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Neutral Citation Number: [2022] EWFC 76

**IN THE FAMILY COURT**  
**SITTING AT THE ROYAL COURTS OF JUSTICE**

Case No. ZE21C00379

Courtroom No. 41

Royal Courts of Justice  
Strand, London  
WC2A 2LL

Wednesday, 30<sup>th</sup> March 2022

**Before:**

**THE HONOURABLE MR JUSTICE KEEHAN**

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B E T W E E N:

**LONDON BOROUGH OF HAVERING**

**- and -**

**S**

**Re S (Children) (Withholding Evidence)**

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Transcript of a recording by Ubiquis  
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**MR K LEFTERI** (instructed by **Legal Services**) appeared on behalf of the **Applicant**  
**MR J BUCK** (instructed by **Lillywhite Williams & Co Solicitors**) appeared on behalf of the  
**Respondent Mother**  
**MR J PATEL** (of **Legal Comfort Solicitors**) appeared on behalf of the **Respondent Father**

**MS D MARSDEN** (of **Creighton & Partners**) appeared on behalf of the **Children through their Guardian**

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JUDGMENT (Approved)

**MR JUSTICE KEEHAN:**

1. In this matter, I am concerned with two children: A, who is 14 years of age, and L, who is 12 years of age. Their mother is the first respondent. Their father is the second respondent.
2. The children are the subject of public law proceedings brought by the London Borough of Havering, and they are currently in the care of the Local Authority.
3. I should note that their two older siblings M and R were the subject of private law proceedings in 2013/2014, but they are not the subject of the proceedings before the Court today.
4. Within these proceedings, the mother has made an application to limit the documentation filed and served in this case, which should be given to the father. It is her case that, were he to receive all of the papers, in particular, information that is personal to her, he would use it to undermine her, and to undermine the children.
5. That application is broadly supported by the Local Authority and the Guardian, albeit that the Local Authority and the Guardian submit that the father should receive redacted copies of a psychological report prepared by an expert in the case, relating to the children.
6. The father does not accept that position and submits that there is no reason at all why he should not receive all of the case papers filed and served.
7. To date, the papers disclosed to the father are limited to a redacted copy of the Local Authority's application; a redacted copy of the social worker's initial witness statement; the whole of the papers relating to previous private law proceedings, which concluded in 2014; and the risk assessment that was recently undertaken of the father by the social workers in this case.
8. The parties are agreed as to the law which I should apply. It is agreed that non-disclosure of documents to a party is an exceptional course, which is only to be justified in the clearest possible terms.
9. I was helpfully referred to the leading authority of *Re D (Minors) (Adoption Reports: Confidentiality)* [1996] AC 593. In giving the lead speech in the House of Lords, Lord Mustill said as follows:

“The Court should first consider whether disclosure of the material would involve a real possibility of significant harm to the child. If it would, the Court should next consider whether the overall interests of the child would benefit from non-disclosure, weighing, on the one hand, the interest of the child in having material properly tested, and, on the other, the magnitude of the risk that harm will occur, and the gravity of the harm if it does occur.

If the Court is satisfied that the interests of the child point towards non-disclosure, the next and final step is for the Court to weigh that consideration and its strength in the circumstances of the case against the interest of the parent or party in having an opportunity to see and respond to the material.

In the latter regard, the Court should take into account the importance of the material to the issues in the case. Non-disclosure should be the exception, not the rule.

The Court should be rigorous in the examination of the risks and the gravity of the feared harm to the child and should order non-disclosure only when the case for doing so is compelling”.

10. I also have regard to the provisions of Part 21 of the Family Procedure Rules, which relate to applications for non-disclosure of materials to a party.
11. I, of course, have regard to the Article 6 and Article 8 rights of the mother, the father, and the children, but I bear in mind that, where there is a tension between the Article 8 rights of the child on the one hand, and the parents on the other, the rights of the child prevail; *Yousef v The Netherlands* [2003] 1 FLR 210.
12. The father has not seen the children since 2013, when he separated from the mother. In the course of private law proceedings, HHJ Staite gave a very full and detailed judgment on 23 September 2014. In it, she made a number of very serious findings against the father, in the terms that he was controlling of the mother, and manipulative of her; that he had used contact with the children to destabilise the mother and the family; and the mother would have real difficulty coping with any involvement with the father.
13. However, the case advanced by the father is, notwithstanding the passage of some seven years, the children should be returned to his care. Failing that, that he should have contact with them.
14. In a recent statement, the mother set out her case why disclosure should not be made to the father, although, as noted by Mr Lefteri, appearing on behalf of the Local Authority today, the mother does not set out in that statement, what documents she would seek to have withheld.
15. The father, in his lengthy statement, challenges the findings made by HHJ Staite in 2014, and a large part of the statement is taken up with his account of the perceived injustice that he has suffered in the family court.
16. The Local Authority were eventually able to undertake a risk assessment of the father, with his cooperation. It concluded that the father has no insight into his past role in this family, and no insight into the present needs of the children.
17. The father takes issue with that risk assessment and does so at some length. However, given his own stance in not accepting the judgment of HHJ Staite, or her findings, it is difficult for the Court to understand what proper criticism can be made of the social worker’s risk assessment.
18. I am sad to conclude that, given the father’s stance, as set out in his recent statement, and articulated to the Court today, he has a wholly unrealistic approach. It would appear to me that his main objective is to challenge the judgment of HHJ Staite, which was not, I note, the subject of any challenge on appeal at the time.
19. The father is intent upon receiving every piece of paper filed and served in this case, and, in particular, the mother’s medical records. Those medical records have no relevance or

materiality to the case being advanced by the father whatsoever. It therefore begs the question of why the father wants them, and I am driven to the conclusion, on the totality of the evidence and find, that the father seeks to explore the injustices he considers he has suffered, to challenge the decision of HHJ Staite, and to cause distress and harm to the mother.

20. Such distress and harm to the mother, would inevitably have an adverse impact upon both of the children.
21. I am therefore satisfied and find that, if full disclosure of the papers in these proceedings was made, as sought by the father, there would be a real possibility of significant harm to both children. Indeed, if they were disclosed, then there is a grave risk that the children would suffer emotional and psychological harm as a result of the grave upset caused to their mother by the father having access to that material, and potentially using it against her.
22. I consider it would be in the overall interests of both children that there should be only very limited disclosure of the papers in this case to the father. The material that would be withheld would not need to be tested in respect of the father's case.
23. I am satisfied that it is appropriate for a redacted copy of the psychological assessment of the children to be disclosed to the father, in the hope that he will read it, absorb it, and take on board the expert evidence about the current psychological and emotional wellbeing of his two younger children.
24. I do not consider that disclosure of that document poses any risk of harm to the children. As to the balance of the material which has not as yet been disclosed to the father, it has no relevance to a case that he can realistically put before the Court. It causes him no disadvantage. It would not be in breach of his Article 6 rights to a fair hearing, nor his Article 8 rights for the remainder of the case papers to be withheld from him.
25. Given that there is no detriment to the father, weighing all matters in the balance, I am entirely satisfied that it is necessary, proportionate and appropriate for me to accede to the mother's application for non-disclosure of the papers in this case to the father, save, as I have said, for a redacted copy of the psychological report to be served upon him.

**End of Judgment.**