Neutral Citation Number: [2021] EWHC 157 (QB)

Claim Nos: (1) QB-2019-001107 & (2) QB-2019-001092

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 04/02/2021

Before :

THE HONOURABLE MRS JUSTICE TIPPLES

- -

Claim No: QB-2019-001107

Between:

'D' **Claimant**

- and -

Persons Unknown

Defendants

Claim No: QB-2019-001092

And Between:

'F' **Claimant**

- and -

Persons Unknown

Defendants

- -

Mr Edward Fitzgerald QC and Mr Jonathan Price (instructed by Just for Kids Law Ltd (D) & Bhatt Murphy Solicitors (F)) for '**D' and 'F'**
Mr Sam Tobin, a journalist, for the Press Association

Hearing dates: 21st and 22nd October 2020

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Approved Judgment

Covid 19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives and the Press Association by email and release to Bailii. The date for hand down will be Thursday 4 February 2021.

The Honourable Mrs Justice Tipples DBE:

Introduction

1. The claimants seek a lifelong anonymity injunction to prevent them from being identified as the murderers of Angela Wrightson. They were children when they were convicted of this crime and are now adults. The claimants are referred to as "D" and "F" and, by one order or another, their anonymity has been maintained ever since 11 December 2014.

2. The issue I have to decide is whether this is an exceptional case in which the *Venables* jurisdiction should be exercised in favour of the claimants.

3. The claimants maintain that this is such a case and the permanent injunctions they seek should be granted. The Press Association ("**the PA**") maintain this is not an exceptional case, and the granting of the injunctions would substantially erode the open justice principle and represent a significant extension to the *Venables* jurisdiction. Nevertheless, the PA accept that the positions of D and F are sufficiently intertwined that, if an injunction is granted in respect of one of D or F, then in order for that injunction to be effective, an injunction must be granted in respect of the other one as well.

Background

4. On 8 December 2014 Angela Wrightson was murdered at her home in Stephen Street, Hartlepool. Ms Wrightson was a vulnerable adult and was the victim of a sustained and brutal assault. She had over 100 injuries which were the result of being struck in 12 separate locations with a number of different objects. In the time that the claimants were at Ms Wrightson's home, they took pictures of themselves and posted them on social media. On 6 April 2016, at the Crown Court sitting at Leeds, the claimants were convicted of her murder. D committed this offence when she was 13 years-old, F was 14 years-old.

5. The case attracted extensive local and national media attention, with the claimants being referred to as the "Snapchat killers". The case has resulted in public outrage and revulsion, together with public concern about how these two young girls could commit such a brutal murder.

6. On 7 April 2016 the claimants were sentenced to life imprisonment by Globe J with a minimum term of 15 years. The minimum term expires in December 2029, and the claimants will then be eligible for consideration for release by the Parole Board.

7. This was the second trial. The sequence of events which led to the second trial, and the reporting restrictions in place were as follows.

8. On 11 December 2014, shortly after the claimants had been arrested, the court made a direction under section 39 of the Children and Young Persons Act 1933 prohibiting the press from reporting the claimants' identities ("**the section 39 order**").

9. The first trial commenced at Teesside Crown Court on 1 July 2015. The opening of the case was accompanied by "a blitz of extreme and disturbing comments posted on Facebook by members of the public" (per DCI Hunt, quoted by Globe J in his sentencing remarks).

10. On 3 July 2015 Globe J made a reporting restrictions order (under section 45(4) of the Senior Courts Act 1981) addressed to all media organisations reporting on the trial in order to deter such social media activity in so far as it was caused or encouraged by the media organisations reporting on the trial ("**the section 45(4) order**"). The section 45(4) order directed the media organisations to disable comments on sites reporting on the trial, to stop linking from or to such sites, including social media sites, and to refrain from tweeting about the trial.

11. Nevertheless, the social media activity by members of the public became so intense and extreme that on 6 July 2015 a joint application was made by the prosecution and defence to discharge the jury on the basis that the claimants could no longer have a fair trial. The judge granted the application. However, before the jury were discharged, the judge dealt with a challenge from the media to the section 45(4) order, which he then revoked and replaced with an order under section 4(2) of the Contempt of Court Act 1981 ("**section 4(2) order**"). The section 4(2) order postponed the publication of any report of the proceedings, other than that the proceedings had been halted and the jury discharged, until the return of verdicts in relation to both claimants or further order of the court. The jury were then formally discharged on 9 July 2015.

12. There was then further argument in relation to the section 4(2) order on 20 October 2015. On 9 November 2015 Globe J decided to maintain the order, but he granted the media leave to appeal. The appeal was heard by the Court of Appeal (Criminal Division) on 26 January 2016, and judgment handed down on 11 February 2016: see *R v F and D ex parte British Broadcasting Corporation and eight other media organisations* [2016] EWCA Crim 12. The Court of Appeal discharged the section 4(2) order and restored the section 45(4) order, but subject to a number of modifications. That order was then in place throughout the second trial. The Court of Appeal directed that the appeal proceedings, and the judgment, could not be published until after the return of verdicts in the criminal trial or any further order of the trial judge.

13. When the claimants were sentenced on 7 April 2016, the media applied to discharge the section 39 order. The application was opposed by Hartlepool Borough Council (the local authority who had parental responsibility for the claimants), the police and the claimants. Globe J refused the media's application. Having identified the relevant statutory provisions, and case law, the judge provided the following reasons for doing so, which I should set out in full:

> "[55.]The application by the press includes the following three factors that support no anonymity: (1) the exceptionally grave nature of the crimes committed and the legitimate public interest in discussion of the background to these crimes; (2) the deterrent effect of naming the defendants; (3) the ages of the defendants who are now 15 and 14. Neither is particularly young. The orders will expire upon their 18th birthdays in any event.
>
> [56.] The first point is particularly strong. Its weakness lies in the fact that the full facts have been able to be reported and a debate about the background to the crimes remains possible without knowing the precise identities of the defendants.
>
> [57.] The second point is a reasonable point, but it is less strong. This type of offence is extremely rare and it is arguable that no further deterrence is necessary or, if it is,

the naming of the individuals will add little to the fact that those responsible have been brought to justice, been convicted and been sentenced.

[58.] The third point is also a reasonable point, but requires consideration of the value of the anonymity continuing for the next few years.

[59.] In a detailed letter to me by the Senior Investigating Officer, DCI Hunt, emphasis is placed on the wider issues of what is likely to happen if anonymity is lifted. "I am reminded of events following the opening of the case at Teesside last summer when there was a blitz of extreme and disturbing comments posted on Facebook by members of the public. The effect of a similar blitz upon anonymity being lifted is likely to result in the identification of juvenile witnesses, the families of both defendants, their carers and their schools. In turn, that could detrimentally affect the lives of both defendants, who remain in fragile and vulnerable emotional states." DCI Hunt concludes his letter to me by stating that the verdict has already been widely reported both locally and nationally in a controlled and sensible manner and there are no obvious benefits that arise from disclosing the names of the defendants other than to further sensationalise the case.

[60.] Mr Hill and Mr Elvidge reflect the concern of the police. They emphasise the fact that each defendant poses a risk of self-harm. In one case, it is a real and present danger. Removing anonymity is likely to exacerbate what is already a dangerous situation.

[61.] The Chief Solicitor for Hartlepool Borough Council makes reference in a letter dated 4 April to the possibility of collateral damage to the defendants' siblings if the defendants' identities are made known. However, the real thrust of his letter is focussed upon the effect that identifying the defendants would have on themselves. Mr Wise QC, counsel acting for the council, in a written and oral submission made to me this morning, reinforces the psychological vulnerability of both of you. Reference is made to recent suicide attempts by both of you, not just you F.

[62.] That is also my real concern. It is conceded by the press that they have not seen evidence relating to the welfare of either of you. I have not only seen that material and had the advantage of observing you coming and going and giving evidence, but have also been receiving reports about how you have been conducting yourselves within the court precincts. I have received one first-hand report from a member of the court staff who I am satisfied saved your life, F, by prompt and immediate action when you suddenly decided violently to attack yourself with your own hair. In circumstances where I might be satisfied that both of you were stable, strong-minded defendants convicted of serious crime, the balance might arguably have been in favour of the lifting of anonymity. It would certainly have been a fine balance between the competing interests of the article 10 rights of the press and the public and your article 8 rights. However, I am satisfied that both article 2 is engaged, specifically in your case F and possibly in your case, too, D as well as what Mr Wise refers to as "the upper reaches" of your article 8 rights.

[63.] I have been informed by the Youth Offending Team in your case F that you are on what is called "two minute visual checks". I am sure that everything that can be done will be done to try and protect you from yourself. Nonetheless, despite the

terrible thing that you have done and the sentence that must be imposed upon you for it, I am concerned and disturbed by what I regard as a heightened real risk that identification, followed by a press blitz will elevate the risk to your life to such an extent that I am satisfied that there is a real and immediate risk to your life if you were to be identified as one of the two girls who murdered Angela Wrightson.

[64.] Having watched over this case since the middle of last year and specifically during the last few weeks of the trial, I am satisfied about you and the case that it is not in the overall interests of justice for you F to be named. I do not find the arguments quite as strong in your case D. However, I can see no justification for naming you if F is not also named. You are more robust, but not sufficiently so that it justifies identification on your own. In my judgment, you, too, remain extremely vulnerable to outside pressures. Naming you in public is one such pressure. In your case, too, I refuse the application to lift the anonymity order.

[65.] For the avoidance of doubt, the s.39 Order remains in place in both cases."

14. It is therefore clear that Globe J was satisfied that both article 2 (in relation to F, and possibly in relation to D) and article 8 of the ECHR were engaged and, in the case of both claimants, he expressly referred to the risk of self-harm or suicide, for reasons which are clear.

15. Following conviction and sentence, the claimants were moved to a secure training centre ("**STC**"). In April 2018 F was transferred to the adult female prison estate, and D was transferred to the adult female prison estate in March 2019.

The Part 8 claims

16. Very shortly before D turned 18 her legal representatives commenced these proceedings in the High Court on 27 March 2019 by Part 8 claim form. D seeks the following relief:

> "The claimant seeks an injunction prohibiting the publication, whether in writing, by broadcast, or online, of her name, addresses and/or any other information that might lead to them (sic) being identified by members of the public in connection with the death of Angela Wrightson on 8 December 2014. The order sought is necessary to protect her rights under articles 2, 3 and 8 of Schedule 1 of the Human Rights Act 1998, and any interference with the article 10 rights of any person or company which would otherwise seek to so identify them is proportionate."

17. The section 39 order in relation to F had already lapsed on her 18th birthday (see *R(JC) v Central Criminal Court* [2015] 1 WLR 2865, CA), but there had been no reporting of her identity in the meantime. This was no doubt because, if there had been any reporting of F's identity, that would have led to the identification of D, whose identity was still protected by the section 39 order. Nevertheless, when F was given notice that D would be applying for anonymity, she too made an application (linked to D's application from the outset) for substantially the same reasons. F's Part 8 claim form was also issued on 27 March 2019.

18. The relief sought by the claimants is *contra mundum* rather than against any particular defendant. The protection sought by the claimants is so that they cannot be identified at

any time as murderers of Angela Wrightson (which was the relief sought and granted in *RXG v Ministry of Justice* [2020] QB 703, Div Ct ("***RXG***"), see paras 4, 6 and 11).

19. Prior to the issue of the claim forms, on 21 March 2019 Swift J granted the claimants an *ex parte* interim injunction preventing them from being identified. On 11 April 2019 William Davis J continued this injunction until the hearing of the claimants' claims. On 21 October 2020 I continued the injunction in the same terms, so that it remained in place pending the determination of the claimants' claims and the handing down of this judgment.

20. Media organisations were served with the claim forms. None of them sought to be joined to the proceedings, or to make submissions to the court as to the terms of the order sought by the claimants. The court has however, received written and oral submissions from the PA. The PA is an independent national news agency for the UK and Ireland. The PA did not wish to be joined to the proceedings, but did wish to provide submissions to oppose the grant of a final injunction. At the hearing, I permitted Mr Sam Tobin, a journalist, to make oral submissions on behalf of the PA, which were helpful and of assistance to the court, as were his carefully researched written submissions.

21. The Attorney General was also served with the proceedings, but did not wish to intervene.

The evidence in support

22. In terms of the evidence in support of each claim, D relies on the following evidence.

    a. D's own witness statement dated 20 October 2020.

    b. The five witness statements of Jennifer Twite, D's solicitor at Just for Kids Law, dated 20 March 2019, 9 April 2019, 12 June 2019, 12 October 2020 and 19 October 2020, and the exhibits JT/1 to JT/29 thereto.

    c. The witness statement of the Operational Services Manager of the STC where D lived until she turned 18 dated 20 March 2019.

    d. The witness statement of D's Community Offender Manager dated 12 October 2020.

    e. The witness statement of D's Offender Supervisor dated 12 October 2020.

    f. The expert report of Dr Louise Bowers BA, MSc, ForenPsyD, C.Psychol, CSi, AFBPsS, registered forensic psychologist and chartered psychologist ("**Dr Bowers**"), dated 21 March 2019, and the addendum thereto dated 13 October 2020.

    g. The expert report of Lucy Baldwin FRSA, FHEA, MA. Dip. SW BA a senior lecturer and researcher, De Montfort University ("**Ms Baldwin**") dated 6 October 2020. Ms Baldwin has worked in criminal and social justice for over 30 years, is a qualified social worker and probation officer and has also worked as a psychiatric social worker.

23. F relies on the following evidence:

a. F's own witness statement dated 3 October 2020.

b. The witness statement of F's sister dated 14 October 2020.

c. The three witness statements of Jane Ryan, F's solicitor of Bhatt Murphy, dated 20 March 2019, 9 April 2019 and 13 June 2019.

d. The witness statement of F's Offender Supervisor dated 29 September 2020.

e. The expert report of Jackie Craissati MBE, BA (Cantab), PhD, MA Criminol, Dip Clin Psychol, AFBPsS, ATASF, consultant forensic and clinical psychologist ("**Dr Craissati**") dated 18 December 2019, and the addendum thereto dated 16 September 2020 (both verified by an expert declaration and statement of truth dated 25 January 2021).

f. The report of F's Offender Manager dated 6 October 2020.

g. The expert report of Ms Baldwin dated 6 October 2020.

24. This evidence inevitably contains private information in relation to the claimants. The PA were provided with the case papers, but subject to an undertaking to only use them for the purposes of these proceedings.

25. The evidence is not disputed. I was taken to it in detail during the course of the hearing (which took place in open court) and have considered it all carefully. The central parts of the expert evidence are, in particular, set out below.

Media interest

26. Ms Twite's first and fourth witness statements exhibit media reports and social media commentary that attended the criminal proceedings, the present application, and other matters which have happened in the meantime. She also exhibited the witness statements of DC Kevin Appleby and PC Gary Walters both dated 8 April 2016, together with the exhibits thereto. It is clear that media and social media interest has continued in the case following the conviction of the claimants.

27. DC Kevin Appleby provided details of a public posting on Facebook on 8 April 2016 about the claimants, with their photograph and a message imploring others to share the post "before it gets removed". This was the day after the claimants had been sentenced. PC Gary Walters provided details of the reaction to this post from other social media users, which had included the following comments: "they both want hanging god they make me feel so fucking angry evil witches"; "all in good time in jail they'll know what's coming to them they'll get fucked up Horrible cunts"; "They should be tortured like poor angie was!"; "… Sick little rats gets me fuming hope I see them in the future me!"; "i wouldnt worry about sharing a photo hunny because it will get shared far and wide then what they gonna do prosecute everyone that shared it?? I think people need to know who they are"; "Horrible bastards hope they get a good kickin in jail"; "Evil scum hope they get what they deserve when they reach the age to go to a proper prison xxx"; "… I hope when they get inside I hope someone gets to them and give them a good fucking over like what angie had done to

her"; "They want skinning and leaving to rot"; "They should be tortured same way she was!"; and "enjoy prison because as soon as other inmates realise who you are you're fkd". The above is only a selection of comments under a single Facebook post. The string of comments included both the claimants' full names and photographs of them. Facebook have since deleted the posts that depict or name the claimants.

28. In 2017 there was a thread of public comments on a YouTube video, which included the following: "One of the girls who murdered her went to my school. This happened down near where I live. I don't believe you have covered this as this it is an old case."; "Give out names please."; "It was in Hartlepool and when she done it she got threatened by a lot of people in the town and at school"; "I was locked up with the girl one of the girls is called [D's name]". These posts in which the claimants have been depicted or named have since been removed.

29. In her first witness statement dated 20 March 2019 Ms Twite explains that:

> "The interest in the traditional press and on social media has understandably abated in the years since the trial. However, even our limited efforts thus far have revealed a number of worrying contemporaneous comments on the internet about [the claimants]. There are a number of videos on YouTube about the killing of Angela Wrightson. Comments under these videos are not disabled. [She then refers to the video at paragraph 28 above]. A different video includes comments by users asking for the 'names and mugshots' of the defendants and asking why they have not been named. These comments were made in the last several weeks… I believe this shows that there is still real interest amongst the public in identifying the defendants, and if their identities were published in the national media, it would be extremely significant."

30. In March 2019, when these proceedings were issued, the BBC website published an article entitled "Killer girls in bid to extend anonymity" which generated numerous posts on Facebook in relation to the case. Many of these posts said that the claimants' identities were known in Hartlepool and "if [you are] from the Hartlepool area and ask about plenty will tell you" and other posts included comments such as "the pair want forgetting about just drop them off a cliff somewhere …", "put them to sleep they won't reoffend".

31. Further, there have been two films made about the claimants. The film "Like" was released in 2019 and premiered at the Raindance Festival in London in September 2019. The making of this film, which fictionalises the case, triggered renewed interest in the case in the local press in December 2018, and there was further media interest when the film was released. The film was live-streamed at a film festival in Sheffield in October 2020, and was then available on demand.

32. The Channel 5 documentary series, "When Kids Kill" devoted an episode to the claimants entitled "No Name Killers". This was first shown on 12 July 2017 and last shown on MTV UK on 26 August 2020, and remains available to view on demand. In addition to that, the case is featured in at least five podcasts and was the principal case study in a recent book "Baby Face Killers: Satan's Seed" published in August 2019, the publication of which resulted in further focus upon the case in the news media.

33. Ms Twite's evidence dated 12 October 2020 explained that there had been further posts on-line, available through Facebook, Twitter and Google, identifying the claimants as having committed the offence. These posts have also since been removed.

Evidence in relation to F

34. Dr Craissati's expert psychological report dated 18 December 2019 was prepared following meetings with F in June 2019 and October 2019. Dr Craissati also considered, amongst other things, psychiatric and psychological reports relating to F, together with F's medical documentation held by the prison and attendance notes of meetings in prison. Dr Craissati's expert report is detailed and comprehensive.

35. Dr Craissati's evidence is that F has a current diagnosis of emotionally unstable personality disorder ("**EUPD**"), with antisocial traits. Dr Craissati says that this is consistent with a continuation of F's behavioural and emotional difficulties characterised by, amongst other things, recurrent suicidal behaviours, instability of mood and short-lived stress-related paranoid thinking and psychotic (hallucinatory) experiences. Dr Craissati explains that EUPD tends to be linked to biological, psychological and social factors and in F's case "there is clearly a biological/genetic predisposition for the development of mental health difficulties, and I think this is most marked in terms of emotional sensitivity/instability". Mr Fitzgerald QC, who appeared for the claimants with Mr Price, also pointed out that EUPD is identified in the International Statistical Classification of Diseases and Related Health Problems – 10th Revision (ICD-10) at paragraph F60.3.

36. Dr Craissati was asked: "In your opinion what would be the effect of removing the anonymity injunction on [F's] psychological functioning?" In response to this, her evidence is that:

> "[38.] I consider anonymity to provide [F] with an important element of reassurance, that can enable her to focus on constructive progression through her sentence. With the removal of anonymity, any prisoner might be expected to feel frightened; however, in [F's] case, she is not 'any prisoner' insofar as she has additional and significant mental health difficulties. These difficulties are particularly entrenched in her case on account of her biological predisposition and the very early onset of a wide range of problematic symptoms and behaviours. I am confident that with the removal of anonymity, it would be reasonable to expect the following:
>
> - [F's] anxiety will be extremely high and not susceptible to reassurance or to reasonable attempts by the prison to protect her.
>
> - She will become excessively withdrawn and unable to participate in the prison regime.
>
> - She will be preoccupied with thoughts of suicide and already has plans to take her life. The risk of suicide in the short to medium term will be extremely high. Even if she is ambivalent about dying, her impulsive behaviours and the intensity of her emotions, means that 'in the moment' she is quite likely to take her life.

- I think it is likely that she will suffer from abnormal (psychotic) symptoms such as hallucinations and paranoid ideas, to the extent that she may need to be sectioned under the Mental Health Act and transferred to hospital."

37. Dr Craissati was asked a number of other questions, the answers to which are set out at paragraphs 39 to 42 of her report:

"[39.] **In your opinion is there a risk of self-harm/suicide if [F's] identity were to become widely known during her imprisonment?**

The risk is extremely high in the short to medium term (please see [paragraph 38] above), and remains moderately high in a 'chronic' sense over the longer term. By this, I mean that although she may stabilize over time, she remains extremely vulnerable to any threat to her safety – for example, if a prisoner started yet again to shout taunts about her – and suicidal thoughts that were held in mind but manageable, are likely to become acute. When acute, plans … can then impulsively be enacted after a period of dormancy. Although self-harm, such as cutting oneself, does not appear to be in any way life threatening, the research evidence is clear that such behaviour desensitizes an individual and can lead to increasingly dangerous acts of harm. Furthermore, the dramatic quality of [F's] plans for suicide is associated with a greater likelihood of reckless risk taking that is associated with completed suicides. The suicide rate for those with significant mental health issues is considered to be somewhere between 10-20% over a lifetime; a powerful history of self-harm is the still the most powerful risk factor for completed suicide. It is therefore reasonable to state that there is a significant risk that [F] will take her life should her identity become widely known.

… I would state that the risk of [F] taking her life in the community may be even higher than when in prison. This is because in prison, staff are alert to her situation, and she tends to withdraw into her cell when emotionally fragile and distressed; she receives a high level of support. In the community, she will inevitably be in receipt of much less intensive support, and she will be subject to a much wider range of scrutiny, including the local community and the media. I think it is highly unlikely that, as she presents now, she would be able to cope in any way with this exposure; in my view there would be a very significant risk that the situation as described in the paragraph above would result in [F] taking her life. I should add that her family are not a protective factor in this regard, as many of them are over reliant on her as their support (rather than the other way round).

[40.] **In your opinion, what would be the effect on [F's] wellbeing and psychological health should her identity become widely known during her imprisonment?**

[F] is young and showing some recent signs of maturity… I think that with anonymity, she may well progress fairly well.

With the removal of anonymity, I am concerned that [F] will become too withdrawn and too disturbed to avail herself of the options to progress. Her management will necessarily focus on her self-harm and risk to self, and she will be too anxious to engage with the regime. There is also a realistic chance that she will be assaulted or in other ways abused, and in order to offer her protection, the prison will necessarily have to restrict her access to rehabilitative opportunities.

…

[42.] **In your opinion, what would be the effect of [F's] rehabilitation if her identity were to become widely known?**

I have addressed this above, in terms of the likelihood of her risk taking behaviour in relation to self-harm, making attempts to take her life, and the risk that she will complete suicide as a result. Furthermore, if her identity were widely known, there is legitimate concern that she will become rather paranoid, withdrawn, suffer from panic attacks, and develop eating difficulties. All of these issues – self harm and withdrawal behaviours – interfere with an individual's ability to progress in prison. However, it is also the case that most of the interventions to help those with EUPD contain an element of community living and/or group work. In my experience, individual prisoners with offences that are particularly heinous and in the public eye are necessarily excluded from such interventions, for their own safety. This would greatly restrict her opportunity to demonstrate reduced risk in the future."

38. On 16 September 2020 Dr Craissati prepared an addendum to her psychological report. In order to do so she interviewed F by video-link, and was provided with, amongst other things, F's updated medical reports, together with a report from her offender supervisor. Having considered these matters, Dr Craissati expressed her conclusions in these terms:

"[F] is clearly maturing, and there is evidence of her becoming more stable and resilient in terms of emotional well-being … [F] is at an early stage in her recovery and the improvement in her well-being remains somewhat precarious, as evidenced by the recent decline in emotional functioning in relation to the forthcoming hearing, and on-going (albeit less frequent) incidents of self-harm, panic attacks and low mood.

I have reviewed all the conclusions of my December 2019 report, and there is nothing in my current observations of [F's] progress that suggests any revision is required…"

39. I also note that F's Offender Supervisor gave the following evidence in his witness statement dated 16 September 2020 in relation to the consequence of F being identified:

"If [F's] anonymity order was to be lifted, it is extremely likely that [F] would no longer attend her work placement [from where she resides] due to [F's] concerns that other residents would have knowledge about her offence. I believe this would leave her petrified to leave the houseblock. From my experience of working within a prison, I can foresee [F] being at risk from other residents should her anonymity be lifted."

40. F's Offender Manager was asked whether it would assist F's rehabilitation for her identity to remain private. Her response, set out in a report dated 6 October 2020, was that:

"In my view it would be invaluable for her rehabilitation for F's identity to remain private. It would enable her to focus while in custody on her sentence plan and offending behaviour work. She would not be afraid of reprisals and violence within the prison estate provoked by her notorious offence becoming linked to her. She would not be crippled by shame preventing her engagement with professionals within prison and following release… She has made slow, gradual progress towards engagement with professionals and services, and desistance from self-harm with her anonymity

guaranteed. Were his guarantee to be removed, her progress so far is under threat, and her future progress jeopardised."

41. In Ms Baldwin's expert report dated 6 October 2020 she addressed the following five questions, namely: (1) what would the effect of F's identity becoming known be on her ability to participate in the prison regime?; (2) would F's identity becoming known fundamentally undermine her ability to engage in her sentence plan, including core offending behaviour and rehabilitative work while in custody?; (3) would F's identity being known, negatively impact F's risk management while in custody?; (4) would F's identity becoming known fundamentally undermine her rehabilitation on release?; and (5) would F's identity becoming known leave her ostracised and vulnerable to exploitation upon release?

42. Ms Baldwin interviewed F in July 2020 and considered Dr Craissati's first psychological report, together with four earlier psychological reports and five psychiatric reports. Her report answered all the questions asked. However, I only need refer to the summary of her conclusions in which she explained:

> "[2.2.] F remains a vulnerable and to some extent unpredictable young woman in many ways – particularly vulnerable in terms of her own mental health and wellbeing, but also in relation to her future risk of aggressive or violent behaviour… There is no doubt that F has matured to some degree and appears to have settled well into her current prison. She appears to have adapted well to the adult estate… However, she self-reports that she still has difficulty managing her emotions and as such utilises self-harm as a coping method, she is also still troubled by thoughts of suicide. She is nervous and worried about the prospect of the removal of anonymity leaving her in a somewhat emotional and anxious state of mind. Should the outcome of the injunction be negative for F then I would be concerned that this would have the potential to completely upend her progress to date – primarily because she would then be in a constant state of anxiety and nervousness about her identity and offence details becoming more widely known and accessible. F stated explicitly that she feels that if her identity becomes known she 'knows' she will just go back to how she was, in terms of mental health and her behaviour. She states she feels there would be 'no point' in living or 'trying to have a better future'… I concur with Dr Craissati's view that she would, if her anonymity was removed, be at high risk of suicide."

43. Finally, F's evidence is that, as a result of her offence, her family were "forced to leave their homes and have located to a new town in any event."

Evidence in relation to D

44. Dr Bowers' expert psychological report dated 21 March 2019 was prepared following a meeting with D in March 2019. Dr Bowers also considered, amongst other things, psychiatric and psychological reports relating to D, together with D's medical records. This is also a very detailed and comprehensive report.

45. Dr Bowers' evidence in relation to what will happen to D if her anonymity is removed are set out in the final section of her report. In March 2019 her opinions and conclusions were expressed as follows:

"**The effect of removing D's anonymity**

[6.5.] … In my experience, cases that involve children, (particularly young children) committing unusual offences, do generate strong feelings amongst the public. Media reporting can be extremely hostile, last for many years and typically includes on-line abuse as well as more formal negative news reporting…

[6.6.] It is not possible to gauge current public feeling towards D as media reporting is not stimulating it. D's legal representative, however, has provided evidence to suggest that there is on-going interest in this case. Given the outpouring of hatred towards D & F during and after their trials … it is likely that the public's reaction would be negative and there could be members of the public who may still wish to do D harm. In my opinion, D's fear of being threatened or harmed is real, and this is already having an impact on her. Other risks relate to how her identification and the public's reaction to her may impact on her mental health, social functioning, identity, rehabilitation and re-integration which I will now discuss.

The effect of lifting anonymity on her psychological functioning

Current psychological functioning

…

Development and Maturity

[6.8.] … In effect, she is in a state of arrested development and she is still replicating the same behaviour patterns that she engaged in as a younger child (including non-compliance, defiance, aggression, violence and poor emotional management). In my opinion, she engages in these behaviours in an attempt to hide her underlying vulnerability, make herself appear tough and to keep people away. Overall, D presents as psychosocially immature for her chronological age, although I note that staff have begun to notice some signs of maturity more recently.

Resilience

[6.9.] ... D's resiliency profile is one that is often seen in young people with clinical issues such as depression, anxiety, and conduct disorders.

Mental health

[6.10.] D has been diagnosed with depression and she is currently taking medication for this condition. Her psychometric test scores support this diagnosis with her depressive symptoms being at a moderately elevated level. D is reporting symptoms of anxiety (eg sleep disturbance, worries about her future, poor appetite) and her psychometric test scores indicate she has a moderately elevated level of anxiety-related symptomology. D's sleep disturbance is long-standing but it is particularly severe at the moment. She has been prescribed medication to assist with this.

[6.11.] D has recently engaged in acts of self-harm and has required medical attention in hospital. D disclosed to me that she has formed a plan to kill herself in the event she was transferred to HMP X. I have no way of verifying whether she intended to kill herself or had an actual plan. However, it is extremely concerning that she said she had concealed this plan in the knowledge that this would increase the chances of her carrying it out in the future if required. Apart from her history of self-harm and her previous expressed suicidal ideation, D presents with many other indicators for elevated risk of self-harm or suicide risk… In my opinion, D continues to pose a high risk of self-harm, and I consider that anything which increases her stress further could elevate her risk of suicide.

Effect of removing her anonymity on her psychological functioning

[6.12.] D was not suffering from any mental health conditions when she was assessed pre-trial. It appears that her mental health deteriorated at the point she acknowledged that transfer to the adult prison estate was becoming a reality. Finding out that her anonymity may soon be removed has, in my opinion, significantly added to her distress and mental decline.

[6.13.] … If D's anonymity is lifted when she turns 18, I consider that she will experience shock and fear about what this will mean for her life going forward. … being identified more generally as one of the girls who murdered Angela Wrightson will, in my opinion cause her significant distress. She is immature and has low levels of resilience to cope with identification, and my view is, this would exacerbate her mental health problems and significantly increase her risk of self-harm/suicide. If she was identified when she was a new prisoner in the adult prison estate, with much lower staffing levels than she is used to, this could escalate her risk of self-harm/suicide to a very high level. Additionally, I consider there would be a risk to her physical safety.

The effect of removing D's anonymity on her rehabilitation and reintegration both with the prison estate, and in the wider community once she is released

[6.20.] D has yet to start her rehabilitative journey. D is known at her current STC as one of the young women who killed Angela Wrightson, and in my opinion, this has become part of her identity… Being confronted with and constantly reminded of her past identity is likely to make it very difficult if not impossible for D to start the process of developing a new pro-social identity. If she is labelled 'Angela Wrightson's killer' in the adult estate she may give up and see little point in starting the journey towards improving her psychological functioning and increasing the chances of being able to reintegrate and be a productive member of society. I consider that she needs to be given the opportunity to build her resilience, increase her self-esteem, and the belief that she can have a positive future. Allowing the stigma and shame of what D did as a child come to define her as an adult, will in my opinion, only impede her psychological development and rehabilitation.

…

[6.23.] D will not be released until 2030. So, it is impossible to say how she might develop, if her resilience will increase and whether her mental health might improve over the years. Whatever the outcome for her, based on my analysis of my experience from

previous cases, D's longer term reintegration into society would be greatly assisted by having her anonymity maintained."

46. I should also mention that, prior to stating her opinions and conclusions, Dr Bowers considered D's progress in custody in an earlier section of her report. In relation to this topic, Dr Bowers explained:

"[4.20.] D's behaviour has been poor in custody and she has been involved in a high number of incidents. She has assaulted staff and other residents and has had to be restrained on occasions. At the end of December 2018, D was charged with violent offences against staff members at her STC. She was given an absolute discharge by the court due to the fact that she is already serving a life sentence.

[4.21.] Reports suggested that D has been very unsettled recently because she believed that when she turned 18 she would be transferred (on restricted status) to HMP X, an adult prison near to her old home and where the offence took place. She was fearful about the treatment she would receive from other prisoners there because her offence is so well known in the local community. This anxiety affected her mood and behaviour. D remains concerned about transferring to the adult estate, but now it has been confirmed that her restricted status has been removed and she will be transferring to HMP Y she is engaging in practical transition planning and is hoping for a fresh start. Staff who know D well have commented on the fact that she is becoming aware that people judge her based on her offence and they are concerned about the impact of lifting D's anonymity on her rehabilitation at [a] time when she is making the transition to adulthood and the adult prison estate…"

47. On 13 October 2020 Dr Bowers prepared an addendum to her psychological report. In order to do so she interviewed D on 28 November 2019 and 16 September 2020 and was provided with, amongst other documents, D's full medical record, together with information about D's progress in an adult prison. The addendum is a further detailed psychological report.

48. The addendum was, of course, prepared 18 months after Dr Bowers' first report. In that context, the addendum provides the following up-date in the opening summary:

"[2.2.1.] In my previous report [dated 21 March 2019], I suggested that D would make an effective transition to the adult prison estate if she was able to behave in prosocial ways, form positive relationships with staff/prisoners and engage in vocational opportunities or therapeutic interventions. D has achieved all of these objectives, and most importantly has recently been assessed for [a rehabilitative programme] which she is very keen to complete. I have therefore concluded that she has made a successful transition to the adult female estate. I provide evidence of D's increased psycho-social maturity and this, in combination with her being able to move into the adult estate as a relatively unremarkable and unknown young person have, in my opinion, both contributed significantly to her effective transition."

49. In October 2020 Dr Bowers' evidence as to what will happen if D's anonymity is removed is set out in the final section of the addendum.

"**What would be the impact of disclosing D's identity now?**

[7.7.] All of the general comments I made about the impact of removing the anonymity of young adults who were previously protected as children are still relevant to D's case (see paragraph 6.5 of my original report). The opinions I gave about how media interest in this case might manifest if D's identity is disclosed also remain valid (see paragraphs 6.5 and 6.6 of my original report).

Current psycho-social functioning

Development and maturity

[7.8.] … it appears that being placed in an adult environment and being given a fresh start has supported the natural maturation process in D's case. D has not reached full maturity yet, but this would not be expected as research has demonstrated that while individuals tend to reach physical maturity during mid-adolescence and intellectual maturity by the age of 18, emotional and psychosocial maturity continue to develop into the mid-twenties (*Casey, Tottenham, Liston & Durston*, 2005; *Johnson* et al, 2009). Nonetheless, the signs that the maturation process has commenced are encouraging.

Resilience

[7.9.] … I have concluded that D's resiliency is improved in terms of having peers she can turn to for support, but in the other areas (competency/mastery and emotional regulation) she continues to have low-levels of personal strength. As a result, in my view, she will struggle to cope when facing challenging situations.

Mental health and self-harm

[7.10.] D has been diagnosed with depression and she is currently taking medication for this condition…

[7.11.] D continues to engage in acts of self-harm and one recent incident … required hospital admission…

[7.12.] In conclusion, D continues to have issues with her mental health and this impacts on her wellbeing. She continues to pose a risk of self-harm, and I consider that anything which increases her levels of stress could elevate her risk further.

Current view on the effect of removing D's anonymity on her mental health

[7.13.] In my opinion D's effective transition to the adult estate has been supported by the fact that she had an interim injunction in place and so could make this transition relatively anonymously… If [her anonymity] is removed now, in my opinion, she will experience shock and fear about what his will mean for her life going forward. I remain of the view that the inevitable hostile newspaper and TV reporting and being identified more generally as one of the individuals who murdered Angela Wrightson will cause D significant distress. D is still maturing, and she continues to have relatively low levels of self-esteem and resilience, and in my view identifying her now would exacerbate her mental health problems and significantly increase her risk of self-harm/suicide.

Additional concerns regarding the impact of removing D's anonymity in the near future

[7.14.] … In my opinion, D is currently at a critical point, both in her development and her rehabilitative journey. She is maturing effectively, her behaviour is improving, she is developing insight into problems with her functioning, and she has accepted that she needs to engage in treatment both to reduce her risk and to address her traumatic childhood experiences. If her anonymity is removed now, in my view, she may give up hope of having a better future and her belief in her capacity for change may weaken. As a result, she may lose her motivation to engage in interventions. In addition, I am concerned that her mental state could deteriorate to the point that she may become too unwell to engage in interventions at all.

[7.15.] D has made some progress in developing a new identity as a person who can comply, work hard … I am concerned that if D's anonymity is removed now she may revert to feeling trapped in her old identity. She may feel defensive and hypervigilant to threat and beginning to engage in abusive, aggressive and violent behaviour again as a coping strategy to protect herself. If the media spotlight is on D, other residents will inevitably relate differently towards her and some may shun her or withdraw support. Feeling isolated and alone would have a significant impact on her mental health and well-being in addition to her ability to cope with the disclosure of her identity.

…

[7.16.] In conclusion, since my last report, D has made a reasonably effective transition to the adult female estate. She is maturing both emotionally and psychosocially and there have been significant improvements in her attitudes and behaviour. However, she still has mental health issues and low levels of self-esteem and resilience. In my opinion, D's transition to the adult estate and her progress more generally have been supported by having a temporary injunction in place. In my view, neither her identity development nor mental health are stable enough currently to withstand the impact of her identity coming into the public domain now. In terms of public protection, it is critical that D engages in interventions in order to reduce her risk, and support the development of her strengths and non-offending identity. It is my opinion that removing D's anonymity now could undo the progress she has made and potentially prevent her from engaging in effective rehabilitation and being a productive member of society in the future."

50. In Ms Baldwin's expert report dated 6 October 2020 she addressed the following five questions, namely: (1) what would the effect of D's identity becoming known be on her ability to participate in the prison regime?; (2) would D's identity becoming known fundamentally undermine her ability to engage in her sentence plan, including core offending behaviour and rehabilitative work while in custody?; (3) would D's identity being known, negatively impact D's risk management while in custody?; (4) would D's identity becoming known fundamentally undermine her rehabilitation on release?; and (5) would D's identity becoming known leave her ostracised and vulnerable to exploitation upon release?

51. Ms Baldwin interviewed D in September 2020 and considered Dr Bowers' first psychological report, together with an earlier psychological report from Dr Jo Nadkarni dated 11 May 2015 and a psychiatric report from Dr Parag Shah dated 26 June 2015. Her

report answers all the questions asked. However, I only need refer to the summary of her conclusions in which she explained:

> "[2.2.] D remains a vulnerable and to some extent unpredictable young woman in many ways – vulnerable in terms of her own mental health and wellbeing, but also in relation to her risk of reoffending and potential for disruptive behaviour and self-destructive/injurious tendencies. There is no doubt that D has matured and has adapted well to the adult estate. Her behaviour has significantly improved… However, she self-reports that she still has difficulty managing her emotions and as such utilises self-harm as a coping method, and she is also still troubled by thoughts of suicide. She is nervous and worried about the upcoming court case, leaving her in a somewhat emotional and anxious state of mind. Should the outcome be negative for D then I would be concerned that this would have the potential to completely upend her progress to date – primarily because she would then be in a constant state of anxiety and nervousness about her identity and offence details becoming more widely known and accessible – thereby producing the very state in which her behaviour and mental health was at its worst in her past. Furthermore, I feel that the long term implications of her identity becoming known would have serious and lifelong implications for D and would severely compromise, if not completely destroy her rehabilitation."

52. D's Offender Supervisor gave the following evidence in her witness statement dated 12 October 2020 in relation to the consequence of D being identified:

> "[9.] I think that if D's anonymity is lifted it will serve to de-stabilise her. We are hoping that D will be able to transfer onto [the rehabilitative programme] in the coming months and any high-profile media coverage could jeopardise her transfer. If her identity were to be revealed, the focus would be taken off [the rehabilitative programme] and the progress she is making would be lost. She would likely be anxious about the way the prisoners will react to her offence and how they will engage with her as a result. I think she would likely return to self-preservation based behaviours as opposed to self-reflection. This would have the knock-on effect of disrupting her rehabilitation.
>
> [10.] I do not know whether the other prisoners in D's current prison are aware of the specific details of D's offence. In the past, I have known prisoners to ask family members to search prisoners' names on the internet to find out the offence that they committed. At the moment, because of the anonymity protection, prisoners would not have been able to find out those details about D. I would worry that if there was media attention, other prisoners would easily find out and, due to the severity of the offence and the fact it was committed against a vulnerable adult, this could result in D being subjected to verbal or physical abuse."

53. The rehabilitative programme referred to is "a critical piece of work to address any PD (personality disorder) issues and risk factors" (per D's probation officer, quoted in Ms Baldwin's report at paragraph 7.4).

54. I note that D's Offender Supervisor says that she does not know whether other prisoners in D's current prison are aware of the specific details of D's offence. However, there is evidence before me that, notwithstanding the orders in place, some people are aware that D and F murdered Ms Wrightson, and this is a point relied on by the PA. I now turn to the evidence in that regard.

Knowledge of the claimants' identities

55. D's identity was known in the STC where she was held until March 2019, and also in the establishment where she was held before that. In March 2019 D instructed her solicitor, Ms Twite, that "this caused arguments between her and other children in the establishments but that the staff … prevented things escalating into physical altercations".

56. However, since D has transferred to an adult prison the evidence from Dr Bowers in her report dated 13 October 2020 is that D:

> "believed some of the other women in her house must know about the offence she was convicted of, although they had never discussed it openly. D said 'it just doesn't come up'. As regards the younger women who have moved into the house more recently, she said they know she is serving a sentence for murder but she does not believe that they know the details of her offence."

57. D explained the position as follows in her witness statement dated 20 October 2020:

> "I do not want to lie to people when they ask me what I am in for. But also I do not want people to know. Nobody knows me already, and most people don't ask, and it is easy not to go into details".

58. Further, Ms Baldwin's report records that in September 2020 D's Offender Supervisor informed her that "the residents and staff [at the adult prison] … are aware of her offence", although D's Offender Supervisor does not know whether they are aware of the "specific details" of D's offence (see paragraph 54 above).

59. F's identity is known by some people in the adult prison where she is at present. This is set out in the report of Ms Baldwin dated 6 October 2020. Ms Baldwin explains that in March 2019 a fellow resident shouted abuse at F from a window, indicating that she knew who F was and what she had done, which the prison records show triggered further self-harm and mental health decline. F's identity is known in her houseblock, although Ms Baldwin's evidence is that this is the only place where F "feels safe" and that she is "consumed with anxiety" as soon as she leaves her block about what others might do to her. F's own evidence it that she had told one friend in the adult prison about her offence, but says she did this as "she is my close friend and I want to be honest. She had not told anyone and I trust her not to."

60. I now turn to the relevant law.

Relevant law

ECHR Articles

61. I should set out first the relevant articles which the parties rely on:

> **Article 2 Right to life**

(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8 Right to respect for private and family life

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10 Freedom of expression

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The *Venables* jurisdiction

62. This is an exceptional jurisdiction. The principles derived from the rare cases in which it has been exercised are set out in *RXG* at paragraph 35:

"(i) Restrictions upon freedom of expression must be (a) in accordance with the law; (b) justifiable as necessary to satisfy a strong and pressing social need, convincingly demonstrated, to protect the rights of others; and (c) proportionate to

the legitimate aim pursued: *Venables* [*v News Group Newspapers*] [2001] Fam 430, para 44.

(ii) The strong and pressing social needs which may justify a restriction upon freedom of expression, in principle, include: (a) the right to life and prohibition of torture under articles 2 and 3 (*Venables*, paras 45-47; [*X a woman formerly known as*] *Mary Bell* [*v O'Brien* [2003] EMLR 37], para 16; *Maxine Carr* [*v News Group Newspapers* [2005] EWHC 971 (QB)], para 2; and *Edlington* [*A (a protected party) v Persons Unknown* [2017] EMLR 11], paras 9, 35); and (b) the right to a private and family life under article 8 (*Venables*, paras 48-51; *Mary Bell*, paras 19-31; and *Maxine Carr*, para 3).

(iii) The threshold at which article 2 and/or 3 is engaged has been described variously as: "the real possibility of serious physical harm and possible death" (*Venables*, para 94); "a continuing danger of serious physical and psychological harm to the applicant" (*Maxine Carr*, para 4); an "extremely serious risk of physical harm" (*Edlington*, para 36).

(iv) In *Venables* (paras 87-89), Dame Elizabeth Butler-Sloss P. considered that the authorities of *Davies -v- Taylor* [1974] AC 207 and *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 provided helpful guidance as to the assessment of future risks to physical safety. She held that the test is not a balance of probabilities but rather that the evidence must "demonstrate convincingly the seriousness of the risk" and raise a real possibility of significant harm: a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm.

(v) Where an applicant demonstrates, by cogent evidence, that there is a real and immediate risk of serious physical harm or death, then there is no question of that risk being balanced against the article 10 interests: *Maxine Carr*, at para 2.

(vi) In cases where article 2 and 3 are not engaged and the conflict is between the article 8 and article 10 rights, neither right has precedence over the other. What is necessary is an intense focus on the comparative importance of the rights being claimed in the individual case. The justifications for interfering with or restricting each right must be taken into account and a proportionality test must be applied: *Edlington*, para 28.

(vii) The rights guaranteed by articles 2 and 3 are unqualified. Where the evidence demonstrates that there is a real and immediate risk of serious harm or death this cannot be balanced against any article 10 right, no matter how weighty. In that context, it should be noted that we would respectfully depart from the proposition articulated by the Chancellor, Sir Geoffrey Vos in *Edlington*, para 35 that article 2 and 3 rights could be balanced against article 10 (a proposition later adopted by Sir Andrew MacFarlane, P. in *Venables -v- News Group Newspapers Ltd* [2019] 2 FLR 81, para 43 ("*Venables (2019)*"): see further 26(vi)[1] above.

[1] This is, it appears, a cross-reference to para 25(vi) above in *RXG* (as there is no para 26(vi) in *RXG*). In para 25 of *RXG* the Divisional Court summarised paras 42 to 49 of *A v BBC* [2015] 588, SC which contains the Supreme Court's analysis of the Convention Rights that were engaged when the court was considering whether to impose reporting restrictions *contra mundum.* Para 25(vi) in *RXG* says: "But where the conflict is between the media's rights under article 10 and an unqualified right of some other party, such as rights guaranteed by articles 2 and 3, there can be no derogation from the latter. Care must nevertheless be taken to ensure that the extent of the interference with the media's rights is no greater than is necessary: para 49 [of *A v BBC*]."

(viii) However, where evidence of a threat to a person's physical safety does not reach the standard that engages articles 2 and/or 3, then the evidence as to risk of harm will usually fall to be considered in the assessment of the person's article 8 rights and balanced against the engaged article 10 rights. Whilst the level of threat may not be sufficient to engage articles 2 or 3, living in fear of such an attack may very well engage the article 8 rights of the person concerned.

(ix) Article 8 rights may, depending on the facts of a particular case, justify a *contra mundum* injunction. In *Venables*, Dame Elizabeth Butler-Sloss P., expressed uncertainty to whether the engaged article 8 rights, on their own, would have justified the order: para 86. In *Mary Bell*, the evidence did not reach the level at which article 2 was engaged (para 16), but the article 8 rights (balanced against article 10) did justify a *contra mundum* injunction (para 61). In *Mary Bell*, factors under article 8 that favoured the granting of a *contra mundum* injunction included: (a) the youth of an offender at the time of the offending (para 45); (b) the length of time which has elapsed since the offences were committed (para 45); the likely impact upon the mental or physical health of the person if identified (paras 45, 60(4), 61); and (d) the fact that there was significant information (beyond the new identity of Mary Bell) already in the public domain about the applicant and his or her crimes which enabled the media to comment freely on the case (para 60(1)-(2)).

(x) The making of a *contra mundum* injunction was regarded as exceptional in *Venables*, paras 76 and 97; *Mary Bell*, paras 33 and 64; and *Edlington*, para 34. In *Mary Bell*, Dame Elizabeth Butler-Sloss P. held that the notoriety which may be a consequence of the commission of serious offences would not, of itself, entitle the offender, upon release, to an anonymity order based upon the likelihood of press intrusion: to do so would unjustifiably open the floodgates: para 59. The cases in which *contra mundum* orders have been granted have been exceptional. In three of them, the Court found that article 2 was engaged and, in *Mary Bell*, the combination of the article 8 rights engaged outweighed those engaged by article 10."

63. The Divisional Court also held that section 45A of the Youth Justice and Criminal Evidence Act 1999 did not have the effect of ousting or curtailing the *Venables* jurisdiction: see *RXG* at para 39.

Articles 2 and 3 of the ECHR: self-harm and suicide

64. It is the claimants' case that, if their identities are revealed, articles 2 and 3 are engaged as they are both vulnerable by reason of a mental disorder and there is a very real risk of self-harm or suicide. The exercise of the *Venables* jurisdiction has not, it appears, been considered by the court in circumstances where the risk of serious physical harm or death of an individual is from the mentally disordered individual themselves, rather than from other individuals.

65. In this context, Mr Fitzgerald directed my attention to *Keenan v United Kingdom* (2001) 33 EHRR 913 at paras 92, 93 and 97; *R (Kwietniewski) v Circuit Court of Tarnobrzeg Poland* [2008] EWHC 3121 (Admin) at para 4 ("***Kwietniewski***"); *Rabone v Pennine Care NHS Trust* [2012] 2 AC 72, SC ("***Rabone***"). Mr Tobin referred the court to *In Re Officer L* [2007] 1 WLR 2135 at paras 24 and 25. It appears that the decision of the Grand Chamber

of the European Court of Human Rights in *Fernandes de Oliveira v Portugal* (2019) 69 EHRR 8 ("*de Oliveira*") is also of some relevance.

66. In *Rabone* Lord Dyson explained:

> "[15]. As the ECtHR said at para 115 of the *Osman* case, the operational duty [under article 2] exists in "certain well-defined circumstances". The court has held that there is a duty on the state to take reasonable steps to protect prisoners from being harmed by others including fellow prisoners (*Edwards v United Kingdom* (2002) 35 EHRR 487) and from suicide (*Keenan v United Kingdom* (2001) 33 EHRR 913)."

67. In *Kwietniewski* Latham LJ said that:

> "[4]. For our purposes today, I entirely accept that a risk of suicide, on sufficiently well-established and clear evidence, can form the basis of a proper plea that the individual's article 3 rights may be infringed by any action which could trigger suicide. That is well established in immigration law; and there seems to me to be no principle should not apply in extradition cases."

68. The starting point in the present circumstances is that, as Eady J explained in *Maxine Carr*, the court has a duty under section 6 of the Human Rights Act to take reasonable measures for the protection of any citizen against threat and violation of the fundamental non-derogable rights under articles 2 and 3 of the ECHR. That obligation of the state, which in this instance is to be exercised by way of its judicial powers, is "unchallengeable and rock solid": see *Maxine Carr* at para 2.

69. It cannot make any difference for the purpose of engaging articles 2 or 3 whether the source of the real and immediate risk is from the individual himself or from other people. In my view articles 2 and/or 3 will be engaged if, upon revealing the identity of a vulnerable individual, the real and immediate risk of serious physical harm or death comes from the actions of the individual himself. This, in turn, means that the court is under a duty to take all reasonable steps to exercise the *Venables* jurisdiction so as to prevent serious self-harm or suicide of a mentally disordered person under the state's care and control.

70. The court's duty in these circumstances is, it seems to me, entirely consistent with the parallel or analogous operational duty of the state to take reasonable steps to prevent the real and immediate risk of suicide by a vulnerable person, such as a prisoner suffering from a mental condition: see *Rabone* at paras 15, 22, 34, 38 to 40 and 43 and *de Oliveira* at paras 103, 108-115.

71. Further, it was common ground between Mr Fitzgerald and Mr Tobin that in relation to article 2, the court needs to ascertain whether, if the claimants' identities are revealed, that would give rise to a materially increased risk to life: see *In re Officer L* [2007] 1 WLR 2135, HL at 2145F, per Lord Carswell. Suicide risks were considered in *de Oliveira* in the context of the state's operational duty and the following factors were identified:

> "[115] Concerning suicide risks in particular, the court has previously had regard to a variety of factors where a person is detained by the authorities (mostly in police custody or detention), in order to establish whether the authorities knew or ought to have known that the life of a particular individual was subject to a real and immediate risk, triggering

> the duty to take appropriate preventative measures. These factors commonly include: (i) history of mental health problems; (ii) the gravity of the mental condition; (iii) previous attempts to commit suicide or self-harm; (iv) suicidal thoughts or threats; and (v) signs of physical or mental distress."

72. These factors are, it seems to me, just as relevant in the present context.

73. Mr Fitzgerald submits that, although the *Venables* jurisdiction had not to date been exercised in the context of preventing self-harm or suicide as a result of a notorious offender's identity being revealed, it was a logical step to recognise that a *contra mundum* injunction could be granted in such circumstances where the offender (i) is a person suffering from a mental disorder, (ii) is in custody of the state as a result of a crime committed as a child, and (iii) that person's risk of self-harm or suicide will be materially increased by the consequences of revealing his or her identity.

74. Mr Tobin did not agree with this, but rather submits this represents a significant extension to the *Venables* jurisdiction and would open the "floodgates" for applications by offenders for anonymity.

75. In order to protect a person's article 2 and 3 rights the *Venables* jurisdiction must cover the circumstances identified by Mr Fitzgerald. If the risk of serious harm or death comes from mentally disordered offender's own actions, then whether this exceptional jurisdiction should be exercised in his or her favour under articles 2 and/or 3 will depend on the quality of the evidence presented to the court and the application of the principles set out in *RXG* at paragraph 35(iii) to (v) and (vii). I do not accept Mr Tobin's floodgates argument as it is clear that the notoriety, which may be a consequence of the commission of a serious offence as a child, is not the justification for the exercise of the *Venables* jurisdiction in these circumstances.

RXG - Principle (vii): RXG or Edlington?

76. In *Re Al M (Reporting Restrictions Order)* [2020] EWHC 702 (Fam) Sir Andrew Macfarlane P noted the difference of view expressed in *Edlington* and *Venables (2019)* on the one hand and *RXG* on the other on the question of whether it is appropriate to consider striking any balance with article 10 rights in cases where articles 2 and/or 3 are engaged (paras 10 to 15). He observed that:

> "[19] There is, it seems, therefore, a tension between the three divisions of the High Court at first instance [*Edlington* (ChD), *Venables (2019)* (Fam) and *RXG* (QB, Div Ct)] as between themselves and, separately, from the developing jurisdiction at Court of Appeal level in a parallel context [*Re X (A Child: FGMPO)* [2018] EWCA Civ 1825 and *Re K (Forced Marriage: Forced Marriage Passport Order)* [2020] EWCA Civ 190] on whether questions of proportionality and balance have any place in the court's consideration where there is a real possibility, or real risk of an individual experiencing behaviour sufficient to fall within articles 2 and/or 3."

77. The issue did not need to be decided in that case as the media had accepted the proposition that, where articles 2 and/or 3 are engaged, there can be no derogation and "where the evidence demonstrates that there is a real and immediate risk of serious harm or death this cannot be balanced against any article 10 right, no matter how weighty" (para 15).

78. In the event I find that articles 2 and/3 are engaged, the PA invited me to follow the approach set out in *Edlington* and *Venables (2019)* and to balance these against article 10 rights. I am not prepared to do so for two reasons. First, as a judge at first instance, I am bound to follow the decision of the Divisional Court in *RXG*: see *Police Authority for Huddersfield v Watson* [1947] 1 KB 842, CA at 848. Second, the Divisional Court in *RXG* appears to have departed from *Edlington* as a result of the Supreme Court's decision in *A v BBC* [2015] 1 AC 588 at paragraph 49. This paragraph is summarised at paragraph 25(vi) of *RXG* (which is the paragraph in *RXG* cross-referred to in principle (vii) of *RXG:* see footnote 1 above). The decision of the Supreme Court in *A v BBC* does not appear to have been cited in *Edlington*.

Submissions on the evidence

The claimants' submissions

79. Mr Fitzgerald submits the claimants were young girls at the time of the offence. They remain extremely psychologically vulnerable, and suffer from recognisable mental conditions, namely depression in the case of D and a persisting emotionally unstable personality disorder in the case of F. The lifting of anonymity will create a very high risk of self-harm or suicide, and a virtual certainty of psychological deterioration. It also will create very significant further risks of harm from third parties. It will also seriously prejudice both their therapeutic treatment and their rehabilitation – in which both have only just begun to make progress.

80. The claimants rely on the following factors in support of the granting of the relief sought:

    a. there is undoubtedly a high risk of serious self-harm or suicide, which in F amounts to a very high likelihood;

    b. in any event there will be a catastrophic effect upon their mental health, and both have been diagnosed as suffering from recognised forms of mental disorder;

    c. the preservation of anonymity has had a beneficial effect upon the integration of both claimants into the adult prison estate, and there will be a serious and very damaging effect upon the claimants' rehabilitation if the anonymity is lifted;

    d. there is a high risk of attack and serious harm from third parties if anonymity is lifted;

    e. there will be increased risk to, and the claimants will be anxious about, their families if the anonymity is lifted;

    f. there is a very high degree of interest from the media and the general public in identifying the claimants and their families; and

    g. there is continuing intense hostility to the claimants expressed online and a desire to find them and exact retribution upon them by causing them harm or killing them.

81. Mr Fitzgerald submits that there are two ways in which the claimants' rights under articles 2 and 3 are engaged by the lifting of their anonymity. First, the removal of the claimants' anonymity will in the case of each of them exacerbate the risk of suicide and/or serious self-harm, because each suffers from psychological vulnerabilities, in each case amounting to a recognised mental disorder. Second, there is the risk that they will be physically attacked by third parties. That risk arises both from the fact of their identities and images being widely disseminated in the media, and from the inevitable further hostility that will be "whipped up" in that event on social media. Further, in addition to the catastrophic and potentially lethal effect that naming the claimants will have on their mental health, naming them will reverse any gains in their rehabilitation, and prevent them from progressing through therapy and treatment in prison. It is therefore clear from the evidence that: (a) the high degree of risk of serious harm necessary to engage articles 2 and 3, and (b) the high degree of exceptionality required by article 8, have been met in the case of the claimants, so that the making of a permanent anonymity injunction is necessary.

82. Finally, Mr Fitzgerald submits that the claimants' entitlement to this relief is not undermined by the fact some people know their identity. This is because their identities are not common knowledge and, although some people may know the names and identities of the two juveniles who killed Ms Wrightson, it is necessary for the state and the court to take all reasonable steps to reduce the risks identified. Further, the evidence from the claimants is that those in their current establishments in the adult prison estate do not generally know about their offences.

The PA's submissions

83. Mr Tobin, for the PA, submits that granting this application would substantially erode the open justice principle as it would "effectively give those convicted of heinous crimes near-automatic anonymity because of the public opprobrium such offending inevitably attracts". This is because the claimants' circumstances are not truly exceptional and the principle of open justice means that people convicted of crimes in open court are to be publicly identified.

84. The PA's case is that articles 2 and/or 3 are not engaged because, on the evidence, the claimants cannot establish a real and immediate risk of serious harm or death if their identities were to be revealed.

85. The PA submit that the facts of this case do not come anywhere close to the level of public outrage which followed the notorious murders by Jon Venables and Robert Thompson, Mary Bell or Ian Huntley. The evidence of offensive and abusive comments made by the claimants on social media (most of which was posted on the day the claimants were sentenced "when public interest in the case would have been at its highest") do not amount to clear or cogent evidence sufficient to engage articles 2 and/or 3: see *RXG* at paras 52-53. The PA also point to the fact that the claimants are in custody (and will be there until at least December 2029) and maintain that the prison service is very experienced at protecting prisoners, and any risks from third parties can be managed within the prison estate. Further, there is no evidence that the lifting of the claimants' anonymity will lead to physical attacks against the claimants' families. The PA accept that it is possible that the identification of the claimants may lead to some verbal abuse, on or off social media, being directed towards their families, but maintain that is speculative.

86. The PA submit that the claimants' article 8 rights are engaged, which means that the court is required to undertake the familiar balancing exercise between articles 8 and 10. The consequence of doing so is that the claimants' article 8 rights are outweighed by the article 10 rights of the press and public. The court must examine the justification for and proportionality of interfering with each right and an intense focus is required on the comparative importance of the specific rights being claimed in the individual case.

87. In this case, the PA submit that the claimants' identities – which were provided in open court, subject to statutory, time-limited reporting restrictions – are not matters in respect of which they can have had any reasonable expectation of privacy. In any event, the evidence appears to demonstrate that the claimants' identities are still well-known in the Hartlepool area and also known to some prisoners in the adult estate. Conversely, the article 10 rights of the media and the public are particularly strong. There is a strong public interest in enabling informed debate about the criminal justice system in general. There is also an important public interest in better understanding the circumstances behind serious crimes, such as the murder of Angela Wrightson. Further, the PA submits that an order continuing the claimants' anonymity would have a significant effect on the media's ability to report criminal proceedings: for example, it would severely curtail reporting of D's recent conviction for assault at the STC (which the PA maintains is highly relevant as it calls into question the rehabilitation of D).

Decision

Articles 2 and 3

88. It is plain from the evidence that there is ongoing media interest in this case and, if the claimants' identities are revealed, it is inevitable that this will attract very significant media coverage locally and nationally. However, the evidence before me does not, as Mr Tobin argues, demonstrate convincingly that, if the claimants' identities are revealed there is a real and immediate risk of serious physical harm or death to either D or F from third parties.

89. Dr Craissati's evidence is that, with the removal of anonymity, there is a "realistic chance" that F will be assaulted or in other ways abused, but protection provided from the prison will "restrict her access to rehabilitative opportunities". F's Offender Supervisor has said that he can foresee F being at risk from other residents should her anonymity be lifted. Dr Bowers considers there would be "a risk" to D's physical safety and D's Offender Supervisor says that revealing her identity "could result" in D being subjected to verbal or physical abuse from other prisoners. This evidence recognises that within the prison estate the claimants can be protected from the risks presented by other prisoners, although that will have adverse consequences on their rehabilitation. However, for the purposes of articles 2 or 3 this evidence does not meet the threshold at which articles 2 or 3 are engaged.

90. I appreciate that there is also evidence of identifiable threats from social media and on-line comments. However, for the reasons explained at paragraph 53 of *RXG* "rhetoric and invective [from social media and on-line comments] is generally insufficient, without more, to amount to a credible threat of violence or one which engages the *Osman* duty". In this

case, I do not consider there is a credible threat of violence from social media and on-line comments which engages articles 2 or 3.

91. However, the position is very different in relation to the risk of suicide and self-harm.

92. The evidence in relation to F is, in my view, compelling. It is clear from the evidence that F has an extensive history of mental health problems, has been diagnosed with EUPD and has a biological or genetic predisposition to the development of mental health difficulties. F has made previous attempts to commit suicide and repeatedly self-harms. She continues to have suicidal thoughts and plans and continues to show signs of mental distress. Dr Craissati's expert psychological evidence is that, if F's identify is revealed, the "risk of suicide in the short to medium term will be extremely high". Ms Baldwin agrees with this conclusion. Therefore, the very same risks that Globe J identified in July 2016 in relation to F, when he refused the media's application to lift the section 39 order, exist just as much today.

93. In these circumstances, I am quite satisfied that this is a case where there is a real and immediate risk of serious physical harm or death to F at her own hand if her anonymity is not preserved. Articles 2 and/or 3 are therefore engaged and there is no question of this risk being balanced against the media's article 10 interests. This is therefore an exceptional case where it is necessary to grant F the injunction sought in order to prevent her from being identified in connection with the murder of Angela Wrightson.

94. The strength of F's position therefore also determines D's claim as well, as the PA have accepted that if D's identity is revealed then, as a result of "jigsaw identification", this would lead to the identification of F. Therefore, in order to ensure that the injunction preserving F's anonymity is effective, it is necessary to grant D the relief she seeks as well.

95. In any event, in relation to D the expert psychological evidence of Dr Bowers shows that, if her identity is revealed, that will significantly increase her risk of self-harm. F has a clinical diagnosis of depression (a diagnosis she has had since she was in the STC), a history of issues with her mental health, she repeatedly self-harms (which led to hospitalisation in 2020), has had suicidal thoughts and anything that elevates her stress levels elevates her risk of self-harm. Dr Bowers' opinion is that "identifying [D] now would exacerbate her mental health problems and significantly increase her risk of self-harm/suicide". The evidence of Dr Bowers does, in my view, convincingly demonstrate that, if D's identity is revealed, there is a real and immediate risk she will cause serious physical harm to herself and the threshold for the engagement of her article 3 rights are met. There is therefore no question of this risk being balanced against the media's article 10 rights. As with F, D's case is also an exceptional one, where it is necessary to grant the injunction sought to prevent her from being identified in connection with the murder of Angela Wrightson.

96. D is therefore also entitled to an injunction prohibiting her identification in connection with the murder of Angela Wrightson.

Articles 8 and 10

97. If my assessment of the evidence in relation to the engagement of articles 2 and/or 3 is wrong, I should also consider the position in relation to articles 8 and 10. In these

circumstances, the evidence as to the risk of harm falls to be considered in the assessment of the person's article 8 rights and balanced against the article 10 rights.

98. Adopting the approach set out at principle (ix) of *RXG*, the following factors are relevant to D and F's respective positions under article 8. First, their ages at the time of the offence. D was 13, F was 14. They were young, but not as young as the offenders in *Venables* (10.5), *Mary Bell* (11) and *Edlington* (10 and 12). Second, the claimants have grown up with their identities protected in the six years since the offence was committed. Third, it is clear from the evidence that, if the claimants are identified, the likely impact upon them mentally and physically is extremely serious for the reasons already set out. Fourth, D has made good progress in the adult prison estate which is demonstrated by being assessed as suitable for a rehabilitative programme, and the evidence of Dr Bowers is that she is at a "critical point" both in terms of development and in her rehabilitation. Dr Bowers' evidence is that removing D's anonymity will have a serious impact on her mental health which, in turn, will have a direct adverse impact on her rehabilitation and, in effect, completely undermine the progress she has made to date or will be able to make in the future. The evidence of Dr Craissati is that F is also making progress with her rehabilitation, but this will be destroyed by the removal of her anonymity and F will be unable to progress. It is clear that, if the claimants are identified, there is a very real risk their rehabilitation, which at the moment is somewhat fragile, will be completely jeopardised.

99. There are, of course, strong arguments to be made in relation to article 10, which Mr Tobin advanced clearly. He referred to the fundamental public interest in the full reporting of trials and those charged with criminal offences, together with the public interest in understanding how children of 13 and 14 could have committed this offence. He also pointed to the fact that the claimants were named in court at their trial, their identities were protected by the section 39 order, with a presumption that order would cease when they reached 18.

100. Mr Tobin also made the point that the claimants' identities are known in the Hartlepool area and possibly beyond. Nevertheless, it is clear from the evidence that their identities are not common knowledge and, in the adult prison estate, not generally known about. In any event, the fact that some people may know the names and identities of the two juveniles who killed Angela Wrightson does not mean that the court cannot take all reasonable steps to reduce the identified risks of removing their anonymity: see *Venables (2019)* at paras 45 to 47 (adopting the analysis in *PJS v News Group Newspapers Ltd* [2016] AC 1081, SC).

101. Mr Tobin also sought to attach significance to D's offence in the STC. That was committed in or about December 2018 prior to D's transfer to the adult prison estate. It is clear from evidence of Dr Bowers that, in terms of D's progress, matters have moved on since then in terms of D's own development and rehabilitation, and this has been assisted by the fact D moved into the adult estate as a "relatively unremarkable and unknown young person".

102. The trial took place in public and was fully reported at the time it took place. All matters relating to this offence are in the public domain, except for the identities of D and F. I am clear on the evidence before me that, revealing the claimants' identities, is likely to cause each of them very serious harm and interfere with their article 8 rights. Therefore, even if I

have to balance the competing rights under articles 8 and 10 (which in my view I do not), this is an exceptional case in which the balance is tipped very firmly in favour of protecting the claimants' article 8 rights and it is both necessary and proportionate to grant the injunctions sought so that both their identities are protected and not revealed.

Conclusion

103. I will give judgment in favour of the claimants and grant permanent injunctions preventing them from being identified. As in *RXG* the terms of the injunction should include provision for a review, in the event there is a material change of circumstances.