Neutral Citation Number: [2025] EWHC 801 (Fam)

Case No: WH19P000120

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/04/2025

Before :

MS JUSTICE HARRIS DBE

- -

Between :

MS M	**Applicant**
- and -	
MR F	**First Respondent**
- and –	
THE CHILD, C (By his Guardian, Miss Kelly)	**Second Respondent**

- -
- -

Dr Charlotte Proudman (direct access) for the **applicant**
Mr Patrick Gilmore (instructed by **Bendles Solicitors**) for the **second respondent**
Mr F appeared in person

Hearing dates: 20th February 2025 and 2nd April 2025

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 2nd April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MS JUSTICE HARRIS DBE

This judgment was delivered in private. 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, must

ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Ms Justice Harris:

1. This matter comes before me on an application by Ms M, the applicant mother, for permission to be able to publish information regarding lengthy private law proceedings between herself and the child's father, Mr F, the first respondent. She seeks permission to be able to:

   i) Publish media articles about her experiences of the family court system and the domestic abuse she suffered at the hands of the father, using an alias; and
   ii) Speak at events facilitated by organisations such as Cafcass, women's right groups and children's rights groups, using an alias.

   It is noted at the outset that Ms M's position is that she would wish to preserve the confidentiality of both herself and the child, C, by using an alias, and thus does not seek permission to disclose the child's identity or her own.

2. The father's position is that he does not oppose Ms M's application. In the hearing before me, he sought an equal right to be able to speak and write publicly about the case using an alias, it being his position that he has been the subject of a miscarriage of justice in the serious findings of rape and domestic abuse made against him.

3. The position of the guardian on behalf of C, is that she is supportive of Ms M being able to speak about her experiences as a victim of abuse and does not therefore oppose Ms M's application to publish media articles using an alias. She does however sound a note of caution about Ms M being given permission to speak at public events due to the difficulty of maintaining anonymity in such circumstances, and the risk to C of his identity becoming known.

Background

4. Mother submits that as a victim of rape and serious domestic abuse, she has been let down by the family justice system. She seeks to share her experiences in public. In September 2023, HHJ Baker made findings that mother had been the victim of serious domestic abuse including rape perpetrated against her by the father, Mr F. He went on to make welfare orders that there shall be no contact between C and his father and revoked Mr F's parental responsibility. He also made a costs order against the father. However, the findings of HHJ Baker only followed a successful appeal to the High Court against an earlier decision of HHJ Dodd in which no findings had been made.

5. Ms M asserts that given the history of this case it is immediately one which is of public interest, involving as it does contested allegations of rape, domestic abuse and parental alienation. The case brings under scrutiny the workings of the family courts including the approach of the child's guardian at the time of the proceedings before HHJ Dodd (not the current guardian Ms Kelly) to Ms M's allegation of rape. The case is one in which there has already been publication of information and some media interest.

6. The re-hearing of the finding of fact before HHJ Baker was attended by accredited media representatives and a transparency order was made permitting them to publish

information about the case pursuant to the transparency pilot then in operation in that area. The confidentiality of the identity of the child and their parents are secured by that order. It is understood that this was one of the first private law children's cases in which a transparency order was made. Media articles have been published in the Guardian, the Observer and the TBIJ.

7. There have also been a number of anonymised judgments published during the course of the proceedings: the fact-finding and welfare judgments of HHJ Baker have both been published, as has the judgment of Morgan J dealing with the appeal. Knowles J has ordered that the judgment of HHJ Dodd should also be published but it is unclear why that has not progressed.

8. Under the standard terms of the transparency order made by HHJ Baker, Ms M and Mr F are permitted to speak to accredited journalists and provide direct quotes regarding the case. Ms M has done so. They are not however permitted to write or speak directly about their own experiences of the family justice system. It is that ongoing restriction on the right of victims within family proceedings to speak *directly* about their experiences that Ms M seeks to challenge. Ms M seeks an order in the following terms:

> Section 12 Administration of Justice Act 1960 is varied in so far as:
>
> a. The mother shall be permitted to speak at family law associated events about the family law proceedings when 'chatham house rules' are engaged using a pseudonym.
>
> b. The mother shall be permitted to write articles for publication and/or speak to accredited journalists about the family law proceedings using a pseudonym.
>
> c. The mother shall take necessary steps to prevent members of the public in attendance at public events identifying her name, taking photographs and/or videos of her and/or publishing photographs and her name in any public or online forum.

9. The Court wishes to make clear before embarking on its analysis of the legal arguments that it is profoundly sympathetic to Ms M's position. The Court fully appreciates that the inability to be able to speak openly about how, as a victim of rape and domestic abuse she was dealt with by the family justice system, compounds the trauma she has suffered, and is experienced as a further means of coercion and control. Ms M clearly has an invaluable contribution to make to current debates about domestic abuse, parental alienation and contact with children within the family justice system.

Submissions

10. The Court thanks both Dr Proudman and Mr Gilmore for their efforts to assist the Court. They have both filed detailed skeleton arguments and supplemental submissions following the hearing on 20th February 2025. The question of whether

this Court ***has jurisdiction*** (that is the power) to give permission for Ms M to speak publicly about her experiences, and, if so, ***what is the framework guiding the exercise of that legal power***, might appear to have been a question to which an obvious answer should exist. However, answering the question, once probed, has proved surprisingly difficult.

11. Dr Proudman submits that section 6 of the Human Rights Act 1998 puts a duty on the Court to act compatibly with Convention rights, including Article 10. She argues that section 12 of the Administration of Justice Act 1960 (s 12 AJA 1960) cannot be presumed to simply prevail in defeating the Article 10 rights of Ms M now the Court is actively seized of the issue. She suggests that whilst s 12 of the Administration of Justice Act 1960 provides a lawful basis for interfering with the Article 10 rights of Ms M, the Court is under a duty to conduct a balancing exercise of the competing rights specific to the needs of this case and determine the necessity and proportionality of any ongoing interference. She submits that primary legislation can and has been made subject to a balancing exercise. She relies, in particular, on the decision of Lieven J in *Tickle & Farmer v Griffiths* [2021] EWHC 3365 (Fam) in which she asserts that the Court simply relaxed s 12 without limiting it in the way a transparency order does to 'pilot reporters.' She also relies on the decision of Bodey J in *Tickle & Ors* [2015] EWHC 2991 (Fam) which concerned a mother who had turned her life around wishing to discuss her case on social media.

12. Dr Proudman thus submits that there exists a legal framework to vary the statutory provisions and grant mother's application. She argues that the novel legal point is whether the transparency order already in place in this case can be amended to allow for this. If the Court does not consider the transparency order can be amended, she would seek for a separate bespoke order to be made as in previous cases where parents have been allowed to speak or write publicly about family proceedings.

13. Somewhat differently, Mr Gilmore submits that the Court has the power to permit a party to publish information about the proceedings pursuant to FPR r. 12.73(1)(b), thereby disapplying the provisions of s 12 of the AJA 1960. In deciding whether to give such permission, the Court should proceed to balance the competing Article 10 and Article 8 rights in accordance with the judgment of Lord Steyn in *Re S (A Child)* [2004] UKHL 47. In contrast to Dr Proudman, Mr Gilmore submits that it does not appear permissible to simply vary the transparency order to permit the mother to write and speak directly. He suggests this is because it is unnecessary to do so, the mechanism to allow a parent to publish information about their case having already been established in the key authorities.

Law

14. The issue raised within this case is clearly a very significant one impacting more generally on the move towards greater transparency in the family courts. The first question for the Court must be whether it has the ***jurisdiction*** to make the order sought by Ms M. Only if it has that power, can the Court move on to undertake the balancing of Convention rights and interests established in *Re S (a child) (identification: restriction on publication)* [2005] 1 AC 593. Having carefully considered the submissions of Dr Proudman and Mr Gilmore, I am satisfied that currently there is no legal power provided for within the family procedure rules by which I can grant Ms M's application to speak directly in public about her

experiences within the family justice system. The power clearly exists within s 12 of the AJA 1960 for secondary legislation to be passed which would provide for such a possibility within the court rules, but no such rules have been adopted. I am however satisfied in accordance with existing Court of Appeal authority, that such power exists within the Court's inherent jurisdiction, albeit the legal basis for that enduring power is not considered in any detail within the case law and is somewhat unclear.

General Principles:

15. Open justice is a fundamental principle of our democracy. Judges hold and exercise enormous power. Open justice ensures appropriate scrutiny, accountability and understanding of their work. The privacy and confidentiality afforded to family proceedings and enshrined in primary legislation is a significant exception to that fundamental principle. In recent years, successive Presidents of the Family Division, have taken important steps towards increasing transparency in the family courts.

16. The drive towards greater transparency is underpinned by the right to freedom of expression, as protected by Article 10 of the European Convention. As set out by Dame Victoria Sharp PQB in *Griffiths v Tickle & Ors* [2021] EWCA Civ 1882, at paras 27 - 29, Article 10 encompasses a right to speak to others, including the public at large, about the events and experiences of one's private and family life. That right is also a facet of the right to respect for private and family life. As powerfully explained by Munby J in *Re Roddy* [2003] EWHC 2927 (Fam), paras 35-36:

> "35. Article 8 thus protects two very different kinds of private life both the private life lived privately and kept hidden from the outside world and also the private life lived in company with other human beings and shared with the outside world. For, as the Strasbourg jurisprudence recognises, the ability to lead one's own personal life as one chooses, the ability to develop one's personality, indeed one's very psychological and moral integrity, are dependent upon being able to interact and develop relationships with other human beings and with the world at large. And central to one's psychological and moral integrity, to one's feelings of self-worth, is the knowledge of one's childhood, development and history. So amongst the rights protected by Article 8, as it seems to me, is the right, as a human being, to share with others — and, if one so chooses, with the world at large — one's own story, the story of one's childhood, development and history. Man is a sociable being. Long ago Aristotle said that "He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god". More recently, Blackstone observed that, "Man was formed for society". And, somewhat earlier, John Donne had memorably written that, "No man is an Island … any man's death diminishes me, because I am involved in Mankind". That is what distinguishes mankind from the brute creation. We are able to think and to communicate with each other. We have self-awareness. It is natural for us to want to talk to others about ourselves and about our lives. It is fundamental to our human condition, to our dignity as human beings, that we should be able to do so. This, after all, is why totalitarian regimes seek to silence those who will not conform not merely by taking away their right to speak in public but also by depriving them of human companionship.
>
> 36. The personal autonomy protected by Article 8 embraces the right to decide who is to be within the "inner circle", the right to decide whether that which is private should remain private or whether it should be shared with others. Article 8 thus embraces both the right to maintain one's privacy and, if this is what one prefers, not merely the right to waive that privacy but also the right to share what would otherwise be private with others or, indeed, with the world at large. So the right to communicate one's story to one's fellow beings is protected not merely by Article 10 but also by Article 8."

Allied to these protected rights under Articles 10 and 8 of the Convention for an individual to impart information about his or her private and family life, without interference by a public authority, is the fundamental right of others to receive such information, again without such interference.

17. These are not, however, absolute rights. They are qualified to the extent that is necessary in a democratic society for certain purposes. In this context, the Article 8 rights of the child to respect for their private and family life will always be a weighty consideration in any question of publication of private and sensitive information about family proceedings of which they are the subject. In any balancing exercise, the child's welfare is an important consideration, albeit not the primary or paramount consideration.

Section 12 of the Administration of Justice Act 1960

18. In considering Ms M's application, the starting point must be that Parliament has established a clear statutory framework in s 12 of the Administration of Justice Act 1960 which in Parliament's view strikes the correct balance between the competing rights and interests in Children Act 1989 proceedings held in private. FPR r 27.11 provides that Children Act proceedings are to be held in private, subject to any contrary direction by the Court. Section 12 of the Administration of Justice Act 1960 then provides:

> (1) The publication of information relating to proceedings before any court **sitting in private** shall not of itself be contempt of court except in the following cases, that is to say—
> (a) where the proceedings—
> (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
> (ii) **are brought under the Children Act 1989 or the Adoption and Children Act 2002**; or
> (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor….
> (2) Without prejudice to the foregoing subsection, **the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court** except where the court (having power to do so) expressly prohibits the publication.
> (3) …
> (4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular **where the publication is not so punishable by reason of being authorised by rules of court**).

19. The effect of section 12 of the Administration of Justice Act 1960, in general terms, is that it will constitute a contempt of court to publish information relating to proceedings held in private with respect to children unless, by way of exception, it is information limited to the publication of the text or summary of an order (subject to the court expressly prohibiting publication) or publication is authorised by rules of court. Whilst section 12(2) provides express provision for these prohibitions on publication to be further tightened by the court, section 12 does not provide any general power for the court to relax the statutory prohibitions. In *Norfolk CC v*

Webster [2007] 1 FLR 1146, Munby J provided a much-cited authoritative exposition of the scope and effect of s 12 of the AJA 1960:

> "There is no need on this occasion for any detailed exegesis of s 12. It suffices for present purposes to note that the effect of s 12 is to prohibit the publication of accounts of what has gone on in front of the judge sitting in private, as also the publication of documents (or extracts or quotations from documents) such as affidavits, witness statements, reports, position statements, skeleton arguments or other documents filed in the proceedings, transcripts or notes of the evidence or submissions, and transcripts or notes of the judgment. On the other hand, s 12 does not of itself prohibit publication of the fact that a child is the subject of proceedings under the Children Act 1989; of the dates, times and places of past or future hearings; of the nature of the dispute in the proceedings; of 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; or of the text or summary of any order made in such proceedings. Importantly, it is also to be noted that s 12 does *not* prohibit the identification or publication of photographs of the child, the other parties or the witnesses, nor the identification of the party on whose behalf a witness is giving or has given evidence."

20. I pause at this point to note the *range* of information about family proceedings for which publication may be sought. It may include court orders, the judgment, identifying information about the parties, court documents such as witness statements, skeleton arguments and position statements, evidence filed by third parties such as the police or health, oral evidence heard in court or an account of what was said and done by the parties or the judge in the course of a hearing. As is clear from the passage in *Webster* above, there is much about family proceedings that does not fall within the prohibitive scope of s 12.

21. In any application it is therefore important to be clear as to what it is that a party may be seeking to place within the public domain. Ms M is not, for example, in any way constrained from discussing anything contained within the published judgments in her case as they are already in the public domain, provided it does not identify the child, something which she does not seek in any event.

22. Furthermore, in accordance with section 3 of the HRA 1998, primary and subordinate legislation must be interpreted and given effect so far as it is possible to do so in a way which is compatible with Convention rights. In limiting open justice, section 12 must thus be interpreted and given effect, in so far as it is possible, in a way which is compliant with Convention rights, particularly Article 10. However, outside the bounds of that interpretative obligation, it is not constitutionally permissible to simply balance primary legislation against Convention rights and for the Court to 'disapply' clear statutory provisions because the Court considers the interests protected within the legislation to be outweighed by competing interests - in this case, Ms M's Article 10 and Article 8 rights. That would constitute an impermissible infringement of the separation of powers. Where primary legislation is incompatible with Convention rights and cannot be interpreted to secure compliance, the remedy as provided for in section 4 of the HRA 1998 is for the Court to make a declaration of incompatibility.

23. I turn then to section 12 of the AJA 1960 and the explicit exceptions provided within its terms, such that the following will not amount to a contempt of court:

    i) The publication of the text or summary of the whole or part of an order unless the Court expressly prohibits the publication;

ii) Publication which is authorised by rules of court.

24. The first exception appears on its face limited in its scope to "orders" of the court. Although it is not in issue before me, the publication of judgments may well fall within a Convention compliant interpretation of those terms. The publication of judgments handed down within family proceedings is now strongly encouraged and in recent years has become much more routine. Practice guidance on the publication of judgments was first provided by Sir James Munby in 2014; guidance which has been updated in 2018 and again in 2024. Although the Practice Direction does not specify under what jurisdictional power the publication of judgments is permitted, it can be readily achieved by the court convening in open court for the hand down of judgment. Alternatively, it would appear to come within the proper interpretive scope of what is meant in s 12(2) by the text or summary of the whole or part of an order. Judgments whether handed down in open court or pursuant to s 12(2) of the AJA 1960 will usually be anonymised to safeguard the child's right to privacy and include a standard provision requiring any identifying information to be removed. There are a number of authorities dealing specifically with the question of whether the usual anonymity in published judgments should be lifted. That was the specific issue which came before the Court in *Tickle v Griffiths* [2021] EWHC 3365 (Fam).

25. It is relevant to note again the important question as to the *scope* of what may be discussed within the public domain following publication of a judgment, with or without anonymity. It appears from the submissions before me that it may have been assumed in *Tickle v Griffiths* that by allowing the publication of the judgment with the anonymity of the parties removed, Ms Kniveton, the mother in that case, would be permitted to speak more generally in public about her experiences as a victim of abuse within the family justice system. The clear importance of her Article 10 right to do so as a survivor of domestic abuse was certainly heavily relied upon in support of the argument that anonymisation in the published judgment should be removed. It does not however appear from Lieven J's judgment that she was specifically invited to consider and determine the *scope* of any information relating to the proceedings that could now be freely discussed in the public domain following the de-anonymised publication of the judgment. In my judgment, any broader mandate to speak publicly about the proceedings cannot safely be assumed from publication of the judgment alone, given the potential reach of s 12. The point of the current application, it must be assumed, is that Ms M seeks to publish information which she believes goes beyond the scope of that already placed in the public domain by means of the published judgments.

26. Section 12(4) sets out a further exception to the prohibition in s 12(1), providing that *any publication authorised by the rules of court* will not constitute a contempt of court. The Family Procedure Rules now provide for a number of such exceptions falling into two broad categories: i) publication by a party to proceedings to various professionals or for the purpose of receiving advice or support; and ii) publication by accredited members of the media or legal bloggers.

27. The rules providing for publication by a party to the proceedings to professionals or to receive advice or support are contained within FPR 2010 rr. 12.73 and 12.75:

12.73 (1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated –

(a) where the communication is to–

(i) a party;

(ii) the legal representative of a party;

(iii) a professional legal adviser;

(iv) an officer of the service or a Welsh family proceedings officer;

(v) the welfare officer;

(vi) the Director of Legal Aid Casework (within the meaning of section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012);

(vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;

(viii) a professional acting in furtherance of the protection of children;

(ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies;

(b) where the court gives permission; or

(c) subject to any direction of the court, in accordance with rule 12.75 and Practice Direction 12G.

(2) Nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings.

(3) Nothing in rule 12.75 and Practice Direction 12G permits the disclosure of an unapproved draft judgment handed down by any court…

12.75 (1) A party or the legal representative of a party, on behalf of and upon the instructions of that party, may communicate information relating to the proceedings to any person where necessary to enable that party –

(a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;

(b) to attend a mediation information and assessment meeting, or to engage in mediation or other forms of non-court dispute resolution;

(c) to make and pursue a complaint against a person or body concerned in the proceedings; or

(d) to make and pursue a complaint regarding the law, policy or procedure relating to a category of proceedings to which this Part applies.

(2) Where information is communicated to any person in accordance with paragraph (1)(a) of this rule, no further communication by that person is permitted.

(3) When information relating to the proceedings is communicated to any person in accordance with paragraphs (1)(b),(c) or (d) of this rule –

(a) the recipient may communicate that information to a further recipient, provided that –

(i) the party who initially communicated the information consents to that further communication; and

> (ii) the further communication is made only for the purpose or purposes for which the party made the initial communication; and
>
> (b) the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the conditions in sub-paragraph (a) are met.

28. As Mr Gilmore suggests, on first reading, rule 12.73(1)(b) may appear to confer a general discretion on the court to permit publication of information relating to proceedings, thereby avoiding contempt of court. Indeed, there would appear to be one authority in which r.12.73 was directly invoked to permit publication in circumstances analogous to those of Ms M. In *Tickle & Others* [2015] EWHC 2991 (Fam), Ms Tickle had applied for permission to publish an extended article about care proceedings involving a mother who had written on social media in an anonymous blog and spoken to various professional audiences about her experiences. The matter was not contested, and an agreed order was placed before the court. It was not therefore the subject of any judicial consideration or determination. The agreed order provided:

> 4. Pursuant to Family Procedure Rules 2010 rule 12.73(1)(b) and Family Procedure Rules 2010 rule 12.73(2) and section 12(1) Administration of Justice Act 1960 the publication of information relating to the current or past proceedings relating to the children or their adult siblings is permitted and shall not be a contempt of court save insofar as set out in paragraphs 2 to 3 above.
>
> 5. For the avoidance of doubt it is permitted to identify the Mother of the children as the operator of the anonymous twitter account "@survivecourt" and as the writer of the anonymous blog "Surviving Safeguarding" (http://www.survivingsafeguarding.co.uk), provided that the Mother must not be identified by her real name.
>
> 6. Pursuant to Family Procedure Rules 2010 rule 12.73(1)(b) any party to the current or previous proceedings relating to the children may disclose to Louise Tickle documents produced for the purposes of those proceedings, for the specific purpose of informing her journalism, and provided that those documents themselves may not be published in full or further distributed by her.

29. Paragraph 4 of the order is of particular interest, providing as it does unlimited permission (which must therefore include the mother in the proceedings) to publish information relating to the current or past proceedings. The order refers to rules 12.73(1)(b) and 12.73(2) but the judgment is silent as to how those provisions within the rules are reconciled. The issue having not been argued before Bodey J or addressed by him within the judgment, this is not therefore a precedent on which the Court can place any great weight.

30. Turning directly to the terms of r.12.73, it can clearly be argued that any purported interpretation of rule 12.73(1)(b) to confer a general power on the court to permit publication of information relating to proceedings to the public at large, cannot survive r. 12.73(2). Rule 12.73(2) explicitly prevents anything contained within 'this chapter' permitting communication to the public at large. On its face, that must also apply and limit the scope of judicial power contained within r 12.73(1)(b), that rule sitting squarely within 'this chapter'.

31. The question arises whether pursuant to s 3 of the HRA 1998, and in order to give effect to Ms M's article 10 rights, rule 12.73(1)(b) and r 12.73(2) can be read in such a way as to ensure compatibility with the Convention. I remind myself that the Court has much greater scope for ensuring a Convention compliant interpretation of rules contained within subsidiary legislation than it does with primary legislation. However, even accounting for that greater interpretative freedom, in my judgment, to read rule 12.73(1)(b) as the vehicle by which a party may achieve publication to the public at large, risks going beyond the legitimate scope of interpretation, and strays into territory properly reserved to statutory bodies. Firstly, r 12.73(1)(b) must be read within the context of the chapter in which it appears: they are rules directed at permitting, by default, limited and controlled disclosure to specified professionals. Rule 12.73(1)(b) clearly permits the Court to authorise disclosure beyond the specific circumstances identified in rule 12.73(1)(a). However, within that context, s 12.73(2) is clear and specific in its terms that 'nothing within the chapter' permits any publication to the public at large. Read as a whole, this chapter is focused on disclosure to specified professionals for specific purposes. It could be argued r 12.73(1)(b) is different, in that it does not operate by default and maintains the courts' overriding control of publication, thereby ensuring proper consideration of any competing rights and interests. However, to interpret r 12.73(1)(b) as conferring such a wide and unfettered discretion on the courts, would divorce the rule from the context in which it appears (the publication of information to professional advisers) and ignore explicit provisions within the rules to the contrary.

32. This conclusion is supported by the judgment of Lord Dyson MR in *Re C* [2017] EWCA Civ 798. *Re C* concerned an application for the publication of a fact-finding judgment in care proceedings where the parents had been convicted in criminal proceedings of offences concerning the death of a sibling child. In considering his jurisdiction to permit such publication (which he found existed within the Court's inherent jurisdiction), Lord Dyson MR held:

> **[10]** Before this court, Mr Bunting submits that Pauffley J had jurisdiction to make the order sought under FPR r 12.73(1)(b) which provides that, for the purposes of the law relating to contempt of court, information relating to proceedings held in private may be communicated "where the court gives permission". But as Mr Dean points out, rule 12.73(2) provides that "nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings". It seems to me, therefore, that the power to make the order sought cannot derive from rule 12.73(1).

33. However, there is authority to the contrary. McFarlane LJ, with whom Macur and King LJJ agree, appeared to come to the opposite conclusion in *Re W* [2016] EWCA Civ 113. That case concerned an appeal against decisions of Peter Jackson J, as he then was, to permit: i) publication of a fact-finding judgment; and ii) allow media attendance and daily reporting on the re-hearing of those factual allegations. McFarlane LJ held:

> [35]. It is well established that the family court and the High Court has the power to relax the prohibition on reporting on a case by case basis (see *Re Webster; Norfolk County Council v Webster and Others* [2006] EWHC 2733 (Fam) and *Medway Council v G and Others* [2008] EWHC 1681 (Fam)). This power is reflected in FPR 2010, r 12.73: "(1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a

> document filed with the court) may be communicated: … (b) where the court gives permission …"
>
> [37]. In the present case, Jackson J used the power available to him to move from the default position so as to allow a controlled degree of publicity. This was a matter for the judge's discretion. It was common ground before this court that that discretion must be exercised by conducting a balancing exercise between the rights to privacy and a private life which are encompassed within ECHR, Art 8, on the one hand, and the right to freedom of expression reflected in Art 10.

34. Determining which of these competing Court of Appeal authorities should be followed is not straightforward given neither interrogates the legal arguments on the effect of the rules contained within r 12.73 in any detail. However, it must be noted that the relevance and potential impact of FPR 2010 r 12.73(2) is not referred to by McFarlane LJ in his judgment in *Re W*, whereas it is specifically considered, albeit very briefly, by Lord Dyson MR in *Re C*. For that reason, and for the reasons set out in paragraph 31 above, this Court prefers the approach to r 12.73 set out within *Re C*.

35. The second exception provided for within the rules is now contained within FPR 12.73A and 14.14A and PD12R. These new rules which came into effect on 27th January 2025 follow the successful transparency pilot that has been overseen by the Transparency Implementation Group (TIG). Following careful piloting these significant new rules achieve a shift in the balance between open justice and privacy, whereby media reporting is now permitted essentially by default, subject to maintaining the privacy of the child and adult parties. These default provisions will always be subject to any alternative orders of the court. The transparency order referred to within PD12R provides a ready and consistent template for use throughout the family courts and includes detailed provisions on such matters as the media's access to court documents.

36. FPR 12.73A and 14.4A simply provide that Practice Direction 12R makes provision in relation to the court giving permission to communicate information from proceedings. PD12R is clear and explicit in its terms as to its scope:

a.1 This Practice Direction applies where-

(a) a Reporter attends a court hearing in accordance with rule 27.11 FPR and Practice Direction 27B; and

(b) that hearing is in proceedings of a type referred to in paragraph 1.2.

1.2 The types of proceedings are-

(a) all proceedings for orders in public law proceedings and private law proceedings, and proceedings to discharge, vary or enforce existing orders in such proceedings;

(b) all proceedings under the inherent jurisdiction of the High Court, including to authorise the deprivation of a child's liberty

(c) all proceedings to which Chapter 6 of Part 12 FPR applies (proceedings under the 1980 Hague Convention, the European Convention and the 1996 Hague Convention).

37. It is thus clear that PD 12R only applies to cases where a reporter has attended court proceedings held in private under FPR rule 27.11, thus engaging s 12 of the AJA

1960. The PD goes on to provide for the making of a Transparency Order. A Transparency Order means an order:

(a) setting out-

(i) what information from court proceedings referred to in paragraph 1.2 may be communicated;

(ii) who may communicate that information;

(iii) to whom that information may be communicated (which may include to the public at large or a section of it), meaning that any such communication will not amount to a contempt of court; and

(b) setting out what information from court proceedings referred to in paragraph 1.2 may not be communicated, meaning that any communication of that information could amount to a contempt of court.

Paragraph 3.1 of the Practice Direction provides that its aim "is to support Reporters being able to report on what they see and hear in court in accordance with the terms of a Transparency Order ("the transparency principle")."

38. The confidentiality of the child and adult parties is provided for by default:

The template Transparency Order-

(a) states that it remains in place until every child to whom the proceedings relate reaches the age of 18;

(b) provides that, in any reporting about the proceedings, the following must not be reported to the public at large, or a section of the public, without the express permission of the court-

(i) the name or date of birth of any subject child in the case;

(ii) 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 child(ren) being identified;

(iii) the name of any person who is a party to, or intervening in, the proceedings;

(iv) the address of any child or family member;

(v) the name or address of any foster carer;

(vi) the school, hospital, placement name or address, or any identifying features of a school, of the child;

(vii) photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;

(viii) the names of any medical professional who is or has been treating any of the children or family member;

(ix) in cases involving alleged sexual abuse, the details of such alleged abuse;

(x) for the purposes of section 97(2) of the 1989 Act, any other information likely to identify the child as a child who is, or has been, the subject of proceedings to which that section applies.

39. In my judgment, it is clear and unambiguous that the Practice Direction is not intended to, and does not deal with, *parties* who wish to speak out *directly* in the

public domain. Indeed, the scope of what the parties may themselves say or do is dealt with in express terms within the Practice Direction:

5.4 The template Transparency Order does not prevent publication by a parent of information that they would ordinarily be permitted to publish, for example information concerning their child, if it does not relate to or refer to the proceedings, the child's involvement in those proceedings or the evidence concerning that child within the case.

5.5 The template Transparency Order ***permits parties to discuss the proceedings with a Reporter and permits a Reporter to quote parties in their reporting,*** without this being a contempt of court.

5.6 The template Transparency Order ***does not permit the parties to themselves publish information from the proceedings where this would otherwise amount to contempt of court (including by virtue of section 12 Administration of Justice Act 1960).*** This includes re-publishing any media articles or blogs written about the case under the pilot, where accompanied by comment that may identify the child concerned.

40. Dr Proudman urges that following a balancing of the competing Article 8 and 10 Convention rights, the transparency order can simply be amended to permit the parties themselves to publish information contrary to the apparent restriction contained in PD 12R, para 5.6. In my judgment, that would be to distort the purpose of the transparency order. The transparency order is simply the vehicle by which the objectives of the rules, as contained within PD12R, are achieved. In other words, it gives effect to these new rules - it is not an end in and of itself. The rules to which it gives effect are on their face, clearly and explicitly, only applicable to "Reporters" who have attended at the hearing pursuant to rule 27.11. These rules recognise the important role of the media within a democratic society in maintaining the rule of law and holding the justice system to account. In my judgment, given the evolution of the rules and their clear terms, it would be an inappropriate interpretative strain to say PD12R applies directly to the parties to proceedings, and a transparency order can simply be amended to give effect to that position.

41. There are, moreover, sound policy reasons why an expansive interpretation of FPR 2010 rule 12.73 or PD 12R may not be an appropriate use of judicial interpretative powers. This case clearly raises an important question in which competing rights and interests are at stake. To permit a parent to talk directly in the public sphere, even as in this case with efforts to secure the child's confidentiality, raises very significant and distinct challenges. Social media allows an almost unlimited audience for parents to disseminate information about family proceedings in which they have been involved. Whilst Ms M seeks in this case to exercise her article 10 and article 8 rights in a perfectly responsible way and has a compelling argument to put under Article 10, that will not always be the case. Indeed, Mr F tells the Court he seeks an equivalent right to discuss in public the 'miscarriage of justice' to which he has been subjected by the family courts. A change to the rules raises the spectre of many more parents being able to continue their litigation battles in the full public glare of social media to the significant detriment of the child. Children and young people have an important voice in determining these issues that needs to be heard. They may value their own right to speak out about their experiences in the family justice system, but many children and young people are deeply fearful of the intrusion into their private lives. A more far-reaching change to the rules may also operate to the significant detriment of

victims of abuse. One unintended consequence of extending transparency in this way, may be to permit parents found by the courts to be perpetrators of domestic abuse to continue their abuse and harassment of victims through ongoing public media campaigns in the name of correcting a 'miscarriage of justice'. These are all matters that require careful consideration and consultation.

42. I note that the essential progress that has been made thus far in opening the family courts to greater transparency has been painstakingly consulted on and piloted before reaching the position we now have enshrined in PD12R. The rules governing reporting by the media are very detailed and necessarily complex to ensure all parties rights are safeguarded. It works in no small part due to self-regulation and editorial control by the media and the involvement of accredited journalists and professional bloggers who take seriously their own professional obligations to ensure transparency orders are fully complied with. The same inherent mechanisms of control do not exist when parties directly enter the public domain.

43. None of this is to say there should not be a means by which parties to family proceedings can obtain permission to speak directly of their own experiences of the family justice system without relying on the media as their voice. Survivors of domestic abuse have a clear interest in being able to do so, underpinned by their Convention rights. The issue is how to secure that right through a process in which the rights and interests of all interested parties can be heard and considered. In my judgment, section 12 of the AJA 1960 provides that process through the development of rules of court. That is what has happened so successfully for media reporting by means of the transparency pilot. In my judgment, that is the correct process by which Ms M's wish to extend the transparency order to permit direct reporting by parties to the proceedings should be explored.

44. Following careful analysis of s 12 of the AJA 1960 and the Family Procedure Rules 2010, I am therefore satisfied they do not provide any legal power for this Court to permit Ms M to publish information about the proceedings which goes beyond that contained within the already published judgments.

Powers that may exist beyond the statutory framework:

45. I turn then to the question of whether there may exist jurisdiction outside of primary or subsidiary legislation to enable this Court to give Ms M permission to speak directly about her experiences of the family justice system. The case law would appear to support such a power remaining as a feature of the High Court's inherent jurisdiction.

46. A number of the leading authorities make passing reference to the Court's inherent jurisdiction to determine matters of publication. In *Clayton v Clayton* [2006] 3 WLR 599, the Court of Appeal held that the protection afforded to a child's privacy under s 97(2) of the Children Act 1989 ceases upon conclusion of the proceedings. However, it went on to hold that the Court retains a welfare jurisdiction (either under the High Court's inherent jurisdiction or by means of orders available under s 8 of the Children Act 1989) to prevent publication of information relating to the upbringing of a child including information that would lead to the identification of a child as the subject of

previous court proceedings. In such circumstances, the Court's jurisdiction is to be exercised following a careful balancing of the competing interests engaged.

47. As to how *Clayton* may assist with the issues now before this Court, the father's wish in *Clayton* to be able to campaign on issues of shared care drawing on his own experiences in the family justice system, appears in many ways to be very similar to what Ms M seeks to achieve within these proceedings. However, the Court of Appeal's decision in *Clayton* was limited to whether Mr Clayton should be prevented from identifying himself and the child as the subject of the judgment and final shared care order already in the public domain, and whether he should be prevented more broadly from campaigning on issues of shared care. The Court of Appeal, having considered the *scope* of what Mr Clayton was seeking to do (set out at paragraphs 72 and 106 of the judgment), determined that his requests, save for one involving the child in making a film, were uncontentious. Significantly, the Court of Appeal were clear that the decision did not impinge upon the prohibitions under s 12 of the Administration of Justice Act 1960 (*per* Potter P, [79]). The identifying information father wished to share was limited to publication on matters already within the public domain. That said, during the course of his judgment, Potter P makes brief reference to the courts' ability to permit publications that would otherwise offend s 12 of the AJA 1960 (para [51]). The source of the courts' power to do so is not detailed.

48. I turn next to *Norfolk CC v Webster* [2007] 1 FLR 1146. This case concerned the parents' application, supported by the media, for information about *ongoing* care proceedings with respect to child D to be made public, the parents' position being that three older sibling children had been wrongfully removed from their care and placed for adoption in a miscarriage of justice. Munby J held that s 97(4) of the Children Act 1989 (which allows publication of the name of a child subject to ongoing proceedings despite the prohibition in s 97(2)) had be to construed in a Convention compliant way, thereby not limiting the occasions on which s 97(2) is dispensed with to those where the welfare of the child "requires it", but extending it to every occasion when required to give effect to the Convention rights of others. Having conducted the necessary balance of Convention rights, publication of the actual names of the parties was thus permitted.

49. Munby J went on to give the media permission to attend the ongoing proceedings given the public interest in the case. He held that in the circumstances of this case publication of the judgments would not suffice to meet the Article 10 rights in issue. He went on to hold that as the media were permitted to be present at the hearings, the hearings could no longer be regarded as 'in private' and therefore s 12 of the AJA 1960 would not apply. That enabled the media to report on any matters discussed or referred to within the hearing. These are of course matters which are now governed by the careful scheme within the FPR 2010 which, contrary to Munby J's decision, maintain the private nature of proceedings when the media attend.

50. As to how the decision of Munby J in *Webster* may assist in the present case, he also briefly refers to the "clear power" of the court to relax and to increase the default restrictions limiting open justice in children's proceedings. He held:

> 53. [I]t is clear that the court has power both to relax and to increase these restrictions. A judge can authorise disclosure of what would otherwise be prohibited. And a judge can impose additional restrictions. This involves the exercise of

> discretion – the carrying out of a balancing exercise – where a number of often conflicting rights and interests have to be balanced. How is this exercise to be performed?
> 54. The answer is provided by the speech of Lord Steyn in *Re S (Identification: Restrictions on Publication).*

51. The root of the Court's jurisdiction is again not interrogated in any detail. Thus, the source of these powers, outside what is permitted by primary and secondary legislation interpretated so far as it is possible to do so to achieve compliance with Convention rights, remains unclear.

52. It is perhaps relevant to note again that section 12(2) of the AJA 1960 explicitly provides power for the court to further tighten the statutory prohibitions on what may be published, whereas there is no corresponding power contained within s 12 for the court to relax the restrictions. In this regard, the enduring *parens patriae* jurisdiction of the High Court to exercise its *protective* powers to impose restrictions on reporting extending beyond the statutory scheme (such as to maintain a child's confidentiality once proceedings have concluded) is tolerably clear. It is the subject of lengthy consideration by Lord Burnett in the Court of Appeal in *Abbasi and Hastrup v Newcastle Upon Tyne Hospitals NHS Foundation Trust and Kings College Hospital NS Foundation Trust* [2023] EWCA Civ 331. That case concerned the High Court's jurisdiction to impose a Reporting Restriction Order protecting the anonymity of professionals in an end-of-life case heard in public. The Court of Appeal held:

> 45. In making the RROs the High Court was exercising powers under its inherent *parens patriae* jurisdiction (parent of the nation) which is of ancient origin. It enables the court to protect those who cannot protect themselves. It was described by Lord Eldon LC in *Wellesley v Duke of Beaufort* (1827) 2 Russ 1 at 20, (1827) 38 ER 236 at 243:
>
> 'it belongs to the King, as *parens patriae*, having the care of those who are not able to take care of themselves, and is founded on the obvious necessity that the law should place somewhere the care of the individuals who cannot take care of themselves, particularly in cases where it is clear that some care should be thrown round them.'
>
> 46. Under that jurisdiction the High Court may make orders to protect those engaged in, affected by or connected with the proceedings before it and to protect the integrity of the proceedings themselves. Similar inherent powers have been vested in the High Court and its predecessors for centuries.
>
> 47. Discussion of 'jurisdiction' may give rise to confusion if two different concepts are conflated. The first (jurisdiction strictly so called) is whether the court has power to make an order. The second is whether it is appropriate to exercise that power. The High Court, by contrast with inferior courts and tribunals, is a court of unlimited jurisdiction, but the exercise of the power it has in any area must be exercised on a principled basis established in authority. Moreover, the court's wide jurisdiction may be subject to statutory limitation.

In circumstances such as those in *Abbasi*, the inherent jurisdiction is being employed *protectively* where Parliament has not intervened to impose limitations on the High Court's otherwise unrestricted powers. It is less clear how the High Court's inherent jurisdiction can be invoked to *permit* publication where Parliament has intervened, and where permitting publication appears to cut across clear statutory prohibitions to the contrary, as contained in s 12 of the AJA 1960. In this regard, the recent Court of Appeal decision in *Re X and Y* [2025] EWCA Civ 2, provides a pertinent reminder

that the inherent jurisdiction cannot be used to "cut across" a statutory scheme to achieve an outcome which was clearly contrary to Parliament's intention.

53. However, despite those uncertainties, the Court of Appeal has held that the High Court continues to hold such powers. *Re C* [2017] 2 FLR 105, noted above, concerned an application for permission to publish a fact-finding judgment. Having rejected FPR 2010 12.73 as providing the necessary jurisdictional basis to permit publication, Lord Dyson MR went on to hold that such power was found in the Court's inherent jurisdiction:

> 12… But I am in no doubt that the court does have the power to order the disclosure of part or all of what takes place in private proceedings (including any judgment made by the court during the course of or at end of the proceedings). In my view the court has that power under its inherent jurisdiction. It had that power before the incorporation of the Convention by the Human Rights Act 1998: see *In re B (A Child) (Disclosure)* [2004] 2 FLR 142, paras 83–86 where Munby J summarised the relevant jurisprudence. The court continues to have that jurisdiction following the incorporation of the Convention.

54. In reaching this conclusion on jurisdiction, Lord Dyson relies on the earlier decision of Munby J in *Re B* [2004] 2 FLR 142. The decision is similar on its facts to the present case. The case concerned an application by a mother to be able to place within the public domain certain facts about proceedings in which she had been found to have harmed her child by reason of Munchausen's Syndrome by Proxy. Mother was appealing the finding on the basis the expert evidence had relied heavily on the discredited work of Professor Roy Meadows. Having carefully considered the scope of what he termed the "automatic restrictions" in section 12, Munby J held:

> 83… [I]t is clear that the High Court has jurisdiction both to relax and to increase these restrictions. A judge can authorise disclosure of what would otherwise be prohibited. And a judge can impose additional restrictions.
>
> 84. The principles upon which these jurisdictions (which for convenience I shall refer to as the "disclosure jurisdiction" and the "restraint jurisdiction") were exercisable before the Human Rights Act 1998 came into force were well established.

Pursuant to the Court's "disclosure jurisdiction", Munby J found that the facts mother wished to place within the public domain fell within the prohibitive scope of s 12. He therefore found that without permission, disclosure of such information would constitute a contempt of court. He nevertheless went on, following a balancing of the competing rights and interests, to give permission for publication.

55. I am thus satisfied that whilst it is uncertain how the inherent jurisdiction of the High Court to permit publication survives the intervention of Parliament in section 12 of the AJA 1960, the Court of Appeal has confirmed that such jurisdiction endures. I am therefore satisfied this Court has the jurisdictional basis to consider whether that power should be exercised to permit publication by Ms M, Mr F or both.

56. Before moving to the exercise of my powers, I recognise that I have reached what may be viewed as a less than satisfactory conclusion on the law. Any exercise of the inherent jurisdiction to permit publication requires an application to a High Court judge and is thus not a readily accessible remedy in family proceedings being heard in the family court. Similarly, there is no readily available template order for parties to

proceedings in the family court to utilise, as now exists in PD 12R for accredited media representatives and bloggers. There is, furthermore, a lack of certainty as to the constitutional legitimacy of the High Court's inherent jurisdiction to permit publication in circumstances such as this. These are important questions impacting on transparency which may merit consideration elsewhere.

Exercise of the Court's powers to permit publication under inherent jurisdiction

57. The Court reminds itself that although this is Ms M's application for permission to write and speak publicly about her experiences in the family courts, Mr F also seeks the same right. I have therefore carefully considered the witness statements and exhibits that have been filed by both parties.

58. The seminal authority on how a court is to approach the balancing of Convention rights whenever Articles 10 and 8 are engaged on a matter relating to publication impacting on a child is *Re S (a child) (identification: restriction on publication)* [2005] 1 AC 593. Within his judgment, Lord Steyn sets down the approach to be adopted:

> 17. …The interplay between articles 8 and 10 has been illuminated by the opinions in the House of Lords in Campbell v MGN Ltd [2004] 2 WLR 1232. For present purposes the decision of the House on the facts of Campbell and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. 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. This is how I will approach the present case.

In carrying out the balancing exercise, the rights of the child are a primary consideration, but they are not the primary or paramount consideration (*per* Lieven J, *Griffiths v Tickle* [2021] EWHC 3365 (Fam), at para. 46.

59. Ms M has clear rights under articles 10 and 8 of the European Convention to be able to tell her story in her own words. In my judgment, in the circumstances of this case, those rights are particularly weighty and important. Article 10 safeguards the fundamental principle of open justice and ensures in a democratic society there is appropriate scrutiny of what happens within the family courts. In this case there is a strong public interest in there being an open and informed public debate about the way in which the family justice system approaches disputed allegations of rape, domestic abuse and parental alienation in private law proceedings involving contact with a child. Whilst the media plays an important role in reporting these issues, hearing directly from victims as to how they have experienced the system and the impact the proceedings have had upon both them and the child can be particularly powerful. Those direct voices can often prove invaluable in ensuring informed discussion and debate. I am satisfied on the facts of this case there is a considerable and weighty article 10 right in favour of allowing Ms M to speak.

60. That Article 10 right is strongly aligned with Ms M's Article 8 right to speak about her experiences as a survivor of domestic abuse. The Court is again entirely satisfied that Ms M's Article 8 right to speak about her experiences is both weighty and important. It is difficult to put it any better than Ms M does in her own witness statement:

> 13. I have struggled to find any other system where freedom of speech about your own experiences is curtailed in such a way. I genuinely believe that preventing me from speaking out amounts to further coercive and controlling behaviour. Silencing me, as a victim of rape, from exercising my right to speak, is causing me emotional distress.
>
> 14. I believe it is important for survivors of abuse and of the Family Court System to be able to share their lived experiences…
>
> 20. The silencing of safe parents within the family court, and in particular by court appointed experts like CAFCASS has both a daily and lasting impact on survivors…
>
> 21. There is a distinct lack of survivor stories, due to the secrecy of the systems involved. In any other walk of life, you are able to complain and discuss a process or system that has failed you or has not worked in your best interest - a bad healthcare experience, poor customer service at a retailer or a poor interaction with private sector company for example. However, there remains a requirement not to talk about what happens within the family justice system.

61. The importance and weight to be afforded to the Convention rights of survivors of domestic abuse was clearly recognised by Lieven J in *Griffiths v Tickle* [2021] EWHC 3365 (Fam), at para 52. She held:

> [Ms Kniveton] has a right under Article 10 to her own freedom of expression, and this includes the right to speak to whomsoever she pleases about her experiences. That Article 10 right would normally be very significantly interfered with by the privacy requirements of the Family Courts, but this would generally be justified under Article 10(2) by reason of the interests of the child. I also accept that her Article 8 rights to tell her own story and thus have autonomy, as explained by Munby J in Re Roddy, would be interfered with. The level of the interference in the Mother's rights should not be underestimated. The Mother says that she feels that, having been subject to coercive control by the Father, she is now being silenced by his resistance to the Judgment being published. For women who have been the subject of domestic abuse to be unable to speak about their experiences, including their experiences through litigation, must often be extremely distressing. And may in some cases be re-traumatising.

I wholly endorse those observations. Given the weight and importance of Ms M's Convention rights, any interference with those rights will require particularly careful justification.

62. Turning then to any competing Convention rights, it is important to note again that Ms M does not seek permission for any identifying information about either herself, Mr F or C to be placed within the public domain. She wishes to preserve the family's anonymity. Ms M's commitment to maintaining the family's privacy significantly limits any impact on the competing Article 8 rights of Mr F and C, provided of course that confidentiality can be effectively maintained. It is also relevant in evaluating the weight of the competing Convention rights to note that there is already very considerable information about this case in the public domain due to the publication

of the judgments and permitted media reporting under the transparency pilot. The extent of the material in the public domain is unlikely to be very greatly increased by Ms M's application.

63. Mr F has a right to respect for his private and family life. However, in my judgment, as a perpetrator of rape and domestic abuse, any Article 8 right to maintain the confidentiality of those findings or the court process by which those findings were made, is of limited, if any, importance. Ms M will in any event continue to protect any identifying information about him. In weighing the Article 10 and Article 8 rights of Ms M against the Article 8 rights of Mr F, the balance in these circumstances very clearly comes down in favour of publication. In my judgment, the protection of Mr F's Article 8 rights cannot justify the significant and disproportionate interference with Ms M's Convention rights.

64. Clearly, the more weighty and important consideration will be the Article 8 rights of C. In many cases, any interference with a parent's Article 10 and Article 8 rights will be justified by the need to protect the child's own right to respect for their private and family life. The child's rights and interests whilst not paramount will always be a weighty consideration. In this case, C is a victim of domestic abuse in their own right. They too have suffered trauma as a result of exposure to their father's behaviours. They have a strong and weighty interest in the details of those distressing experiences remaining private. In applications of this nature, safeguarding C will always be at the forefront of the Court's mind. However, given the position of Ms M that she does not seek for C's identity to be disclosed, the extent of any interference with C's Article 8 rights is considerably reduced - *provided C's ongoing anonymity can be effectively secured*.

65. For this reason, and on behalf of C, the Guardian does not oppose Ms M being permitted to publish media articles about her experiences of the family court system and the domestic abuse she suffered at the hands of the father, using an alias. I am equally satisfied that given the inherent safeguards which exist to maintain anonymity when writing for media publication - safeguards which the mother will be able to personally oversee - any impact on C's article 8 rights is very limited. In those circumstances, I am satisfied balancing C's article 8 rights against those of Ms M, that the article 10 and article 8 rights of Ms M prevail.

66. Ms M's application for permission to speak at events facilitated by organisations such as Cafcass, women's right groups and children's rights groups, using an alias, is more finely balanced. In these situations, the level of control Ms M will have over any information shared, including information that could lead to the family's anonymity being breached, will be significantly reduced. Ms M suggests that in agreeing to speak at such events she will ensure the organisers and any participants are aware of the need to maintain confidentiality, any court orders to that effect and that participants are informed of the potential consequences of breach. Ms M is confident that using this mechanism she will be able to safeguard C's anonymity.

67. The guardian is cautious. She does not wish to stand in mother's way, but she considers that in such situations the risks to C's anonymity, and hence the risk of a significant interference with C's Article 8 rights, to be much greater. It is clear that external audiences – many of whom will be completely unknown to Ms M - may be

less understanding and respectful of the need for anonymity and the need to comply with the terms of any order. The risk of photographs being published, or information being repeated or commented upon in such a way that risks identification of Ms M and C either directly or by way of jigsaw identification, is much greater. Identifying the source of any breach may well prove impossible. In my judgment, participation in such events carries a notable risk of anonymity being breached.

68. The extent of any such risk is however variable. The risk of C's Article 8 right to privacy being compromised will vary depending upon the nature of the event in which Ms M wishes to participate. For example, speaking at a 'closed' Cafcass training event is highly unlikely to pose any risk of interference with C's Article 8 rights. In contrast, speaking at a large online event with open attendance, will greatly increase those risks. The Court accepts that any loss of anonymity for C would be extremely damaging and constitute a serious interference with their Article 8 rights. The question for the Court is whether the *risk* of interference with C's Article 8 rights, justifies denying Ms M permission to speak at such events at the expense of her Convention rights. After careful consideration I have concluded that it does not.

69. Given the weight and importance of Ms M's Article 10 and Article 8 rights, the Court does not consider they are outweighed by the *risk* to C's Article 8 rights, such that a blanket prohibition on Ms M speaking at such events is justified as a necessary and proportionate interference. Ultimately, in my judgment, the greatest protection for C's Article 8 rights is Ms M herself. She has always sought to exercise her parental responsibility in an entirely child-focused way, such that C is safeguarded and protected. Ms M is clear she will not endanger C's own interests by risking identification. Given that clear commitment to protecting C's anonymity, Ms M's interests and those of C are more easily reconciled. In my judgment, Ms M can be trusted to carefully evaluate those events in which she can safely participate and those events where the risks are unmanageable. I do not consider Ms M would participate in any event where there was a risk her own anonymity or that of C would be compromised. With that safeguard in place to mitigate the risks to C, I am satisfied in balancing the competing Article 10 and Article 8 rights, the balance comes down in favour of publication. In short, Ms M can be trusted to exercise her parental responsibility to uphold and protect C's rights and interests. In such circumstances, a blanket prohibition would be an unnecessary and disproportionate interference with Ms M's Convention rights.

70. Sadly, the same cannot be said of Mr F. The Court notes that Mr F also seeks the Court's permission to write and speak publicly about his experiences of the family justice system. The Court must therefore undertake the same balancing of rights and interests as that undertaken for Ms M.

71. The Court accepts Mr F also has Article 10 and Article 8 rights to speak about his experiences of the family justice system. The importance to be attributed to those rights is not straightforward. His rights cannot be simply brushed aside because he has been found to be a perpetrator of rape and serious domestic abuse. Mr F's position is that he has been a victim of a miscarriage of justice, and he wishes to be able to speak out about his experiences in the public domain. It is not the role of the courts to 'police' the value of what individuals may wish to say about their experiences of the family justice system. Those who claim to have been the victims of a miscarriage of

justice can play an equally important role in ensuring appropriate scrutiny of, and accountability for, what happens within the family courts. There remains a strong public interest in there being an open and informed public debate about the courts' approach to disputed allegations of domestic abuse in private law proceedings involving contact with a child. It would in my judgment set a dangerous precedent for the courts to attribute diminished weight and value to an individual's Article 10 and Article 8 rights because they claim the family justice system has got it wrong. The Court must therefore start from the position that Mr F has weighty Article 10 and Article 8 rights, any interference with which requires careful justification.

72. To be weighed against Mr F's Article 10 and Article 8 rights are however the competing rights of Ms M and C. As a survivor of rape and domestic abuse, Ms M has weighty Article 8 rights to be placed within the balance. The Court is satisfied that any publication of Mr F's 'story' will constitute a significant and potentially harmful interference with the Article 8 rights of Ms M. The Court reminds itself that there are specific findings against Mr F of using social media as a vehicle of abuse against Ms M, thereby compounding her trauma. There is evidence before this Court that Mr F has continued to use social media to abuse and harass the mother. Ms M has produced screen shots of social media messages in which Mr F continues to refer to Ms M in highly derogatory terms. Given the nature and tone of those messages, I am satisfied that to permit Mr F to speak publicly about the family proceedings, albeit in an anonymised form, would perpetuate and compound the abuse of Ms M, causing her further significant harm. It would constitute a very significant interference with Ms M's Article 8 rights.

73. The same considerations apply with respect to C and the risk and seriousness of any interference with C's Article 8 right to respect for private and family life. Whilst Ms M can be trusted to exercise her parental responsibility to safeguard C's anonymity, Mr F cannot. The messages produced by Ms M, evidence Mr F's desire to re-litigate the proceedings on social media, in disregard to the need to maintain C's privacy and protect C from harm. It is clear from the messages that Ms M and C could be easily identified by way of jigsaw identification. In the Court's judgment, the risks to C and Ms M's Article 8 rights if Mr F is permitted to write and speak publicly about the proceedings is very high indeed.

74. When the Court weighs Mr F's Article 10 and Article 8 rights against the high risk of interference with Ms M and C's Article 8 rights, the balance comes down in favour of the need to protect the rights and interests of Ms M and C. The Court attaches particular weight to the impact on C of any breach of his right to privacy. In the Court's judgment, any interference with Mr F's Article 10 and Article 8 rights is thus necessary and proportionate to ensure C and Ms M's Convention rights are protected.

75. On the question of publication, and pursuant to the Court's inherent jurisdiction, I therefore conclude:

    i) Permission is granted to Ms M to publish media articles about her experiences of the family court system and the domestic abuse she suffered at the hands of the father, using an alias. Mr F's application is refused.

ii) Permission is granted to Ms M to speak at events facilitated by organisations such as Cafcass, women's right groups and children's rights groups, using an alias. Mr F's application is refused.

Mr F's C2 application to commit Ms M for contempt:

76. Mr F has filed a C2 application alleging Ms M has committed a contempt of court by publishing certain information about the family proceedings for the purpose of bringing financial enforcement proceedings against Mr F in Scotland. The costs orders made against him by HHJ Baker and Morgan J remain unpaid. That application is dismissed on the grounds of procedural irregularity, Mr F having failed to comply with the strict procedural safeguards for committal applications set out at FPR Part 37.10. For the avoidance of doubt, this Court gives permission to Ms M to disclose any orders or judgments from these proceedings to other legal authorities for the purposes of enforcement of the Court's orders. All steps should be taken within the limits of the proceedings to redact any information that may lead to the identification of C.

Ms Justice Harris DBE

2nd April 2025