Neutral Citation Number: [2020] EWHC 1282 (Fam)

Case No: ZW19C00360

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th May 2020

Before :

THE HONOURABLE MR JUSTICE HAYDEN

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Between :

PA Media Group	**Applicant**
- and -	
London Borough of Haringey	
- and -	**1st Respondent**
the mother	
- and -	
the father	
- and -	**2nd Respondent**
A & B	
(by their Children's Guardian)	
	3rd Respondent
	4th Respondent

- -
- -

Mr Brian Farmer (unrepresented) on behalf of PA Media Group
Ms Louise Tickle (freelance journalist)
Mr Alistair Perkins and Ms Kate Wilson (instructed by the London Borough of Haringey) for the **Applicant**
Ms Anita Guha (instructed by Freemans solicitors) on behalf of **M**
Ms Caroline Budden (instructed by Osbornes solicitors LLP) on behalf of **F**

Ms Gemma Kelly (on behalf of the Children's Guardian)

Hearing dates: 18th May 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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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.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and published on BAILII. The date and time for hand-down is deemed to be at 12:30pm on 20th May 2020.

Mr Justice Hayden :

1. Following a contested hearing in this matter, I circulated to the parties a draft judgment in which I had named the Local Authority, whose application it was, and the social workers who had conduct of the case. Neither the children nor the parents were named, in order to protect the children's privacy. The Local Authority, the mother and the children's Guardian, each submitted that the historical profile of this case was such as to permit easy identification of the children by the piecing together of simple pieces of jigsaw information. Notwithstanding the gravity of my findings against the Local Authority and the manifest desirability of those findings being in the public domain, it was contended that the impact on the children and most particularly on child B would be so potentially damaging as to require the anonymisation of both the Local Authority and the social workers.

2. During the course of the remote hearing I enquired whether the press was present. I had assumed that given the nature of the application and the abundant guidance now available concerning remote hearings in the Family Court and the Court of Protection, the press would have been in attendance. Unfortunately, on the particular video platform which we were using that day (considered to be the most secure), it is not possible to see more than six people at one time. When I enquired, Mr Perkins, who had much to attend to, apologised and told me that he had omitted to notify the press. I was extremely conscious of the stress within this family and most particularly in respect of child B. This would have been inevitable in any circumstances but the privations of 'lockdown' had greatly added to it. Accordingly, I proceeded with the hearing but indicated that the judgment would be notified to the press in order that they could make any application they considered necessary and appropriate.

3. Having heard argument I concluded that child B's vulnerability and the fragility of his situation ultimately tipped the balance in favour of prioritising the children's family life and emotional well-being over the legitimate public interest in identifying the Local Authority and the relevant professionals.

4. The press has taken the opportunity, extended by my judgment, to make representations inviting me to revisit that balance. Today, I have heard argument and received thoughtful written submissions from Mr Brian Farmer of the Press Association and Ms Louise Tickle, a freelance journalist. Both Ms Tickle and Mr Farmer seek to persuade me that the public interest in this Local Authority being named outweighs the countervailing interests of the children whose identity may be detectable if the Local Authority were named. It is important to record that neither seeks to persuade me to identify the individual social workers, recognising that, for the reasons set out in my earlier judgment, this would, in the circumstances of this case, greatly increase the potential for the children being identified. Mr Farmer and Ms Tickle submit and I agree, that if the Local Authority is to be named the identity of the Director of Social Services is in the public domain and may, of course, be referred to in any published article.

5. In my earlier judgment, addressing this balancing exercise, reported **[2020] EWHC 1162 (Fam)**, I set out the framework of the applicable law. All agree that the relevant law is accurately stated there. Accordingly, it is unnecessary to repeat it. Mr Farmer and Ms Tickle contend that the Court did not have sufficient material before it, at the earlier hearing, accurately to balance the competing rights and interests in focus.

6. Though it does not alter any of the analysis of the law in my earlier judgment, Ms Wilson, who now appears with Mr Perkins on behalf of the Local Authority, highlights a decision not cited at the hearing on 29th April 2020 namely: **ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4; [2011] 2 AC 166** (an immigration decision). It has since been applied in family cases when undertaking the balancing exercise involving competing Article 8 and Article 10 rights, see: **Re J (A Child) (Reporting Restriction: Internet: Video) [2013] EWHC 2694 (Fam); [2014] 1 F.L.R. 523.** It was cited in the recent decision of Sir Andrew McFarlane (P) in **Re Al M (Publication) [2020] EWHC 122 (Fam)** (upheld on appeal **Al Maktoum v Hussein [2020] EWCA Civ 283),** in the President's summary of the balancing exercise (at [26]–[29]):

> "*The court's approach to the balancing exercise has been described in a number of authorities which are most conveniently summarised in the judgment of Sir James Munby P in Re J (A Child) [2013] EWHC 2694 (Fam) at paragraph 22:*
> *"The court has power both to relax and to add to the 'automatic restraints.' In exercising this jurisdiction the court must conduct the 'balancing exercise' described in In re S (Identification: Restrictions on Publication) [2004] UKHL 47, [2005] 1 AC 593, [2005] 1 FLR 591, and in A Local Authority v W, L, W, T and R (by the Children's Guardian) [2005] EWHC 1564 (Fam), [2006] 1 FLR 1. This necessitates what Lord Steyn in Re S, para [17], called "an intense focus on the comparative importance of the specific rights being claimed in the individual case". There are, typically, a number of competing interests engaged, protected by Articles 6 , 8 and 10 of the Convention. I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in Re B (A Child) (Disclosure) [2004] EWHC 411 (Fam), [2004] 2 FLR 142 , at para [93], and in Re Webster; Norfolk County Council v Webster and Others [2006] EWHC 2733 (fam) [2007] 1 FLR 1146, at para [80]. As Lord Steyn pointed out in Re S, para [25], it is "necessary to measure the nature of the impact ... on the child" of what is in prospect. Indeed, the interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 , [2011] 2 AC 166, para [33].*
>
> *...*
> *It is plain that the interests of any children are not afforded "paramount consideration" in the balancing exercise. However, as Baroness Hale warned in PJS v News Group Newspapers [2016] UKSC 26, the fact that the interests of a child may not be "a trump card" does not mean that those interests should be dismissed."*

7. This passage underscores the emphasis to be given to the child's best interests and clarifies the way in which the Courts should approach this facet of the parallel analysis of the competing rights and interests which fall to be considered. Ms Wilson submits that the rights of a child are not to be regarded as "paramount" but the rights

of the individual child, engaged in any application of this kind, are to be regarded as the "primary" consideration. I agree.

8. I commence my analysis of the arguments submitted today by revisiting an observation in my substantive (welfare) judgment which has been scrutinised and commented upon in the course of submissions. That judgment is reported at **[2020] EWFC 38 (Fam)**. At paragraph 11 I made the following observations:

> *"11. It is an alarming feature of this case that the Local Authority failed, in the initial stages, fully to appreciate the significance of the risk CC posed. I regret to say that social services failed in any way adequately to assess the information that was at their disposal, or easily attainable, in order to conduct a professional risk assessment. There appears to have been a collective professional amnesia in respect of the good practice established in evaluating the risk of child sexual abuse, gathered over the last 30 years. Mr Perkins asserts that the deficiencies identified in this team are not representative of practice in this local authority's Children's Services more generally. I profoundly hope that is correct. The Guardian was driven to conclude, and I agree, that this team simply lost sight of the most basic of child protection and safeguarding procedures."*

9. In the second judgment, I made the following observations, at paragraph 14:

> *"14. A reading of my substantive judgment reveals my conclusion that this social work team, within this Local Authority, disregarded fundamental principles of safeguarding and child protection. The nature and extent of the failings, as well as their persistence, can only give real cause for public concern. There is an undoubted public interest in the Local Authority being named, in order that they might be subject to the kind of public scrutiny that many would regard as necessary. Mr Perkins has told me that, at the highest level within the Social Services Department for this Local Authority, there is real concern as to what has happened and a determination that there should be a full investigation. I am told and accept that there will be. Mr Perkins submits that there are "lessons to be learned". It has to be said that this phrase is deployed so regularly when public bodies fail that it is in danger of becoming platitudinous. It is easy to see how lessons might be learned more thoroughly in the spot light of media scrutiny."*

10. I think it is fair to say that both these paragraphs reflect what I hope is a healthy scepticism as to the assurances that I was being given. It is clear from Ms Tickle and Mr Farmer's research that Mr Perkins's assertion, to the effect that the deficiencies identified in the work of this team, were an isolated aberration and not indicative of a wider systemic failure, was entirely inaccurate. I make it plain that I do not criticise Mr Perkins for this. It will undoubtedly have been a submission advanced on instruction but Mr Perkins would not have had the opportunity to review the Ofsted reports, which Ms Tickle has harvested and placed before me.

11. Perhaps the most alarming finding within the Ofsted's Inspection Report, undertaken in October/November 2018, is the following:

> ***"thresholds in the children with disabilities team are not well understood nor well applied when risks escalate. Assessments are not updated and plans are insufficiently child focused. In the majority of cases, plans focus on the needs of the parents rather the child."*** (my emphasis).

12. The importance of this finding cannot be understated. To my mind any social worker who elevates the needs of the parent beyond those of a vulnerable child has disconnected with the fundamental precepts of child protection and lost their professional compass. That is precisely what I found had occurred in this case. The observations, in the Ofsted report, could easily be folded, entirely seamlessly, into my own judgment. They also undermine Mr Perkins's contention that this case was an isolated example of bad practice. What emerges from the Ofsted report, are unambiguous criticisms of Haringey's entire Disabled Children's Team. The particulars of the identified failings resonate, strikingly, with what the children's Guardian identified in this case i.e. a distortion of professional focus, a preoccupation with and empathy for the mother, which eclipsed the needs of the children; a failure to evaluate risk and a planning vacuum. To this requires to be added my own repeatedly expressed concerns, articulated at a number of interim hearings, fulsomely endorsed by the children's Guardian, that the Local Authority was consistently failing to address the serious Child Protection issue which had become central to the case. All this went unheeded. As Mr Farmer highlighted, I described the Local Authority's response as "supine" and expressed my conclusion that these failures, both in isolation and cumulatively were profoundly troubling. I signalled that they indicated a need for "significant retraining". I also emphasised the incomprehensibility of the Local Authority's repeated failure to inform the father what was happening.

13. I do not think that the social workers ignored my expressed concerns discourteously. I regret to say that my impression is, as I have already foreshadowed, that there was a fundamental ignorance of the indicators that children may be at risk and a bewilderment as to how, to the extent that they were recognised at all, they should be addressed. The Ofsted report states that this focus *"on the needs of parents rather than the child"* occurs *"in the majority of cases"*. Thus, it now requires to be stated that this case cannot be seen as an isolated example of strikingly poor practice but is reflective of a much broader and deeper malaise within Haringey's Children with Disabilities Team. This material has been unearthed by the independent press and strikes me as a graphic illustration of the importance of scrutiny of public bodies and the Family Court system by lively and forensically curious journalism.

14. There are, as Ms Wilson identifies and all agree, three central considerations here. Firstly, and it is common ground, these vulnerable children require and are entitled to protection. As the Independent Press Standards Organisation (IPSO), Editors' Code of Practice emphasises, it is important that journalists are able to report about children and the issues they are facing *"as long as the children's rights are protected"*. It is also recognised that information should not generally be published where *"it might cause unnecessary intrusion in to a child's time at school"*. Importantly, where

publication is sought, as an exception to the code, relating to information about a child, the identified public interest has to be greater than if the contemplated article concerned an adult. This accords entirely with the case law referred to in my earlier judgment (concerning publication) and at paragraph 6 above.

15. Ms Wilson and Mr Perkins make the following points in their supplemental written submissions, the central thrust of which is their contention that the press have minimised the risk of identification of the children. They highlight the following:

> *"9. The Mother's previous public efforts to get the Local Authority to modify the family home apparently received significant attention in the local community and in particular amongst families with children with disabilities (Publication Jmt at [3] & [19]).*
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> *10. A report in the press about the Main Judgment which named the Local Authority is likely to be sufficient for at least some members of this particular group of people 'to put two-and-two together' and realise that the report / Judgment is about this family. They would therefore also then connect the family to the information about the Mother's relationship with a sex offender.*
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> *11. In respect of these members of the community, i.e. people who already know about the mother's previous dealings with the Local Authority – whether because they contributed to the crowd-funding, read about this local interest story, or because they know the family or know of them – it is not so much a question of there being a risk of jigsaw identification of this family, but rather that some of them will identify the family upon reading a press report of the Main Judgment because of their specific pre-existing knowledge about them.*
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> *12. Of course, Ms Tickle and Mr Farmer are correct that others, who do not have that pre-existing knowledge of the family or do not fully recall it, would have to identify the family by connecting the information in the Main Judgment to previous reporting about them. But the journalists' route-map to such identification, while it is one possible route, is not the most likely or the most direct. Both journalists argue that members of the public would have to read the Main Publication Judgment to make the connection – but that is not the case.*
>
> *13. Whatever Ms Tickle and Mr Farmer intend to write about, any journalist will be able to report on the Main Judgment. Different publications may adopt different lines in their reporting or different emphases; but any fair and accurate report would be able to include a description of the history this family, the name of the local authority (if the application is granted), the Mother's relationship with a Schedule 1 sex offender, her dishonesty about that relationship, and how it affected the care proceedings.*

> *14. Mr Farmer's and Ms Tickle's arguments do not acknowledge all the risks of identification because they focus upon what they would report upon, namely the council's failings."*

16. Ubiquitously, it is now recognised that the primary risk to children's privacy arises in consequence of public postings on social media. Ms Wilson speculates that the crowd funding scheme, organised by the mother with great effect, most probably involved a significant number of small donations rather than a few particularly generous individual benefactors. Ms Wilson reasons from this that many donors might be alerted by the judgment to investigate, by search engine, whether this was the family they gave financial support to. This, it is hypothesised, might lead to a plethora of social media posts which would be difficult to monitor. Ms Wilson also states, that whilst Ms Tickle focuses on the risk to child B by way of *"playground taunts"* the greater risk probably arises on line and insidiously.

17. Mr Farmer considers that these concerns, though intellectually sustainable, are not, as he puts it, *"rooted in the real world"*. Mr Farmer is a seasoned journalist, he argues the following:

> *"I don't think the concerns are enough to justify the Council's anonymisation. I think, in the real world, the chances of people putting together an identity jigsaw are small and the chances of someone putting together that jigsaw and causing harm, smaller still."*

18. In admirably simple language, Mr Farmer makes the important link between *"jigsaw identification"* and the likelihood of *"harm"* (i.e. emotional distress) to the children. He is correct to emphasise the indivisibility of the two. Furthermore, both Ms Tickle and Mr Farmer respectfully suggest that very few members of the public will take the time to seek out and read my actual judgments, relying instead on what they read in the media. I have no doubt, at all, that this is largely true. Whilst it may mean that the public has an incomplete understanding of the case, it also follows that they may not be alerted to the pieces of information which might provide a jigsaw to identification.

19. It is important that I note that the advocates, Ms Tickle and Mr Farmer have met to consider whether it was possible to revisit the judgment, removing key facts from it which, whilst retaining its integrity, diminish the risk of identification of the children. I am grateful to each of them for the effort that has been made but I am not at all surprised that this exercise proved to be futile. A bowdlerised judgment risks compromising all the different rights and interests engaged.

20. Mr Farmer also highlights the father's position at this hearing. Unfortunately, but for reasons that I entirely understand, the father has not been able to attend these last two hearings, addressing the publicity issues. However, he has read my earlier judgment and instructed counsel, Ms Budden, in clear terms. He considers that the public interest in scrutinising the Local Authority, should prevail and that the concerns relating to potential distress to his children are overstated and can, if they arise, be managed. A reading of my substantive welfare judgment will reveal that I found him to be an impressive and intuitive father. Mr Farmer is correct to submit that in evaluating this question of identification, the father's position is an important facet of the overall analysis.

21. I find that the arguments on both sides of this point have force and merit. Measuring the impact on the children (see Lord Steyn in Re S (supra)), both arising from the risk of identification and any subsequent harm is a difficult and delicately balanced exercise. It is, however, one that does not require to be approached in isolation but in the context of the wider parallel analysis.

22. For completeness, Ms Wilson and Mr Perkins address the risk in this way, recognising that, by its very nature, it is difficult to predict:

> *"24. The risk of a backlash against the family, with consequences for the children, must also be a real one. Those with sufficient background knowledge to identify the family from a report of the Main Judgment apparently include some who donated money to the Mother's crowd-funding appeal (Publication Jmt at [19]). People can be kind; they can also be angry. It is legitimate for the Court to take account of the risk that some of those people may react adversely to finding out that the Mother, having raised money to fight for Child A to live at home, was then "responsible for destroying" that possibility (Main Jmt at [19]). It is realistic to take account of the risk that some who donated to the Mother's campaign will feel aggrieved. Mr Farmer's conclusion that neighbours would "probably criticise the council, but not the family" (para 5.I) is, it is submitted, wishful thinking. Some may do so, but the criticism of this Mother, who fought so hard for an outcome and had previously gained the assistance of some in her locality, but then chose a sex offender over the child is a striking story, and not one likely to engender much sympathy.*
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> *25. At this juncture, it is not known what will transpire; the Court has to consider risks. But, however individuals actually react in the future – whether with sympathy, neutrality, or hostility – there is a taint involved by being associated with a sex offender, and that will affect Child B, whatever actually transpires in terms of the reaction of third parties."*

23. It is against these identified risks that the Court has to consider the question of the public interest in identifying the Local Authority. On this issue and for the reasons I have set out above, the landscape has changed considerably since the earlier hearing. I have already analysed the significance of the conclusions in the Ofsted report. Ms Wilson, in what I consider to be an ambitious submission, suggests that this document can be viewed from an entirely different perspective. The existence of the report means, Ms Wilson argues, that *"the same sort of criticisms of the Local Authority which feature in this case are already in the public domain"*. Ms Wilson develops this point by highlighting that *"the public in general and local residents, in particular have, via the publication of the Ofsted report, already been told of the failings of their council in this area of children services".* Thus, she concludes, it is unnecessary to name the Local Authority because their failings are already known. Ms Wilson describes the Ofsted report as *"recent"* but given that report relates to an overview conducted in autumn of 2018, it strikes me as stretching the concept, at least in the

context of child protection. The failings identified in my judgment were not only persistent, continuing into 2020, but require to be evaluated in the context of an Ofsted report that had already highlighted the very errors perpetuated in this case. The report, like my own warnings at the interim hearings, went entirely unheeded. There is no other reasonable conclusion to draw.

24. Ms Wilson makes a further suggestion:

> *32. Finally, there is a discrete argument which both Mr Farmer and Ms Tickle rely upon, although it is probably not at the heart of their submissions, namely that by not naming the Local Authority in the Main Judgment, the council will be hampered internally in taking appropriate remedial action. Mr Farmer says (at para 3.C) "Council members, or certainly a large number of them, probably won't know it's their council". See also Mr Farmer at para 3.D and Ms Tickle at para 13. Such matters could be addressed, if necessary, by the Court giving permission for the Judgment together with the name of the Local Authority to be shared with a wider group of the Local Authority's councillors or professionals working for it. This could extend, as necessary, so that the social work teams learn the lessons which Mr Farmer speaks to in para 3G.*

25. This suggestion, i.e. that the judgment should be a kind of transparent hybrid, released in unedited format to *"a wider group of local authority councillors and professionals working for it"* but anonymised elsewhere is, says Ms Tickle, entirely unsustainable in principle and unworkable in practice. With respect to Ms Wilson I entirely agree.

26. One aspect of the public interest in knowing the identity of the Local Authority relates to its lamentable history. Though it did not feature at all in my earlier consideration of these issues, I agree with Mr Farmer that what he terms *"the bad track record"* of this Local Authority also requires to be weighed in the balance when considering whether they should be named in the judgment. Mr Farmer notes that this Local Authority:

> *"has been the subject of nationwide criticism over its handling of the welfare of young children in connection with the murder of Victoria Climbié in 2000 and the death of Peter Connelly (formally known as baby P). In March 2009 the council's performance was placed by the Audit Commission in the bottom four in the country and the worst in London. In December 2009 the Authority was placed by Ofsted in the bottom 9 in the country for children's services. It was not until February 2013 that the service was taken out of the governments "special measures scheme".*

27. Following Lord Laming's reports on the death of Victoria Climbié, the NHS Confederation Chief Executive, Ms Gill Morgan, stated:

> *"the key issue is to ensure cultural change across all local services to ensure children's needs are top of the agenda"*

28. As Mr Farmer points out, following the Peter Connelly case, the then Children's Minister, Ms Beverley Hughes, was quoted as saying:

> *"This case… shows that we must work to ensure the highest standards of service in every case"*

29. Both the journalists recognise that those earlier cases were a long time ago and each involved the death of children. This case, whilst serious, is not, it is submitted, *"on the same scale"*. Nonetheless, it is argued, this is an Authority which *"requires to be monitored in the interests of the public and, particularly, in the interests of the children in Haringey"*. The criticisms in my judgment reveal a Local Authority which has fallen conspicuously short of putting children "at the top of the agenda" nor, self-evidently, can it be said to have provided "the highest standards of service" for children in the way contemplated by the Children's Minister. Mr Farmer does not equivocate:

> *"The media has an Article 10 right to impart information. The public has an Article 10 right to receive information. If that right to free speech does not allow the media to tell the public that this council, a public authority, twice subjected to very high levels of criticism over its handling of the welfare of children, has again been criticised and… in trenchant terms by a judge based in the Family Division of the High Court, then what is that right to free speech for?"*

30. Although this is not argued within the framework of the applicable law, it should be identified for what it is, a powerful assertion of the importance of freedom of speech and the responsibility of the press to hold public bodies to account. It may be that Ms Wilson is correct to assert that the reality of the reporting may be less high minded than that contemplated in argument by Mr Farmer and Ms Tickle. Reporting may very well concentrate instead, as she suggests, on the sad history of how this mother, who had battled fiercely for her son, became inveigled into a relationship with a Schedule 1 offender and how her dishonesty about that relationship had such catastrophic consequences to her family. No doubt different newspapers will follow different *"lines"*, as Mr Farmer called them.

31. Ultimately, Article 10 exists not merely to protect those whose views are expressed responsibly, informed by careful research, balancing, with fairness, any conflicting or countervailing factors but also for those with whom we disagree, the sententious, the bigoted, the mischievous and the polemicists who intend to provoke us. It is, in my judgment, unhelpful to evaluate the rights conferred under Article 10 ECHR only by reference to the worst-case scenario i.e. publications in the latter category above. Equally, it is unlikely to be helpful, in analysing the rights guaranteed by Article 8 ECHR to emphasise the most serious manifestation of harm without rooting that in what is most likely or probable. Sometimes the exercise, as here, can be finely balanced and sensitive. It involves the evaluation of risk which, by definition, contemplates uncertainty.

32. In this case, as will now be clear from the analysis above, I have concluded that the public interest in naming this Local Authority must prevail against the potential but not inevitable identification of the children and the potential but not inevitable emotional distress that Child B, in particular, may be caused. The Editors' Code of

Practice affords these children continuing protection, as do my orders preventing publication of their identity. In addition, they have the important support of a father and a mother (notwithstanding my findings against her) who are sensitive to their children's needs and personalities. The father, now the primary carer for child B, is well placed and well equipped to shield him from the consequences of publicity. Moreover, having supported the application of the press to name the Local Authority, the father strikes me as being in a strong position to explain to his son the reasoning underpinning this judgment. For all these reasons the Local Authority, the London Borough of Haringey, will be named as the applicants in this case in respect of whom I have made the significant criticisms in my substantive judgment.

33. This case provides a timely reminder to the profession of the need to adhere to the guidance for remote hearings promulgated by MacDonald J, in particular, the mechanism by which the press should be notified of remote hearings.