

Neutral citation number [2023] EWFC 90 (B)

CASE NO: OX22C50074

IN THE FAMILY COURT SITTING AT OXFORD

HEARD ON 22<sup>nd</sup> & 23<sup>rd</sup> May 2023

HANDED DOWN ON 12<sup>th</sup> Jun) 2023

Before

HER HONOUR JUDGE OWENS

Between

A Local Authority

Applicant

- and -

The mother

First Respondent

-and-

The father

Second Respondent

-

-and-

A

Third Respondent

**Representation:**

For the Applicant: Mr Perry

For the mother, First Respondent: Mr Walthall

For the father, Second Respondent: Miss Sparrow

For A, Third Respondent acting through their Children's Guardian: Dr Gatland

1. This judgment is being handed down [in private] on 12<sup>th</sup> June 2023. It consists of 16 pages and has been signed and dated by the Judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the child and the members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

#### **CASE MANAGEMENT – DISCLOSURE APPLICATION**

2. The father has applied for disclosure of various pieces of information both within the bundle and without by application dated 16<sup>th</sup> May 2023 (B169). It is accompanied by a schedule duplicating initially the provisions of PD 12G (information that can be conveyed and to whom for which purposes without the need for a court order), and then a further schedule setting out in detail what ‘data’ (to use the terminology in that schedule) is sought to be disclosed, to whom, and for what purpose (C163-C173). There is also a statement in support provided by the father which is in the bundle at C157-C163, though this is couched in general terms and does not identify what documents are sought to be disclosed, nor address any potential impact (positive or negative) on A’s welfare.

3. The Local Authority does not oppose some disclosure to a legally qualified individual for the purposes of the father obtaining legal advice in relation to other potential avenues of redress but is concerned that wider disclosure would risk identification of A and would thus not be in A's welfare interests.
4. The mother's concern about widespread disclosure, even with some redaction, is that much of the evidence contains deeply distressing details about the mother, and may risk identification of A.
5. The Guardian is concerned that granting the full disclosure sought by the father risks identifying A and is thus potentially harmful to A's welfare and interests, especially where that disclosure is to a wide group of individuals and the press and may result in A's peers being able to identify A as the subject of these proceedings.
6. At their suggestion, I heard submissions from all parties about this application on the afternoon of day 1 of the final hearing during a hiatus in the timetable caused by lack of witness availability.
7. I will deal with each aspect of the detailed schedule below, but first need to set out the legal parameters.
8. When considering whether to order disclosure, following *Re EC (Disclosure of Material)* [1996] 2 FLR 725 the following factors must be taken into account, albeit as this case considered disclosure to or from criminal proceedings there must be some necessary modification where the application does not specifically relate to disclosure into criminal proceedings:
  - a) The welfare and the interest of the child concerned and of any other children generally;

- b) The maintenance of confidentiality in children cases and the importance of encouraging frankness;
  - c) The public interest in the administration of justice and the prosecution of serious crime;
  - d) The gravity of the alleged offence and the relevance of the evidence to it;
  - e) The desirability of co-operation between various agencies concerned with the welfare of the children;
  - f) In cases where s98(2) applied fairness to the person who had incriminated himself and any others affected by the incriminating statement
  - g) Any other material disclosure which had already taken place.
9. I have also had regard to the case of *M (A Child) [2021] EWCA Civ 437* which confirmed that transparency is helpful and potentially of benefit to those involved in Family proceedings and the general public more widely. Transparency in the Family court currently exists both in a specific pilot form which has been underway since 2018 at particular courts, and more widely by virtue of rule 27.11 which permits accredited members of the press to attend proceedings held in private but which does not permit them access to court documents without permission of the court and does not permit reporting of proceedings in any way that would breach the overall requirement of confidentiality imposed by s97(2) of the Children Act 1989. The aim of the steps that are already underway with regard to increased openness in the Family courts is to enable the public and/or the press to have a proper understanding of the court hearings themselves. Under the updated Guidance issued by the President of the Family Division in relation to allocation or transfer of proceedings to the High Court, issues as to publicity (identification of a child or restriction on publication or injunctions

seeking to restrict the freedom of the media where this is the principal relief sought) must be commenced in the Family Division. Ditto any application which requires the inherent jurisdiction.

10. Item one on the detailed schedule is disclosure to *Any solicitor, barrister, or other qualified legal adviser* – this request is for any information relating to the proceedings, especially relating to the original threshold and statement of expectations. The stated purpose (slightly paraphrased for brevity's sake) is to enable the father to take advice and obtain representation with regard to applications under the Children Act 1989, Family Law Act 1996, or the Equalities Act 2010 on behalf of the father or children for whom the father holds parental responsibility; and to ensure that issues in relation gender harm and discrimination within the court proceedings “*which need to be in the public interest because of gender genocide studies*” (C165). I'm not sure why it is not possible for the father's current solicitors to provide advice regarding any applications under the Children Act 1989 or the Family Law Act 1996 since they are Family solicitors and have advised and assisted the father in these public law proceedings. As a Family court considering applications under the Children Act, this court would have had jurisdiction to consider other Family applications, but none have been made. Similarly, this court has jurisdiction to consider any order under the Children Act 1989 but I am not asked to consider any other order than a Supervision Order or no order on the case that the father has made including final submissions. The application seems therefore to be more properly focussed on the need to take advice in relation to areas that fall outside of the expertise of the firm from the submissions made by Miss Sparrow. This item is largely not opposed by the respondents and, assuming that any such disclosure is limited to

the specified purpose (ie obtaining the necessary legal advice in relation to aspects that fall outside of the expertise of father's current solicitors), such disclosure in general does not seem problematic and would not appear to be adverse to A's welfare interests. It seems to be accepted by the father through Miss Sparrow's submissions that details of third parties such as the mother's current partner, and details in relation to A, should not form part of any such disclosure allowed. It is accepted by the Local Authority and the Guardian that, with the removal of identifying information in relation to A, the mother and third parties, there is no risk to A's welfare by permitting this disclosure. Applications under the HRA or the Equalities Act are also matters which may further the administration of justice generally, having noted that aspects of the matters which concern the father so deeply fall outside the jurisdiction of the Family Court and may instead potentially be subject to other forms of redress including under these pieces of legislation. I will therefore grant disclosure of documents from within the final hearing bundle to any solicitor, barrister or other qualified legal adviser solely for the purposes of providing advice and assistance in relation to any application under the HRA or the Equalities Act, providing that such disclosure does not identify A, the mother, or any third party including professionals involved with the family (given the lack of notice to any third party by the applicant), and making it clear that this does not grant permission for such documents to be used in connection with proceedings arising in a way that would lead to the identification of A, the mother or any third party. With regard to any other documents outside of the court bundle, I am not assisted by any identification of what these may be in this part of the schedule. Nor was I assisted by any clear details being provided by Miss Sparrow in submissions. Somewhat ironically,

therefore, I am asked to provide a degree of clarity and certainty to the father around what the father may disclose and to whom, but not given clarity or certainty around what else is sought. I'm also not sure what the generic purpose in relation to "*gender genocide studies*" means since nothing that has been provided on behalf of the father explains this and no specific approved academic studies are detailed (though these may be permitted disclosure pursuant to PD12G). Given this lack of clarity, I will limit the permitted disclosure to only those documents contained in the final hearing bundle, redacted as I have directed to remove any reference to any identifying information in relation to A, the mother or any third party and this includes geographical information and solely for the specific purpose of providing advice and assistance in relation to any application under the HRA or Equalities Act or any other similarly relevant legislation or under the inherent jurisdiction.

11. Item 2 on the schedule is *The Information Commissioner* (ICO) – and identifies Police disclosure, the psychological assessment of the father including addendum assessments, as well as "*communication between [the psychologist], [A Local Authority] and the courts, emails relating to the kidney operation for father's [other child]. Any data regarding original the original (sic) statement of expectations and threshold etc*". The stated purpose is given as both a data protection complaint and repeats the generic purpose cited in relation to the first item. It appears to be accepted that there is no complaint at present to the ICO. Again, this does not fully identify what documentation is sought to be disclosed and, as I noted to Miss Sparrow, items such as correspondence outside of the proceedings fall to be dealt with under the provisions of the Freedom of Information Act as, for example, a subject access request, and are thus not within

the Family Court jurisdiction. I am not provided with any explanation as to why third parties have not been served with notice of an application which relates to information provided into these proceedings and this includes the police, nor where that information is not part of the proceedings. It is not unheard of for a party to Family proceedings to make complaints to the ICO and this does not always require disclosure of documents from within the proceedings. There is no actual complaint before the ICO in any event to enable me to assess precisely what might need to be disclosed and how the need to protect A's identity, that of the mother and third parties might be achieved in such disclosure. I am therefore left at a loss to understand how any of the potential headings under the caselaw governing these sorts of applications apply to this part of the application and concerned that there may be a risk of loss of privacy for A and thus a significant adverse impact on A's welfare. If a complaint is made to the ICO and, as a result, there is an identified potential need for more focussed disclosure of documents from within the proceedings, that can be the subject of a properly constituted application at that stage. I appreciate that, as Miss Sparrow submitted, that may mean the father and the mother are not eligible for public funding, but it is by no means automatically the case that a properly constituted disclosure application would require a hearing and it may be capable of being dealt with on the papers if no respondent objects. That would also enable proper notice to be given to the likes of the police, the maternal grandfather, the father's other child and professionals involved in the case. It would also enable the application to address properly what may be proposed about any redaction in relation to the maternal grandfather and the father's other child, also potentially in relation to the psychologist, because, although Miss Sparrow did refer to

redaction of identification details of A, the mother, the mother's partner, and professionals such as social workers, the details of how this would be achieved and were not provided to me. This aspect of the application for disclosure is refused.

12. The next item relates to *A Local Authority* and largely duplicates the same information as listed under item one column 2 and item 2 column 3, though the specific stated purpose is detailed as a complaint against A Local Authority. It appears that no specific complaint has been made, or certainly not one where a specific need for documents from the proceedings to be disclosed is identified. As noted above, it is not also clear what precisely is sought to be included in the scope of this disclosure and no third-party notice has been given if that does include third party information. Given this lack of clarity, as above, I cannot see that there is any necessity for such disclosure (noting that complaints against a Local Authority, as with complaints to the ICO, are not uncommon and perhaps especially so in Family proceedings and yet do not necessarily require the disclosure of any information let alone potentially all information from within the proceedings). This aspect of the disclosure application is refused.

13. The next item relates to disclosure to *B Local Authority* and is in identical terms to the one relating to A Local Authority. This is refused for the same reasons set out above.

14. The next item relates to disclosure to the *Local Government and Social Care Ombudsman*, replicates the information in column 2 item 2, and repeats the same justification in column 3 as set out in relation to items 3 and 4 amended to refer to a complaint against both A and B County Councils. Again, it appears that no complaint has been made. I take judicial notice of the fact that the Ombudsman

has a discretion about whether or not to act if no complaint has been made to the council or care provider concerned in the first instance because the Ombudsman will usually only look at a complaint after the council or care provider has had a fair chance to deal with it. It is by no means clear, therefore, that there would be any complaint to the Ombudsman at this point, let alone that any disclosure of any specific (as yet unidentified) information or all information would be required for these purposes, so this aspect of the application must fail on the grounds of there being no apparent necessity for any such disclosure at this point.

15. The next item relates to the *Professional Standards Authority for Health and Social Care* and repeats in column 2 the same information as in column 2 item 2, and largely duplicates the justifications set out in column 3 of the previous items save for detailing that it is sought “*for the purpose of the current investigation into the fabricated incidents reported in the proceedings*”. It seems from this wording that there may already be a complaint of some kind under investigation but there is no further detail provided nor any explanation as to why this is not already within the scope of permitted disclosure under PD12G, for example to an accreditation body, as long as it does not and is not likely to identify any person involved in the proceedings. This aspect of the application thus appears superfluous on the information supplied and is refused.

16. The next two items relate to a specific named MP and then generally Members of Parliament. It appears to relate not just to some specific documents but also refers to Court transcripts (though Miss Sparrow accepted no transcripts for any hearings have been sought), various of the initial application documents including the C110A, and as before any data regarding the original statement of expectations etc, and the stated purpose in column 3 is “*for the purpose of*

*evidencing ... discrimination and HRA violations*". Miss Sparrow submitted that this was a general public interest, though appeared to accept there are no current debates before Parliament to which such specific disclosure may be relevant (and in fact, as long as the father does not breach the confidentiality of the Family Court, the father is free to contribute via the father's MP about anything that MP wishes to deal with on behalf of a constituent or deems relevant to the business of Government which may include debate). The specific allegations of discrimination and HRA violations are potentially matters for other remedies than involvement of the executive. If proceedings are brought before the European Court of Human Rights, disclosure of information to a Minister of the Crown with responsibility for a government department engaged, or potentially engaged in that application is permitted by PD 12G in any event. The Guardian has rightly raised concerns about the risk to A of A's identity being revealed in relation to this aspect of the application if granted. I am also concerned about the potential indirect impact on A of revealing sensitive information about the mother too. Balancing all of the considerations, the father will be able to show the anonymised public judgment in the final hearing to the specific MP and can indeed show it to other MPs if they wish to see it, but it is not necessary or in A's welfare interests for there to be wider disclosure in the absence of any identified, legitimate Parliamentary debate or Select Committee consideration to which such may be relevant at this stage. This aspect of the application is refused.

17. The next item relates to disclosure to *the Cambridge University Autism Research Centre* and names *Professor Simon Baron Cohen* (sic), repeating the same details in column 2 as are in the earlier two items above, but states in column 3 that the purpose is in relation to considering the treatment of autistic people in

research. It was accepted by Miss Sparrow that there is no specific research underway at present to which such disclosure may be relevant. Under PD 12G a party is permitted to disclose information to a body conducting an approved research project for the purpose of an approved research project. Miss Sparrow submitted that disclosure was necessary to enable the father to explore with Professor Baron Cohen whether such research might be undertaken. It is not clear why this cannot be raised without the need for disclosure of information from within these proceedings, let alone why it might require such wholesale disclosure. Again, the final hearing judgment will be a matter of public record and can be used in the course of any request by the father to Professor Baron Cohen to consider such research. To permit wider disclosure when there is no clear understanding of the use to which such material may be put (which would normally form part of a project becoming approved) risks the identification of A, I find. If such an approved research project is undertaken in due course, then such disclosure as is necessary would be permitted by PD 12G in any event. This aspect of the application is refused.

18. The next item is the *Solicitors Regulation Authority*, again seeks wholesale disclosure of all information from the proceedings and potentially beyond, but states that the specific purpose is “*to make a complaint about the conduct of the solicitors and whether they are obtaining instructions whilst [the mother] is under the influence*”. It then repeats also the generalised grounds repeated in the earlier items. This is a strange request because it seems that the father wishes to complain about the mother’s solicitors, not the father’s own solicitors, and about something that is wholly in the purview of the solicitor concerned. There is no mention of this in the statement in support at all. Mr Walthall pointed out that

it was not for the father to raise concerns about the mother giving instructions.

This aspect of the application is thus wholly without foundation and is refused.

19. The next item is to a *forensic psychologist*, again seems to seek disclosure of all information from the proceedings, repeats the generic purpose referred to in earlier items, but also specifically *“to address the conduct of the Judge throughout the proceedings and whether [the Judge] has acted appropriately towards someone who has protected characteristics”*. The statement in support does not address this, and the only submission from Miss Sparrow about this was that it was an aspect that the father was very concerned about and sought disclosure to a forensic psychologist to assess whether these characteristics were not taken into account in the way the court had taken certain steps. I am not provided with any clarification as to why, if the father sought further adjustments or special measures these were not sought during the proceedings, nor why the accommodations which have been made (and which are in line with the recommendations of the psychologist who assessed the father) were not sufficient. I’m also provided with no information as to who this forensic psychologist may be, to what use any opinion provided by them may be put (and thus it is difficult to understand what the wider implications for A and the mother may be of such disclosure), nor how this may relate to any complaint made, for example, to the body with responsibility for overseeing personal judicial conduct, namely the Judicial Conduct Investigations Office. If the complaint in question may relate to case management determinations including special measures or accommodations for the needs of a vulnerable party, then that is not within the purview of the JCIO and again it is not clear what relevance this sort of forensic opinion may have after the conclusion of proceedings. Anything that is objected

to by the father in relation to case management decisions would fall subject to the usual appeal avenues (with the relevant timescale limitations that apply) and would not permit (save in very exceptional circumstances) the admission of evidence that was not before the first instance court, but any issues around seeking to adduce additional evidence would be a matter for an appellate court not the first instance court. This aspect of the application is refused.

20. The next item is *Open Democracy*, again refers to transcripts, police disclosure and various documents from within the proceedings and emails and correspondence more widely, repeats the same general purpose as noted above and the specific purpose “*for the purpose of evidencing ... discrimination and HRA violations*”. Miss Sparrow’s submissions about this focussed on the police disclosure and the concerns that the father has about the way in which they have presented information. I’m not clear how this links to what is a well-respected international media platform, but it seems this is a similar category of proposed recipient of disclosure to the final item on the schedule, which seeks disclosure to various listed media outlets so I will deal with that item at the same time. In relation to that last item, the request relates to all information and provides the general reason provided in relation to the earlier items on the schedule but gives no specific purpose. All other parties have expressed concern about the welfare impact on A of such potential widespread dissemination of information from within the proceedings. Mr Walthall pointed out that there was a wealth of very sensitive information about the mother within this information too and simply removing details in relation to the mother’s name and geographical location would not be sufficient to achieve the sort of anonymity that A’s welfare requires be preserved in relation to the mother. From the very wide nature of the

disclosure sought and the potential to effectively allow very widespread dissemination of details in the media, it actually seems as if this is the sort of application that should in fact be made to the High Court in accordance with *M (A Child) [2021] EWCA Civ 437* and the President's Guidance. Transparency in terms of the Family court jurisdiction in this case could have been achieved by the press attending any part of any hearing pursuant to FPR 27.11, and the final hearing judgment will be publicly available via The National Archives which will also further the general aim of transparency in Family proceedings. I find that I do not have the necessary jurisdiction to grant the very wide disclosure sought and which is in effect to conduct the sort of archaeological digging exercise described and ultimately refused in *M (A Child) [2021] EWCA Civ 437*, and which seems to seek to achieve similar aims to the applicant in that case, namely ultimately with the aim of holding public bodies to account. This aspect of the application is refused.

21. The remaining item on the schedule that I have not yet addressed is to *The Transparency Project*, again seeks a wide number of documents both from within the bundle and more widely, repeats the same generic purpose as previously and the specific purpose "*to encourage transparency in the Family Court and contribute to the debate about access to justice for marginalised litigants*". As I have noted above, there is already a pilot scheme underway to explore greater transparency in Family courts at certain court locations. That pilot has not yet reached conclusion and includes provision for the pilot courts to be able to make Transparency Orders (something that has been available in the Court of Protection for some time) which sets out the rules of what can and cannot be reported. The aim of the pilot, as set out by the President of the Family Division

is “to understand the impact of open reporting and to enhance public confidence, whilst at the same time firmly protecting continued confidentiality”. The pilot permits some public reporting of what accredited media representatives and legal bloggers see and hear in family court hearings in the pilot areas. The court that is dealing with this case is not part of a pilot area. It is not clear either in the application schedule, the supporting statement, or the submissions made by Miss Sparrow why disclosure of such a wide range of information from within the proceedings is required for the purposes of achieving greater transparency via a body which, whilst its members can and do observe court hearings in various permitted jurisdictions, specifically does not take on individual cases and which will have access to the final hearing public judgment and thus would be able (in accordance with their Core Principles – Mission Statement) potentially be able to comment on that judgment if the case requires explanation or clarification to avoid misunderstanding, or is of interest to family law professionals or provides a useful example of how the family justice system works. All the other parties have expressed concern about widespread disclosure in relation to this aspect of the application revealing sensitive information about the mother which would potentially adversely affect A, and the risk of identification of A. The balance between transparency and protecting the rights of the mother and A is struck by the publication of this judgment and does not justify further disclosure beyond this. This aspect of the disclosure application is refused.



HHJ Eleanor Owens  
12<sup>th</sup> June 2023