin. He was likewise anonymised in the challenge proceedings for, were he not to be, the very rationale of the FTT order would have been subverted.

47. Lord Reed noted that the Supreme Court of Canada had considered some of those issues, such as the anonymity of complainants in cases of sexual assault (*Canadian Newspapers Co v Canada* [1988] 1 SCR 122), and the concealment of the identity of undercover police officers (*R v Mentuck* [2001] 3 SCR 442).

48. The recognised circumstances show that an award of anonymity requires a demanding test to be met. Essentially, one of two things must be shown. Either it has to be shown that if the identity of the person in question were revealed he or she would face a high probability of really serious physical or psychological harm (including the shame, humiliation and stress of being systematically trolled). Alternatively that the future prevention of crime would be compromised

49. I have referred before to the baffling practice of the Financial Remedies Court ('FRC') routinely to anonymise judgments in cases where there is no question of section 12 of the 1960 Act applying and where the gravity of the facts is nowhere near the level where anonymity has been awarded in the civil sphere (see above). In the past I have been guilty of this myself.

50. I acknowledge that I announced in *Gallagher v Gallagher (No.1) (Reporting Restrictions)* [2022] EWFC 52, [2022] 1 WLR 4370 at [6] that my expatiations there would be my last word on the subject. But the flow of anonymised judgments bearing, mostly, the standard misleading and unlawful rubric (but in some instances with weird and incomprehensible variants), has continued unabated. I therefore consider that I have a responsibility to try to set out, in a final push, why I consider that routine anonymisation of the parties in financial remedy cases is likely to be unlawful.

51. The justification for a routine anonymisation order is said to be that (a) it protects an 'entitlement' to privacy and (b) such an order would be harmless and merciful. Thus in *IR v OR* [2022] EWFC 20, Moor J stated at [29]:

> "Finally, [the husband] complains that the Wife has threatened him with publicity if the case proceeds. I believe

> this refers to proposed changes to the rules on anonymity in financial remedy proceedings but they are not in place yet. I am clear that, until I am told I have to permit publication, litigants are entitled to their privacy in the absence of special circumstances, such as where they having already courted publicity for the proceedings which is not the case here."

52. I have noted that at the conclusion of an exceptionally lucid and comprehensive judgment by Recorder Moys (*A Former Wife v A Former Husband* [2023] EWFC 4) in which she describes the thoroughly unpleasant and personally offensive conduct during the hearing by the self-represented husband, she stated in similar vein (at [252]):

> "I am satisfied that the publication of my judgment in anonymised form adequately balances the right of the parties to a private life whilst promoting transparency in the accurate and balanced reporting of financial remedy cases."

53. The reasons given by the House of Lords in *Re S* and in *Guardian News and Media Group* [2010] 2 AC 697 establish conclusively that an anonymised judgment is not transparent, let alone open. Lord Rodger's question and answer in [67] of the latter case will live long in the memory ("What's in a name? "A lot", the press would answer.") Let there be no doubt: an anonymised judgment represents a significant derogation from the open justice principle. I will try to explain why such a judgment fails to fulfil one of the primary roles of a judicial verdict.

54. The open justice principle exists so that the people can see how cases are conducted. Everyone knows that the core constitutional responsibility of the judiciary is to uphold and implement the rule of law. This requires the judiciary to try disputes in court fairly, justly and impartially, whether they are private law cases between individuals, or public law cases between individuals and the state. It is one of the main pillars supporting a functioning democracy. That pillar will collapse if the people cannot observe cases being tried, or cannot understand from the judgments how they have been tried. It is for this latter reason that Lord Devlin stated in his book *The Judge* (OUP 1979):

> "The judicial function is not just to render a decision. It is also to explain it …in words which will carry the conviction of its rightness to the reasonable man".

In order to do this a judgment has to tell a story which is readable, or at least not unreadable. Anonymising a judgment almost invariably destroys the quality of the story and renders it largely unreadable. Imagine trying to read an anonymised version of Great Expectations. You wouldn't get very far. In a tweet posted on 9 February 2023 Alexander Chandler KC commented on the anonymised judgment of the Divisional Court in *In Re A Barrister* (9 February 2023 - https://www.judiciary.uk/judgments/in-re-a-barrister/) saying that it was:

> "a good example of how anonymising a judgment (to the extent of disguising even the gender of the barrister) causes it to be so bland as to be almost unreadable".

This is a criticism that can be levelled at all anonymised judgments. I have shown, and fully accept, that sometimes anonymity is unavoidable, as it is in this case. As a result I would think that most reasonable readers would struggle to get through the first 24 paragraphs I have written above. But once all judgments are like that it can safely be said that a key constitutional function of the judiciary will have been sterilised.

55. For the reasons set out above, and stated by me elsewhere, I say as forcefully as I can that litigants in the FRC have no automatic entitlement to a sterilised judgment in which they are not named. I have explained before that the fact that financial remedy proceedings are heard "in private" merely prescribes a mode of hearing, which certain members of the public are allowed in to watch, but not others. It has nothing to do with secrecy as to the facts of the case, and provides absolutely no support to the creed that FRC litigants have an "entitlement" to privacy (see *Gallagher v Gallagher (No.1) (Reporting Restrictions)* at [31] – [32]).

56. If litigants in the FRC want anonymisation they have to prove that their right to a private life as well as the proper administration of justice outweighs the right to freedom of expression to such an extent that there should be a displacement of the ordinary rule which allows full reporting. That is a far cry from an entitlement to privacy in the absence of special circumstances asserted by the supporters of this creed.

57. Should FRC litigants be entitled to claim this privileged special treatment in contrast to almost all other litigants? The answer is an emphatic no, not only for the reasons I have laboriously given, but additionally for those given by the Privy Council in *McPherson v McPherson* [1936] AC 177. In that case the husband's undefended divorce petition was heard in the judge's library in Edmonton, Alberta. This was accessed through a corridor which was separated from the public areas of the court building by a swing door bearing a brass plate on which was written the word 'Private'.

58. Later, the wife applied to set aside the decree, and eventually her application ended up in the Privy Council. In his opinion Lord Blanesburgh stated:

> "And their Lordships in reaching the conclusion that the public must be treated as having been excluded from the library on this occasion have not been uninfluenced by the fact that the cause then being tried was an undefended divorce case. To no class of civil action is Lord Halsbury's statement more appropriate. In no class of case is the privilege more likely to be denied unless every tendency in a contrary direction, whenever manifested is definitely checked.
>
> …
> And there is perhaps no available way to correct these tendencies more effectively than to require that the trial of these cases shall always take place and in the fullest sense in open Court. This requirement must be insisted upon because there is no class of case in which the desire of parties to avoid publicity is more widespread. There is no class of case, in

> which in particular circumstances, it can be so clearly demonstrated even to a Judge that privacy in that instance would be both harmless and merciful."

59. In my opinion those words annihilate any argument that parties to financial remedy litigation have some kind of special, privileged entitlement to an anonymised judgment. *Pace* Lord Blanesburgh's opinion there is a class of case where the desire of parties to avoid publicity is even more widespread and where it could be most skilfully advocated to a judge that privacy would be even more harmless and merciful. That class is of course financial remedy proceedings as practised in the modern era, a class of case which was unknown in Lord Blanesburgh's day. After all, such a silver-tongued advocate would plead: "we have always done it this way". But it is for the very reason that such blatant wrongness can be so artfully justified that the principle of open justice should be affirmed most trenchantly in financial remedy proceedings and anonymisation only allowed in unusual or exceptional circumstances. Those circumstances are where the weighing exercise shows such an imbalance that it can be safely be said that there is a "compelling justification", and that it is "strictly necessary", for there to be a departure from the normal rule of full reporting.

60. *McPherson v McPherson* was emphatically affirmed by the majority of the Supreme Court of Canada in *Edmonton Journal v Alberta* [1989] 2 SCR 1326 (which in so doing struck down as incompatible with Articles 2(b) and 15 the Canadian Charter of Rights and Freedoms (themselves very similar in their language to Articles 14 and 10 of the ECHR) the reporting restriction legislation of Alberta (which was an almost identical facsimile of the Judicial Proceedings (Regulation of Reports) Act 1926)). In his judgment Wilson J stated:

> "Lord Blanesburgh's remarks, in my view, provide a stern reminder of the importance of not allowing one's compassion for that limited group of people who are of particular interest to the public (because of who they are or what they are alleged to have done) to undermine a principle which is fundamentally sound in its general application."

61. This is the problem with the "we have always done it this way" creed. It is convenient, harmless and vanilla, say its supporters. Doing it thus, they say, has not, with respect to Lord Shaw and Lord Moulton, violated our liberties, or attacked the very foundations of public and private security. This is hysterical nonsense, they say. On the contrary, it balances, they say, the right of the parties to a private life whilst promoting transparency in the accurate and balanced reporting of financial remedy cases.

62. As Lord Blanesburgh explains, it is precisely because the method looks so harmless and unremarkable that it is so dangerous. The method's longevity merely demonstrates a collective "see no evil, hear no evil, speak no evil" by the judiciary and practitioners over decades. But now the candle has been grasped and the lawfulness of the practice has been called into question. If standard anonymisation in FRC cases is to be formally ordained I predict it will act as a pathfinder for routine anonymisation in other fields and it will only be a matter of time before most cases are thus processed. A formal standardisation of anonymity in the FRC would, without doubt, be eyed with much interest by many who would leap to have comparable secrecy in other fields. As I have

sought to explain, anonymisation renders most judgments unreadable, bland and sterile. It is my prediction that were anonymisation to become standard fare a vital pillar of the constitution will be seriously, if not terminally, damaged. It is for this reason that I do not think that Lords Moulton, Shaw and Blanesburgh were guilty of exaggerated alarmist rhetoric.

This case

63. I am not satisfied that identifying the local authority will increase the risk of identification of PP. The public will know that the Trust was the Mid Yorkshire Hospitals NHS Trust, that the local authority is in West Yorkshire, and that the care proceedings are in the Family Court at Leeds. It would not increase one whit the probability of her being identified if the actual local authority were named. No application for anonymity is made aside from the special reason.

64. However, it would be disrespectful of me to make the decision that the local authority should be named where in the care proceedings that very decision falls to be made by the Family Court in circumstances where the local authority is the applicant and where the baby's father and guardian can be heard on the issue, in contrast to the case before me.

65. Applying the principles set out above my specific decisions are as set out below. In my judgment, the disclosure I have authorised (a) gives sufficient information for tax-payers to understand what is being done in their name with their money and for local and national elected representatives to do their duty to hold public bodies to account, while (b) affording PP continuing anonymity which in my judgment is not likely to be lost by, or in consequence of, a report of this case making the disclosures I have authorised.

	WHAT PA SEEKS TO REPORT AND WHY:	**THE COURT'S DECISION**
1	**To identify the child as a teenage girl below the age of consent**	PP's age of 15 may be stated
2(a)	**To say that PP has become pregnant and given birth.**	This is permitted
2(b)	**To explain when her pregnancy was discovered**	It may be reported that PP was known by social services in September 2019 and that that they discovered she was pregnant 3 weeks after the initial child protection conference on 11 October 2022.

3	**To outline the order of 18 January 2023 including that the PP has a brain injury**	This is permitted.
4	**To name the trust which made the application – (the trust has since confirmed it does not oppose this)**	The trust may be named
5	**To name the council involved.**	The local authority may be identified as a local authority in West Yorkshire. Application to name the local authority should be made to the Family Court at Leeds
6	**To give a brief outline of PP's involvement with the council**	This is permitted in the terms specified at item 2 above.
7	**To give a brief explanation of what has happened to PP's baby**	This is not permitted at present. Application to report these facts should be made to the Family Court at Leeds.