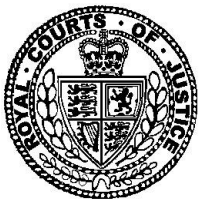

Neutral Citation Number: [2020] EWHC 122 (Fam) Case No: FD19P00246, FD19P00380, FD19F05020, FD19F00064

IN THE HIGH COURT OF JUSTICE FAMILY DIVISION

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 27/01/2020

Before :

The Rt Hon Sir Andrew McFarlane
President of the Family Division

Re Al M (Publication)

Lord Pannick QC, Alex Verdan QC, Desmond Browne QC, Lewis Marks QC, and **Adam Speker** (instructed by **Harbottle and Lewis**) for the **Applicant Father**
Charles Geekie QC, Tim Otty QC, and **Sharon Segal** (instructed by **Payne Hicks Beach**) for the **Respondent Mother**
Deirdre Fottrell QC, and **Thomas Wilson** (instructed by **Cafcass Legal**) for the second and third **Respondent Children**
Sarah Palin (instructed by Associated Newspapers Ltd, British Broadcasting Corporation, The Financial Times Ltd, Guardian News & Media Ltd, Telegraph Media Group Ltd, Sky PLC, Thomson Reuters, Times Newspapers Limited and the Press Association)

Hearing date: 17th January 2020

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Approved Judgment

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

.....
SIR ANDREW MCFARLANE

The release of this judgment to nominated members of the UK press is subject to a four hour embargo ending at 4pm on 5 March 2020 pursuant to the Order of the President of the Family Division dated 5 March 2020. Publication of any part of this judgment before that time is prohibited by that Order.

After the judgment has been published at 4pm on 5 March 2020 it is important to stress that certain reporting restrictions will remain in force pursuant to the Reporting Restriction Orders made by the President of the Family Division dated 28 January 2020 and 3 February 2020. The Reporting Restriction Orders have been served on the media; copies are available from the Royal Courts of Justice Press Office.

Sir Andrew McFarlane P :

1. This judgment is given in the course of ongoing wardship proceedings relating to the welfare of two children. The children are Sheikha Al Jalila bint Mohammed bin Rashid Al Maktoum ("J"), born 2 December 2007, now aged 12 years, and Sheikh Zayed bin Mohammed bin Rashid Al Maktoum ("Z"), born 7 January 2012, now aged 8 years.

2. The children's father is His Highness Sheikh Mohammed bin Rashid Al Maktoum ("the father"). He is the ruler of the Emirate of Dubai and is the Vice President and Prime Minister of the United Arab Emirates (UAE).

3. The children's mother is Her Royal Highness Princess Haya bint Al Hussein ("the mother"). She is a daughter of His Majesty the late King Hussein of Jordan and the half-sister of the present ruler of Jordan, King Abdullah II.

4. On 14 May 2019 the father commenced proceedings in England and Wales under the inherent jurisdiction of the High Court seeking orders for the children to be returned to the Emirate of Dubai. Since that time those proceedings, together with applications subsequently made by the mother, have been considered at a number of hearings before me in the High Court. In the course of that process, and in addition to a number of short case management rulings, I have delivered two substantial judgments. On 11 December 2019 I handed down a fact-finding judgment determining a number of significant factual issues between the parties that had been placed by the mother before the court as being relevant to the final determination that falls to be made regarding the best arrangements for the future welfare of these two children ("the fact-finding judgment").

5. On 17 January 2020 I handed down judgment specifically focussed upon analysing certain matters of international law and domestic law arising from, firstly, assurances given to this court on behalf of the Government of the UAE and the Emirate of Dubai and, secondly, a waiver of immunity made by the father, as Vice-President and Prime Minister of the UAE and Ruler o Dubai, with respect to applications and orders made within these proceedings ("the assurances and waiver judgment").

6. The court hearings in these proceedings, in common with most other family proceedings relating to children, have been conducted in private. However, again in accordance with the normal position that applies under the rules of court, accredited representatives of UK media outlets ("the media") have attended each hearing and have been able to observe all that has taken place in court. However, because of the private nature of the proceedings, only very limited reporting has taken place. In July 2019, a statement was agreed between the parties and issued by the court. It reads as follows:

> "The parties to these proceedings are HH Sheikh Mohammed bin Rashid Al Maktoum and HRH Princess Haya Bint Al Hussein.
>
> These proceedings are concerned with the welfare of the two children of their marriage and do not concern divorce or finances.
>
> Following significant media interest, the President of the Family Division asked the parties to work out what issues, including the question of media reporting, will be before the Court on 30 and

> 31 July 2019. He held that hearing in private, with the media excluded for part of it, to protect the interests of the children.
>
> The hearing on 30 and 31 July will be a case management hearing to deal with issues relating to how to proceed to a final hearing to determine the welfare issues.
>
> The parties have been asked to identify whether they will be seeking any reporting restrictions orders seven days before the hearing and to inform the media. The President asked the media, if they were seeking any orders of their own, to indicate that to the parties and the court in good time before the hearing."

The media have also been permitted to report the dates of various hearings and whether the parties attended such hearings in person. In addition, the media have been permitted to report the fact that applications have been made by the father for summary return, and by the mother for wardship, non-molestation, and for protection against forced marriage.

7. The media has for some time given notice of its intention to apply to be released from most of the current reporting restrictions in order that they may report what has taken place during the various hearings together with the two substantive judgments that have been delivered. In parallel, the parties themselves have kept the question of publication under review. In particular, because of the unusual circumstances of this case and the high degree of media attention that the affairs of this family have already attracted, there may be, in contrast to many cases relating to children, a positive advantage from the perspective of the children's welfare in allowing the substantive judgments to be published.

8. Since at least the hearing in December 2019, the court has accepted that it will be necessary to determine the issue of publication. There was, however, at that time, uncertainty as to whether it would be in the children's best interests to decide the issue of publication at a hearing some time before the final welfare determination, or postpone the publication issue so that it would be dealt with at that final hearing along with all other outstanding issues. The court's December order, therefore, established a hearing on Friday 17th January 2020 which could be used to consider the issue of publicity if one or more of the parties considered that an early determination was merited. The final welfare hearing has now been fixed for three days at the end of March 2020.

9. In the event a hearing took place on 17 January at the invitation of the mother, the children's guardian and the media who all supported publication of at least one of the two substantive judgments at this stage. The father's position was that, irrespective of whether there may be subsequent publication, it is not in the interests of the children for any publication to take place at this stage.

10. It is necessary in this judgment to do no more than summarise the key findings of fact. As described at paragraph 23 of the fact-finding judgment, the mother's sixteen core allegations boiled down to three principal assertions:

Firstly, that in August 2000 the father ordered and orchestrated the unlawful abduction of his daughter Princess Shamsa from the United Kingdom to Dubai (findings number 1-5).

Secondly, that, on two occasions in June 2002 and February 2018, the father ordered and orchestrated the forcible return of his daughter Princess Latifa to the family home in Dubai. In 2002 the return was from the border of Dubai with Oman, and in 2018 it was by an armed commando assault at sea near the coast of India (numbers 6-8).

With respect to both Princess Shamsa and Princess Latifa it was asserted that following their return to the custody of the father's family they have been deprived of their liberty.

Thirdly, the mother made a number of allegations to the effect that the father had conducted a campaign, by various means, with the aim of harassing, intimidating or otherwise putting the mother in great fear both in early 2019 when she was still in Dubai and at all times since her move to England in April 2019.

11. At paragraph 29 of the fact-finding judgment I described the allegations about the two adult princesses as follows:

> "The allegations that the father ordered and orchestrated the kidnap and rendition to Dubai of his daughters Shamsa and Latifa are of a very high order of seriousness. They may well involve findings, albeit on the civil standard, of behaviour which is contrary to the criminal law of England and Wales, international law, international maritime law, and internationally accepted human rights norms."

12. At the conclusion of the fact-finding judgment I found each of the mother's core allegations, save for an assertion related to forced marriage, proved.

13. It is more difficult to summarise the issues raised within the assurances and waiver judgment, but, again, it is not necessary to descend to detail for the purposes of this judgment. In short, whilst expressing gratitude and respect for the fact that the State of the UAE, the Emirate of Dubai and the father have executed documents embodying assurances and waivers which are binding in international law, I concluded that these instruments failed to afford the children any significant level of protection from the risk of abduction within England and Wales.

The issues

14. The following issues fall for determination in this judgment:

(a) whether the fact-finding judgment should be made public (save on the father's case for one discrete area which, if publication is to take place, he says should be redacted);

(b) whether the assurances and waiver judgment should be made public;

(c) whether the children should be identified by their name, age and gender;

(d) whether two key working documents prepared by the mother's legal team to assist the court process should be published;

(e) whether the journalists who have sat through the court hearings should be allowed to report what they have observed taking place in court.

15. The media case has been presented to the court by counsel, Sarah Palin, who acts on behalf of the following media organisations; Associated Newspapers Limited; the BBC; The Financial Times Limited; Guardian Newspapers Limited; The Press Association; Reuters; The Telegraph Media Group Limited and Times Newspapers Limited.

16. The media position is that all five categories of material identified in paragraph 14 should be released for immediate publication.

17. The mother, for reasons which differ from those advanced on behalf of the media, also favours the publication of all five categories of material.

18. The father opposes any publication at this stage.

19. The children's guardian, who is a member of the Cafcass High Court team and is represented through lawyers instructed by Cafcass Legal, supports the publication of the fact-finding judgment at this stage. He does not support the publication of the assurances and waiver judgment, but invites the court to review that issue at the final welfare hearing. He urges the court to prevent the children being named in any publication, but is neutral as to whether their ages and gender are published. Finally, he argues against the release of any of the court working documents and does not support the reporting of the court hearings.

The Legal Context

20. The legal context within which issues of this nature fall to be determined is now well settled and well understood. It is of note that there is no issue at all as to the law taken by any one of the strong and extremely experienced legal teams who have appeared before this court. I will not, therefore, do more in this judgment than describe the underlying statutory position together with the balancing exercise which all agree the court must undertake.

21. These are proceedings which relate to the exercise of the inherent jurisdiction of the High Court with respect to minors. They are therefore covered by Administration of Justice Act 1960, s 12(1) ("AJA 1960") which makes publication of any "information relating to" these proceedings a contempt of court:

> 12(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—
>
> (a) where the proceedings—
>
> (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;

> (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or
>
> (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor.

22. There are certain exceptions to AJA 1960, s 12 which have been identified in previous authority, for example *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam); [2004] 2 FLR 142. This includes the lack of any prohibition on publishing the name, address or photograph of any witness who has given evidence in proceedings covered by AJA 1960, s 12.

23. The proceedings are also governed by the Children Act 1989, s 97(2) ("CA 1989") which prohibits publication:

> "(2) No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify—
>
> (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or
>
> (b) an address or school as being that of a child involved in any such proceedings."

24. CA 1989, s 97(4) provides that the court may, if satisfied that the welfare of the child requires it, dispense with the requirements of s 97(2). When considering whether to do so the court must act in accordance with the European Convention on Human Rights ("ECHR") and the Human Rights Act 1998, s 12 ("HRA 1998") which provides:

> "(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (2) …
>
> (3) …
>
> (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
>
> (a) the extent to which—
>
> (i) the material has, or is about to, become available to the public; or

> (ii) it is, or would be, in the public interest for the material to be published;
>
> (iii) any relevant privacy code.
>
> (5) …"

25. The case law establishes that, where a court is asked to lift or to extend reporting restrictions in a case such as this, a balancing exercise is required between ECHR, Articles 6, 8 and 10 (or, where applicable, other rights).

26. The court's approach to the balancing exercise has been described in a number of authorities which are most conveniently summarised in the judgment of Sir James Munby P in *Re J (A Child)* [2013] EWHC 2694 (Fam) at paragraph 22:

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

27. Further detailed guidance on the approach is given in the judgment of Lord Steyn in *Re S (Identification: Restrictions on publication)* [2004] UKHL 47; [2005] 1 AC 593 (upon whose judgment Sir James Munby principally relied) at paragraph 17:

> "First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right

> must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test."

28. By way of further expansion on references made by Sir James Munby at paragraph 2 of his judgment in *Re J*, it is helpful to refer to the words of Sir Mark Potter P in *A Local Authority v W* [2005] EWHC 1564 (Fam); [2006] 1 FLR 1:

> "The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither article has precedence over or "trumps" the other. The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual cases is necessary before the ultimate balancing test in terms of proportionality is carried out. Having so stated, Lord Steyn strongly emphasised the interest in open justice as a factor to be accorded great weight in both the parallel analysis and the ultimate balancing test…"

29. It is plain that the interests of any children are not afforded "paramount consideration" in the balancing exercise. However, as Baroness Hale warned in *PJS v News Group Newspapers* [2016] UKSC 26, the fact that the interests of a child may not be "a trump card" does not mean that those interests should be dismissed.

30. In the present case, a good deal of information about this internationally prominent family is already in the public domain. HRA 1998, s 12(4)(a)(i) expressly requires the court to have regard to the extent to which the material has become available to the public. In recent times, in particular in the Supreme Court decision in *PJS v News Group Newspapers*, the court has identified the need to consider unwanted intrusion into aspects of a person's private life as being a separate matter deserving of protection under Article 8 which is distinct from the more traditional element of "confidentiality". The fact that confidentiality has already been breached to some extent, does not necessarily justify further intrusion.

The parties' submissions

31. For the media Ms Palin makes clear and robust submissions to the effect that there are overwhelming, strong public interest reasons for authorising wider reporting of these proceedings. These submissions are important, partly in their own right and partly because no other party, in particular the father, has taken serious issue as to the strength and importance of the Article 10 factors that fall to be placed in the overall balancing exercise.

32. At paragraph 24 (2) of her skeleton argument, Ms Palin puts the matter thus:

> "Powerful and pressing public interests are plainly engaged. The issues raised by the applications and evidence adduced are of very considerable public interest concerning credible allegations of international human rights abuses (including kidnap, imprisonment and torture), criminal offences committed in this jurisdiction, the intervention of the state in a criminal investigation and the potential forced marriage of a child. The strength of the public interest is demonstrated by the fact that there has already been very extensive commentary and debate of this case. This case fits into and properly forms part of a wider and very extensive ongoing public debate on a topic of grave public interest, namely the deterioration of the human rights situation in the UAE, the extent to which its rulers are breaching international human rights law notwithstanding their membership of the UN and the UN Human Rights Council; and whether the "tolerant" oasis, the UAE promotes itself as, is a sham. Further, the exchange of information in respect of state intervention in a criminal investigation is crucial to our democracy. The absence in this case of any criminal investigation or likely prosecution make the family proceedings all the more worthy of proper analysis and coverage."

33. Taking up some of those points in more detail, Ms Palin submits that the plight of the missing princesses, and the manner in which it is dealt with within the fact-finding judgment, establishes an urgent and pressing case for publication. The judgment includes new evidence not previously in the public domain. The judgment establishes the mother's present position with respect to the two princesses, which is contrary to her earlier public position. Publication would serve the principled public interest of applying international pressure on the UAE to comply with UN requirements.

34. A secondary element in support of the public interest in favour of publication is, it is submitted, exposing hypocrisy and preventing the public from being misled. The father has issued a number of public statements. He is a man of international standing and a man of prominence in this jurisdiction. It is, submit the media, important, therefore, for the public to know the findings that this court has now made against him.

35. Given the continuing lack of knowledge as to the precise whereabouts and circumstances of the two adult princesses, and given the court's findings, it is said that the well-established public interest in the exposure of "crime or serious impropriety" plainly justifies publication.

36. On a separate basis, Ms Palin submits that there is a public interest in understanding how this court has conducted the present proceedings and how it has been decided that the two children should now remain resident in this jurisdiction. Publication is likely to enhance confidence in the judicial system and in the rule of law. In this regard, the media submit that, in addition to the publication of the two judgments, journalists should be free to report that which they have observed during each of the oral hearings. It is submitted that it is important for the public to have an understanding of the process as well as access to the product of that process in the form of the two judgments.

37. Whilst Ms Palin accepts that the court must undertake a balancing exercise, measuring the Article 10 rights against those of the children and the parents under Article 8, her overall submission is that in the present case the high order of the implications that flow from the court's findings must justify publication. In terms of timing, Ms Palin submits

that there is real urgency arising from the continuing predicament of Princess Shamsa and Princess Latifa and in that context every day is important.

38. Whilst the outcome sought by the media is supported by the mother, the submissions of her leading counsel, Mr Charles Geekie QC, are principally based upon the Article 8 rights of the children and the mother herself. The mother's overall position is that there is no conflict between the Article 8 rights of the children and herself, on the one hand, and the Article 10 case put forward by the media on the other; both are said to point strongly to publication at this stage of all of the relevant material.

39. The mother's case is supported by her witness statement dated 10 January 2020 in which she sets out in detail the negative impact upon the children of misleading information as to their current circumstances and the wider family history much of which, she asserts, has been put into the public domain by the father. She believes that "publication [of the judgments] will have a significant welfare benefit arising from the cleansing value of truth and our ability, once again, to hold our heads up. The children will know that the world understands the truth about their situation".

40. The mother describes her life with the children over the past nine months as being one of "solitary confinement" in which she and the children have been shunned and deserted by many, if not all, those who had, in happier times, been friends and, for the children, play companions. At paragraphs 23 to 25 she gives three specific recent examples of this experience. There is no reason to doubt the accuracy of her account, and the father has not taken any issue with it before the court. I regard those paragraphs as powerful evidence supporting the general description she gives of the life that she and the children are currently living.

41. At paragraph 26 of her statement, for example, the mother says this:

> "People think that I have wronged the children and wronged Sheikh Mohammed. The public narrative is of me leaving Dubai with the children, taking Sheikh Mohammed's money following an affair. People do not want to be associated with us. I have not been able to protect fully the children or defend myself against the lurid reporting and character assassination. …People have said that they want to help and begin to ask for information about the trial. When I have said the proceedings are closed and I am not able to discuss the matter, I have faced increasing hostility including from members of my own family who have accused me of not trusting them or wondering what I am hiding. There is nothing I can say, and no way to explain our situation to them. My silence, and that of the children, only serves to distance them from us. There is an entire year of our lives we cannot speak of."

42. Separately, Mr Geekie submits that the reporting of the two judgments will make a very real difference to the safety and security of the mother and the children. Whilst the judgment might be disclosed in any event to the police and other security agencies, wider publication will permit all persons with responsibility for the safety and welfare of the mother and the children to be aware of the high level of risk found by the court.

    Mr Geekie submits that this argument applies with greater strength in the light of the assurances and waiver judgment, which must, therefore, also be published now.

43. Mr Geekie further points to the independent right of the mother for her private and family life not to be intruded upon by false and defamatory accounts. He points to the adverse media "storm" that I have found was generated by the father during the summer of 2019 which has caused a substantial body of false and hostile material about the mother to come into and remain in the public domain. Mr Geekie submits that the findings of the court present an authoritative means by which this misreporting can be corrected. For this to be done, he argues, is strongly in the interest of the mother and the children.

44. On the question of timing, the mother's case, which is in line with that of the children's guardian, is that it is in the children's welfare interests for publication to take place now as this will have a significant positive impact on the welfare of the children and their mother and is likely to, contrary to the submissions of the father, enhance the prospects of re-establishing contact with him.

45. On behalf of the mother Mr Tim Otty QC made specific short submissions with respect to the assurances and waiver judgment. His primary submission was that the substance of this judgment, which concerns binding obligations in international law, does not have any real element of privacy about it. How, Mr Otty asks rhetorically, can these public statements on behalf of a Sovereign State and by the father with respect to his immunity under international law as the Head of Government of that State be kept private? Separately, in so far as these documents may be relied upon at any stage in the future, particularly if there is a security event relating to the children in this jurisdiction, the court's findings as to the legal impact of the assurances and waiver need to be freely available and known to the public authorities.

46. On behalf of the children's guardian, Ms Deirdre Fottrell QC argues in support of the publication of the fact-finding judgment, but no more. Despite the risk that publication of the judgment may cause harm to the children and will undoubtedly draw unwelcome attention to them, the balance, she submits, favours publication for three reasons:

    (1) The volume of material already in the public domain means that the judgment is not disclosing "new" information but does provide a vital correction to the existing narrative;

[redacted]

(3) The mother has been under some social, psychological and emotional pressure so as to cause her anxiety and stress which she considers may be alleviated by publication.

47. The guardian had at all previous stages expressed caution over the issue of publication. However, his recent engagement with the children and with the mother has caused him to change his position. He has been particularly struck by matters, including those set out in the mother's witness statement, which indicate the clear and stark psychological, social and emotional pressure that she has experienced as a result of the false narrative that presently exists. It is said that the sustained impact that this has had on the mother impinges directly on the welfare of the children.

48. [redacted]

49. In contrast to the mother, the guardian does not regard the publication of the assurances and waiver judgment as being necessary at this stage.

50. Despite the fact that the children's names are in the public domain, the guardian does not consider that it is necessary to name the children and he invites the court to specifically prevent their names being published. He is neutral on the question of publication of their age and gender.

51. The guardian is cautious with respect to permitting journalists to report upon what has transpired during the court hearings and to have access to the court's working documents.

52. In contrast to the positions of the other three parties, which are broadly in favour of publication at this stage (subject to the caveats raised by the guardian), the father's position is one of robust opposition to any form of publication at this stage in the court proceedings when the final comprehensive welfare evaluation has yet to take place and when, crucially, active steps are still being pursued to re-establish contact between the father and the two children.

53. Mr Desmond Browne QC and Mr Adam Speker focussed their clear and forceful submissions primarily upon the Article 8 issues and within that the welfare of the children. In contrast their written skeleton argument makes a number of short points with respect to Article 10 rights prior to its conclusion. During oral submissions to this court, Mr Browne made no reference at all to the media's Article 10 case.

54. Mr Browne was able to support his submission that the father had a well-grounded fear that publication at this point would fatally undermine or sabotage the prospect of contact, by reference to the cautious advice offered by the guardian to that effect at [redacted] earlier hearings.

55. Mr Browne sought to describe the likely impact of excoriating wall-to-wall international media and social media coverage if publication is permitted. There would be a likely direct consequence for the family by media attention at their home and wherever they go. Above all, a media storm would not be the optimum moment to attempt to re-establish contact between the children and their father. Mr Browne, therefore, urged the court to be cautious and to rely upon the guardian's earlier expressions as, he submitted, there was no new information to invalidate that cautious conclusion such that the earlier concerns of the guardian have in no manner been allayed.

56. [redacted]

57. Mr Browne argued that the welfare dimension with respect to publication is intrinsically linked with all other aspects of welfare and cannot easily be separated artificially from other welfare issues such as contact and schooling. [redacted]

58. Mr Browne challenged the reasons put forward by the guardian (and on his behalf Ms Fottrell) to justify his recent change of position. He submits that the points that the guardian now puts forward should all be fed into the overall analysis of risk and welfare which is to be undertaken in some weeks' time, and not hived off and considered separately now. In so far as the issue might be considered "delicate", to use the guardian's own word, Mr Browne submits that if the case is delicately balanced then there is all the more reason not to decide the binary issue of publication, with all that will follow, in the absence of a full and comprehensive welfare evaluation. For the contrary to be so, the case in favour of publication would need to be very strong indeed.

59. Separately, Mr Browne argued that it was premature to consider publishing the assurances and waiver judgment. [redacted] the father has not yet had the opportunity to give full instructions. As an issue, it is not urgent and need not be determined at this stage. It goes to the issue of overall risk and future contact, and

does not add anything to the case with respect to the publication of the fact-finding judgment.

60. The father's case was supported by an additional oral submission made on his behalf by Lord Pannick QC, who on a pragmatic basis described the likely procedural route that would follow a decision by this court to permit publication. The father would be likely to seek permission to appeal and would be entitled to be given at least 21 days to prepare an application for the Court of Appeal. The order in favour of publication would be stayed during that time and, if permission to appeal were granted, would continue to be stayed until an appeal were heard. Even if the appeal were brought on swiftly, the time between now and the likely welfare hearing would be largely consumed by the appeal process to the extent that publication would be most unlikely to occur before the children's guardian's main report and any further attempts at contact were made. Thus, any benefit that might be achieved by ordering publication at this stage would not be realised.

61. Lord Pannick concluded his submission by reinforcing the submission made by Mr Browne to the effect that publication would unleash a media frenzy which would impact upon the mother and the children in a highly negative way so that the family would very soon regret supporting the idea of publication. Once the genie is out of the bottle, Lord Pannick submitted, it cannot be controlled and the court should not therefore sanction publicity particularly at a time of such sensitivity with respect to the father's contact.

62. The father's fall-back case, as submitted by Lord Pannick, is that, if any publication is to occur, it should be limited to the judgments and no more.

Discussion

63. It is now necessary to conduct the ultimate balancing test, as described by Lord Steyn and, in doing so, apply an intense focus to the comparative importance of the specific rights being claimed in so far as it is necessary, on the facts of this case, to do so before considering the justification for any interference and the question of proportionality.

64. Standing back, and before turning to the detail, two aspects of this case are particularly and unusually striking. The first is the very strong arguments that are put forward in favour of respecting the freedom of the press under Article 10. In contrast to most cases before the family court, the findings of fact that have been made in these proceedings engage with issues which are of some international importance in terms of human rights and diplomacy and where, in particular, the United Nations has publicly expressed concern about the wellbeing of the two individuals who are at the centre of the principal findings that have been made. Ms Palin was able to pitch her submissions at a high level and in the strongest possible terms, yet it is of note that no party, in particular the father, has suggested that the media case on Article 10 is exaggerated or over-reaches that which might be justified on the facts. Indeed, those acting for the father have, perhaps understandably, simply not engaged with those submissions.

65. In these matters there can be no "trump" card and, strong though they be, the media submissions cannot, on their own, determine the outcome.

66. The second striking feature is that, despite the probable scale of any publicity, which is likely to be both extensive and sustained, the children's mother, who throughout their life has been their sole carer, strongly favours publication [redacted]

67. Turning then to focus firstly on the Article 10 case in favour of publication the reality is that I need say little other than to rehearse the submissions made by Ms Palin which are recorded at paragraphs 31 to 37. There is no reason to doubt the validity of each point that is made in support of the media's case. The findings of fact do indeed establish matters which are of genuine public importance and go well beyond the private lives of the four individual family members whose circumstances are the principal concern of these family proceedings.

68. Turning to the Article 8 rights of the parties, and affording primary consideration to the welfare of the children, the case before the court is plainly more balanced. The father's position in opposition is readily understandable. Indeed, in most cases it would be unremarkable. It is difficult to think of other private law cases concerning the welfare of children where it would be sensible to contemplate publication on even a modest scale of negative findings about a child's father at the very moment that the court is actively contemplating the delicate task of re-establishing the father's relationship with his daughter and son. The caution previously expressed by the children's guardian, and which is now at the core of the father's own position, is a caution that I, too, have shared during the earlier stages of these proceedings. The father's stance before the court on the issue of immediate publication is therefore one that attracts weight and certainly goes into the balance in favour of postponing any publicity at this stage.

69. Conversely, the mother's stance which is in total contrast to what one would expect in an "ordinary" family case, is to do all that she can to bring on the full glare of media and public attention so that the truth of her situation, as she sees it and as the court has found it to be, can be known to all.

70. In this regard, the mother's recent witness statement is of considerable importance and it is a matter to which I attach significant weight.

71. In this regard it is important to consider what the current baseline is. This mother and these children do not live in obscurity, where no-one knows of their circumstances or background history. On the contrary, much is thought to be "known" about them, but much of what is "known" has been demonstrated to be false by the findings of this court. It is not thus a question of moving the children and the mother from the shadows into the floodlight of publicity. It is, rather, a matter of refocusing the lens of publicity so that it includes the findings of the court in contrast to the falsehood that apparently currently holds sway.

72. It is clear that the level of publicity that presently surrounds this family, and is currently being experienced by the mother, is of a high degree. Many, if not every one, of the people that she and the children encounter will know something of her current circumstances and may well have a view about what they may understand to be her actions. She is already experiencing the power flowing from this large body of public opinion and her experience of it is highly negative. It even impacts upon her

relationship with members of her own family to whom she might otherwise be able to turn for support.

73. Mr Browne and Lord Pannick are correct in describing in graphic terms the force that might well be unleashed were these judgments to be made public. However, on the mother's case, which I accept, the landscape of public opinion needs to change so that it is more firmly founded on the true facts. If, by publicity, forces are unleashed so that there is some movement in the underlying tectonic plates, this is likely to benefit the mother and, because she is the children's sole carer, the children to a significant degree.

74. On that analysis, and in the wholly unusual circumstances of this case, I consider that widespread media publicity with the aim of presenting the facts as found by a judge in a court of law is a necessary step in order to meet the private and family life needs of the mother and the children. The purpose of publication is to correct the false narrative that has been generated and currently surrounds their ability to have any form of family, private or social life outside the immediate confines of their home.

75. I regard the Article 8 argument in favour of publication that I have described as being by far the most powerful in the balance. The children's wishes are important, but cannot hold a position of greater prominence or , otherwise, be determinative. [redacted]

76. [redacted]

77. [redacted]

78. [redacted] In that context, just as with the mother's overall Article 8 case, it is necessary to attempt to change the narrative landscape by introducing the detailed findings of fact made by this court into the public domain.

79. The father's own right to respect for private life under Article 8 is also engaged. He is, despite his prominent international position, I accept, an intensely private individual. Although no submission has been made in these express terms, I approach this decision on the basis that he is likely to view the prospect of the publication of these judgments as being profoundly unwelcome; shining, as they do, an intense light on certain aspects of his family and private life. Although the case on his behalf is argued entirely on the basis of the welfare of the children, I have nevertheless included consideration of the impact on his Article 8 rights as part of the exercise of applying intense focus to each of the elements in the ultimate balancing test.

80. Drawing matters together, it will be plain from the conclusions that I have now described that I regard the case in favour of publication as being strong to the extent of being almost overwhelming despite the weight that rightly attaches to the father's position [redacted] The Article 10 analysis, which is not challenged, goes way beyond the private interests of these family members and includes matters of genuine international public interest. In addition and at the same time the mother's Article 8 case in favour of publication is also extremely strong. Publication of the detailed findings of the court in a judgment which describes with clarity the evidence upon which those findings are made, offers some real prospect that those with whom the mother and children may mix, and, particularly, her family will have the material available to them to form a wholly different view of her than the one which apparently presently obtains.

81. In short, I consider that publication of the judgments is not merely desirable, it is necessary to meet the requirements not only of ECHR Article 10, but also Article 8.

82. On the question of timing it is impossible to contemplate, upon the analysis that I have now undertaken, that the fact-finding judgment would remain confidential for all time. The case for publication under Article 10 is in the strongest terms. Further, it is not possible to contemplate that the mother's position under Article 8 is likely to change at any stage.

83. The father's case on timing is that publication now would unleash a media storm precisely at the moment when the children's overall welfare is to be assessed and further attempts at re-establishing contact are to be made. He is, of course, factually correct in that regard. However, the same factors will be in play if publication is delayed for, say, eight weeks until the conclusion of the welfare hearing. If the lives of the children are to be upset by publicity, that upset will happen at a stage during the process of considering contact and attempting to reintroduce it because that very process is bound to occupy the next six months or more, if not longer.

84. I have previously voiced the tentative opinion that it may well be right for the question of publicity to be evaluated along with all the other welfare issues and only determined at the final hearing. That view is one to which the father adheres and, through counsel, firmly submits to this court should be the outcome. I, however, no longer hold to that view for three principal reasons. Firstly, it is clear that, whatever the other welfare determinations the court may make, publication of these judgments in the course of the next two or three months is inevitable. On that basis, nothing is to be gained by awaiting an overall welfare evaluation and a full report from the children's guardian. Secondly,

I accept the submission of Ms Palin that, with respect to Princess Shamsa and Princess Latifa and the implications that flow from the court's findings, the need for publication can be said to be urgent. Thirdly, the strength of the evidence in the mother's recent witness statement indicates that the need for publication in order to correct the negative narrative that surrounds the everyday existence of this mother and these children is also urgent and pressing. I repeat my observation that the baseline here is not of a family living in obscurity about whom nothing is known. Doing nothing, or postponing publication, allows for the continuation of the highly negative and harmful experience of living in circumstances in which all those with whom they have contact are likely to have been influenced by a largely false account of the mother's actions.

85. If publication of the fact-finding judgment is to take place, there is no principled basis for making a distinction between the fact-finding judgment and the assurances and waiver judgment. There is, however, an additional reason in favour of the immediate publication of the assurances and waiver judgment, namely that it will provide some measure of additional security for the protection of the children so that there is a high degree of clarity with respect to assertions that might be made on the ground by any individual who might attempt to abduct them and remove them from this jurisdiction. Without that clarity there is the potential for an individual to assert diplomatic or other form of immunity if challenged by, for example, the police. It is, therefore, both in the interest of the children and, also, the orderly operation of the security services, for this judgment to be readily available as soon as possible so that, to the extent that it may do, it provides real time protection for the children now, rather than at some stage in the future.

86. The order at the conclusion of this judgment will therefore be to permit the immediate publication of the fact-finding judgment and the assurances and waiver judgment. There is no basis for making the minor redaction with respect to the involvement of Z in one episode that has been requested by the father.

87. If the judgments are, therefore, to be published, and if one of the major objectives in ordering publication is to provide an authoritative account of the true facts relating to the actions of the father, the mother and the circumstances of the children, it is, in my view, an essential part of achieving that objective for the public to be allowed to have a full understanding, through responsible reporting, of the process before this court that has led to those findings. To do otherwise, and to keep the court process confidential, risks comment and questioning as to the underlying validity of the investigation that the court has undertaken.

88. I will therefore give leave for journalists who have been present at any of the relevant court hearings to report what they have observed. That permission will, however, be limited solely to matters that are relevant to the fact-finding determination and the court's analysis of the assurances and waivers. There will continue, for the present, to be an embargo on publication of any other matter that has been raised within the court hearings which is not directly relevant to the fact-finding or the analysis of the assurances and waiver.

89. I am, however, not persuaded that it is either necessary, or indeed, helpful for the preparatory documents to be released for publication. They have been available to the

journalists in order to assist them in their professional task. There is, in my view, a potential for confusion for the preparatory documents to be published alongside the court's final determination on the issues covered within those documents. It is hard to see what benefit could be obtained by parallel publication of the preparatory material. I therefore refuse the media's application in that respect.

90. This judgment will be handed down on Monday 27th January at 2.00pm. In order to allow time for consideration of any application for permission to appeal, but in view of the pressing need for publication at this stage identified within the judgment, a stay on the order permitting publication will be granted for 7 days. The stay will expire at 2.00pm on Monday 3rd February 2020, unless it is further extended either by order of this court or of the Court of Appeal.

91. Finally, it is necessary to deal with the question of identification of the children. The natural inclination of the court, indeed it is the default position under the law, is that the identity of children involved in family proceedings should not be identified. In this case, however, given the wide knowledge that exists concerning this family and the ready access there is to the names, ages and gender of the children on the internet, it is wholly artificial for the court to prohibit disclosure of this information in connection with these proceedings if the fact-finding judgment is to be published. Indeed, part of the rationale in favour of publication is to provide a level of increased protection for the children and this will be less effective if there is doubt as to their identity. I will therefore give permission for the names, ages and gender of the children to be published.

92. It is important to stress that the relaxation afforded by publication of names, ages and gender does not extend to other identifying material which will remain covered by CA 1989, s 97(2) so that, in particular, a prohibition remains on publishing any still or moving image of the children which is intended, or likely, to visually identify the children as being the children involved in these proceedings; and on publishing any material which is likely to identify the address or school as being that attended by the children involved in these proceedings.

93. The issues listed at paragraph 14 of this judgment are therefore resolved as follows:

(a) the fact-finding judgment is to be made public;

(b) the assurances and waiver judgment is to be made public;

(c) upon publication of the fact-finding judgment there will be no prohibition on the children being identified by their name, age and gender. Other prohibitions on identifying the children by photographic or other image, or by identifying their residence or school remain in force;

(d) the working documents prepared by the mother's legal team to assist the court process are not to be published;

(e) the journalists who have sat through the court hearings are permitted to report what they have observed taking place in court only insofar as that reporting concerns the proceedings directly related to the fact-finding judgment or the assurances and waiver judgment.

There is a stay on this order taking effect until 2pm on Monday 3rd February to allow time for consideration of any appeal.