[2017] AACR 28

(Adams v Secretary of State for Work and Pensions and Green (CSM)
[2017] UKUT 9 (AAC))

Mr Justice Charles CP **CCS/2116/2013**
13 February 2017

Tribunal procedure and practice – anonymity – whether practice of anonymising decisions appropriate

The appellant had appealed to the Upper Tribunal (UT) against the assessment of his liability for child support maintenance and, in accordance with its usual practice, the UT had anonymised the names of the parties and referred only to the child's forenames in its decision: *CA v (1) The Secretary of State, (2) EG (CSM)* [2014] UKUT 359 (AAC). Its practice represented a default judicial approach as the UT had not made an order prohibiting publication of the names of the parties involved in the proceedings under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The appellant appealed against the UT's practice, arguing that subject to exceptional circumstances all litigants had a common law right to insist on no anonymisation of cases, particularly those heard in public, unless it was removed by primary legislation. Before the UT could consider that appeal the *CA* decision was published on the Fathers4Justice website in an unanonymised form and the UT issued an interim anonymity order under rule 14 requiring the decision to be taken down. Among the issues before the UT was whether a final anonymity order should be made and whether it should continue its practice of anonymising parties in child support cases.

Held, allowing the appeal, that:

1. the fundamental common law principle was applied to promote, and therefore was qualified by, the promotion of the public interest on which it was founded and so it had always been recognised that in some limited circumstances the interests of justice would be better served by a private hearing or anonymisation (with or without a reporting restrictions order) and so a litigant could not insist on a public hearing and unanonymised publication (paragraph 49);

2. when a court was determining an open justice issue by weighing competing Convention rights it must have regard to the fundamental common law principle of open justice and the weight given to it, and thus the public interest reasons for it, by the courts in England and Wales. The exercise was fact and circumstance sensitive and, on this approach, a departure from open justice must be justified. Accordingly, an approach of the UT that was based primarily on an analogy with that taken by the Family Courts or the Court of Protection at first instance would be wrong (paragraphs 66 to 67);

3. the UT concluded that in this case there should not be a final anonymity reporting restriction order having decided that the interests of open justice outweighed the harm arising from embarrassment, worry or distress to the child (and his mother) subject to extending the existing anonymity order for a limited time to enable the current position to be preserved if there was an appeal (paragraphs 101 to 102);

4. the UT's practice of anonymising decisions would continue on the basis that it was explained to all the parties to the appeal that, subject to further order by the UT, the practice of anonymising decisions would only be applied if no party objected to it, and (i) that its effects were that: (a) non-parties who obtained decisions either directly or indirectly from the UT would do so in an anonymised form, and (b) if someone asked the UT for the identity of the anonymised persons the parties would be notified and given an opportunity to object, (ii) that the UT's practice did not prevent publication by a party or anyone else of the identities of the individuals involved in the case, and accordingly (iii) if a party wanted an injunctive order they should ask for one (paragraphs 127 to 132).

DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

Subject to further order of the Upper Tribunal or the Court of Appeal:

(1) On 15 February 2017

(a) this decision, and

(b) the decision of Upper Tribunal Judge Turnbull presently reported as *CA v (1) The Secretary of State, (2) EG (CSM)* [2014] UKUT 359 (AAC)

will be published on the UT(AAC) database in an unanonymized form.

(2) The injunctive order made on 22 June 2016 is continued to but will end at 9.30 am on 15 February 2017.

REASONS

Introduction

1. The appellant (Mr Adams) and the second respondent (Miss Green) have a son Nicholas (N) who is now 15. For most of N's life his parents have been in litigation about him. That litigation (the Family Litigation) has been hard fought and has given rise to very strong feelings on both sides. It has ranged over a number of issues to be decided under the Children Act 1989. I understand that those maintenance proceedings are continuing.

2. I do not know and do not need to know the details of the Family Litigation. I am grateful to both Dr Pelling and Mr Holden for representing the parents on this application. Without them the dynamics of the relationship between the parents and their attitudes would have made a hearing that focused on the issues extremely difficult if not impossible.

3. The appeal to the Upper Tribunal (Administrative Appeals Chamber) UT(AAC) was made by Mr Adams, as the non-resident parent, against a decision of the First-tier Tribunal (F-tT) made on 28 March 2011 that Mr Adams was liable to pay child support maintenance in the sum of £57.14 per week from April 2009. The appeal was heard by Upper Tribunal Judge Turnbull and his decision is reported on the UT(AAC) database as *CA v (1) The Secretary of State, (2) EG (CSM)* [2014] UKUT 359 (AAC) (the Turnbull Decision). The (CSM) in that title identifies that the Turnbull Decision relates to child support maintenance. And the title reflects the practice of the UT(AAC), which I describe later, to anonymize such decisions on its database and in its records. Judge Turnbull did this by anonymizing the names of the parents and referring to the child by his forename. This application concerns:

i) Mr Adams's challenge to that practice of the UT(AAC), which he argues is unlawful, and

ii) whether in this case an anonymity order (and so a reporting restrictions order) should have been made as an interim order and whether it should now be made as a final order.

4. The core of the Turnbull Decision was that the First-tier Tribunal (F-tT) had erred in law in its approach to the application of regulation 18(1)(a) of the Child Support (Variations) Regulations 2000 (SI 2001/156) (the Regulations) then in force which applied to an asset: "*in which the non-resident parent has a beneficial interest, or which the non-resident parent has the ability to control*". Judge Turnbull decided that the reference to a beneficial interest in that regulation encompassed the interest of a beneficiary under a discretionary trust, and so the interest of Mr Adams under such a trust. For that and other reasons Judge Turnbull remitted the appeal to a freshly constituted F-tT for redetermination. My understanding in

October 2016 was that that hearing, and other appeals relating to child support maintenance between the parties, had not yet taken place.

5. Mr Adams:

i) sought permission to appeal the Turnbull Decision, and

ii) challenged its publication in an anonymized form (and this challenge has been referred to as the Open Justice Issue).

6. Permission to appeal was refused by Judge Turnbull, then on paper by Elias LJ and then, following a hearing, by Sales LJ. In refusing permission to appeal the Court of Appeal did not deal with the Open Justice Issue. I gave directions that it was to be heard by me rather than Judge Turnbull. A hearing took place before me on 22 June 2016. The injunctive order I made and the judgment I gave on that day are set out in Parts A and B of the Schedule hereto.

7. As appears from that judgment and order, the Turnbull Decision had been published on the Fathers4Justice website in an unanonymized form. The hearing on 22 June 2016 was held in public and some members of the public attended. Miss Green attended for a very short time but left leaving Mr Holden to represent her. After it, a number of further applications were made but I refused to make any substantive orders on the basis that the applications could and would be dealt with at the hearing on 6 October 2016. At that hearing, Miss Green again only attended for a short time. As at the earlier hearing in June, Mr Adams attended throughout.

8. At an early stage of the hearing it was agreed that all assertions of fact made during submissions would be treated as evidence given on oath and that there was no need for those asserting them to confirm them on oath from the witness box. The media had been informed of the hearing but no media representative or member of the public attended. I informed Dr Pelling and Mr Adams that if members of the public attended but refused to identify themselves as persons who had been notified of the injunction, I would not spend time on that issue but would hold the remainder of the hearing in private and give my decision in public.

9. Miss Green, through Mr Holden, indicated that she was no longer seeking to pursue any committal application in respect of the original and continuing publication on the Fathers4Justice website. Nonetheless, Mr Adams and Dr Pelling continued their stance of exercising their right of silence in connection with that publication and the issues of fact relating to how those responsible for putting the Turnbull Decision on that website in an unanonymized form had obtained a copy of the Turnbull Decision and the identities of the parties to it.

10. I indicated that I would give my reasons for my announced conclusions on the preliminary and other applications in this decision.

Preliminary and other applications

11. These were:

i) An application by Mr Adams that I should recuse myself or direct that this application should be heard by a three-judge panel comprising myself and two

other High Court judges (one from the QB Division and one from the Chancery Division).

ii) An application by Miss Green that Dr Pelling should not be permitted to represent Mr Adams.

iii) The request made in a letter from N that I should speak to him. This was supported by Miss Green and opposed by Mr Adams.

iv) The application by Mr Adams that N be joined as a party. The basis of this application was that it was N's Convention rights that were being relied on and so, as the relevant victim, he was a necessary party.

v) An application to discharge the injunctive order I made against Dr Pelling on 22 June 2016.

Recusal/Three-Judge Panel

12. I refused to recuse myself without calling on Mr Holden or counsel for the Secretary of State. As the application did not seek to exclude me from the three-judge panel it seems that it was acknowledged that the bias alleged against me could be sufficiently watered down by me sitting with two other judges. The matters alleged were:

i) As I had been a judge of the Family Division for a number of years and I am the Vice President of the Court of Protection there was a plain risk of apparent and even actual bias arising from what amounts to an obsession in the Family Division and the Court of Protection with anonymity in any case which involves a child (directly or indirectly) and indeed, in any case, involving adults who are in or have been in some form of family relationship or who may be regarded as in some sense vulnerable. In this context, reliance was placed on passages in the judgments in *Re G (Celebrities: Publicity)* [1999] 1 FLR 409 which referred to what Hoffmann LJ said in *Mrs R v Central Independent Television* [1994] Fam 192 about the inevitable tendency for a Family Division judge at first instance to give too much weight to welfare and too little weight to freedom of speech.

ii) I had shown pre-judgement and bias:

a) in my oral judgment at the hearing on 22 June 2016 by castigating the lawful publication of the Turnbull Decision in an unanonymized form as irresponsible and as "*stealing a march*",

b) in my observations in my order dated 8 June 2016, where I stated that Miss Green had drawn to my attention that Mr Adams and Dr Pelling have published the Turnbull Decision in an unanonymized form and comments on a website known as Fathers4Justice,

c) by making an injunction on 22 June 2016 against Dr Pelling although in my judgment given on 22 June 2016 I had recorded that there was no explanation as to how Fathers4Justice got the unanonymized version of the Turnbull Decision, and

d) by requiring members of the public who attended the hearing on 22 June 2016 to give their names and addresses.

13. It was also submitted that my decision in *V v Associated Newspapers Ltd & Others* [2016] EWCOP 21 did not give Mr Adams any confidence because it was arbitrarily and wrongly decided and, in particular, did not mention the common law.

14. Point (i). In my view, this does not warrant my recusal or the creation of a three-judge panel. The warning relied on is well made and well known and so is something that any judge of any Division and background should take into account. I do not accept that the obsession asserted exists and, in any event, what matters is the reasoning for any relevant judicial decision.

15. Point (ii). In my view, taken alone and together with the other matters relied on it does not warrant my recusal or the creation of a three-judge panel. Read in context points (a) and (b) do not show any pre-judgement or bias.

16. Point (ii)(c) relates to:

i) who was responsible for providing Fathers4Justice with the unanonymized version of the Turnbull Decision and for writing the comments on it which include, as submitted by Dr Pelling orally, that the point decided is somewhat arcane, and

ii) who could do something about getting it removed from the website.

17. Dr Pelling submitted in exchanges between us on 6 October 2016 that I was relying on *ex post facto* justification in relation to such matters. I do not agree. This submission of Dr Pelling followed my indication that the obvious and most likely providers of the unanonymized version of the Turnbull Decision were, absent any alternative explanation from them, Mr Adams and/or Dr Pelling.

18. I can understand why the attitude of Miss Green means that Mr Adams and Dr Pelling do not wish to provide any such explanation or any likely alternative source. But, in my view, this means that the evidence leads to the almost inevitable inference that they (or one of them) provided the information and comments to Fathers4Justice.

19. It is also clear on the evidence, and so far as I am aware undisputed, that:

i) both Dr Pelling and Mr Adams have had dealings with Fathers4Justice. Indeed Mr Adams, when addressing me directly, made it quite clear that he would try to get Fathers4Justice to make further publication of matters he wanted in the public domain, and

ii) Dr Pelling has been helping and advising Mr Adams for some time in connection with his litigation against Miss Green about their son, N.

To my mind, these points mean that there is an obvious possibility that the entries relating to the Turnbull Decision on the Fathers4Justice website might be removed if they asked for this to be done.

20. This possibility, and the assertion made by both Mr Adams and Dr Pelling that they had no control over what was put on and left on the Fathers4Justice website, are reflected in the terms of the order I made.

21. In my view, although he is not a party, Dr Pelling's connection with Mr Adams and his part in this case (and other cases) between Mr Adams and Miss Green warranted the order being made against him as well as Mr Adams. His submission that I might as well have made the order against Miss Green or Mr Holden or any third party is unconvincing because, so far as they are concerned, an evidential link to the publication, and the possibility of getting it removed, do not exist as they do with Dr Pelling.

22. If Dr Pelling's case is that he only acted, and could only act on, instructions from Mr Adams that would have an impact on the steps he was required to take, namely those that were practically open to him.

23. The taking of names and addresses of the members of the public who attended was to identify the persons who were notified of the injunction.

24. As explained in my judgment given on 22 June 2016, the interim order was to maintain the status quo in line with the responsible stance taken at the earlier stages of the case that the Open Justice Issue, and so the publication of the names of the parties, would be determined by the tribunal and not pre-empted.

Dr Pelling's representation of Mr Adams

25. I had rejected the same application on 22 June 2016. Its repetition was asserted to be on additional grounds. The heart of them was that Mr Adams was acting as Dr Pelling's puppet or pawn to promote Dr Pelling's own agenda and that, for this purpose, Dr Pelling pushed the boundaries as to what he put into the public domain. I will return to the second point in the context of whether there should be an anonymity order in this case. In my view, although put a little differently that second point is not a new point and the reasons I gave on 22 June 2016 for permitting Dr Pelling to represent Mr Adams apply to it.

26. In my view, the written evidence shows clearly that Mr Adams has a mind of his own and is not Dr Pelling's puppet or pawn. After I had indicated my refusal of this application, this was strikingly demonstrated by Mr Adams's own oral submissions, which he made notwithstanding Dr Pelling's sensible discouragement. I shall return to these submissions when addressing whether or not to make an anonymity order.

Speaking to / evidence from N

27. He did not attend on 6 October 2016. This issue was raised on 22 June 2016 and is commented on in my judgment given on that day. It is clear and undisputed that N is a "Gillick competent" child who had made a witness statement dated 21 June 2016. In his letter to me dated 17 September 2016 he says that:

> "I would like to meet with you to speak about the issues with my mother and father, to see perhaps if you could help me. It would only take a few minutes of your time."

It goes on to refer to what he is doing at school and so his availability.

28. Mr Adams confirmed that he wanted N to be cross examined if he was to give any oral evidence and opposed him speaking to me privately. Dr Pelling did not want to indicate what the cross examination would be about as this might reduce its effectiveness.

29. I indicated that I would not see N in private and would not hear oral evidence from either Mr Adams or Miss Green. After I had indicated this Dr Pelling informed me of the points he would have wanted to put in cross examination and I return to these and the issues underlying them when addressing the making of an anonymity order.

30. It was clear from his statement and his letter that N was raising potentially wide ranging issues which were highly contentious as between his parents particularly in respect of the influence his parents have and have had on N. However, from a neutral standpoint, N was making understandable points. For example, in the last paragraph of his statement dated 21 June 2016 where he said:

> "Sometimes I despair that proceedings about me will never end as when the proceedings about residence and contact ended it was a relief … I would like to ask the Judge if there is any power to do so that these proceedings and any other proceeding should be stopped so that I can just get on with my life"

31. Clearly publication of the names of the parties to the Turnbull Decision, and so of N who is referred to in it by his forename, could have an impact on this understandable goal. It is also readily understandable that, like his parents, N has regard to the whole of the family history and so any questioning of him or of them would raise issues about aspects of that history.

32. In my view no meeting should take place between me and N without it being recorded in full and so it could not be a private meeting. Also, unless N simply made an oral statement at that meeting it would be necessary for there to be some probing by me of the validity his views and the reasons for them by putting points to him identified by the parties and myself. To my mind, an oral statement would add little or nothing and it is unlikely that any such probing would be informative on the issues I have to decide. Rather, it would be likely to introduce issues that both parents would want to have a say about which would relate to the antagonistic history and so matters that I would have to treat as allegations.

33. So, in my view a meeting between me and N would be unlikely to add value and, if I was to hear from him orally, it should be by him giving evidence which for understandable reasons he was reluctant to do. Further, if he was to give that evidence and be cross examined there was a real prospect that fairness would require that both Mr Adams and Miss Green should also give oral evidence. To my mind, the following factors:

i) the high prospect that oral evidence would range over irrelevant issues and cause all who gave it unnecessary distress,

ii) the likelihood that such evidence would not enable me to make findings of fact that would be directly relevant to the issues whether the Turnbull Decision should be published in an unanonymized form and an anonymity order should be made and so would only introduce allegation and counter allegation,

iii) the likelihood that such evidence would not go beyond confirming opinions already expressed and which could be challenged effectively in argument, and

iv) more generally the likelihood that such evidence would not add value

found the conclusion that I should not hear any oral evidence.

Making N a party

34. This was addressed on 22 June 2016. Mr Adams made the application on a basis that was not then addressed, namely that as N was the relevant victim N had to be a party. Dr Pelling argued that this was a necessary step and made it clear that it was not a back-door route to engaging or embroiling N in this application. In this context, he accepted that N's argument, as the victim, could be advanced by others.

35. The point is therefore closely linked to the substantive argument on whether I should make an anonymity order and I will deal with it in that context.

The discharge of the injunction against Dr Pelling

36. . This was taken as a free standing preliminary point in contrast to the continuation of the injunction made against Mr Adams. As a free standing and preliminary point I reject this application for the reasons given in [16] to [24] above.

What this application is not about

37. The issue whether there should have been a public hearing does not arise. This is because the hearing before Judge Turnbull was held in public and thus in accordance with the default position set by Rule 37(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules) (SI 2008/2698). It is also likely that that hearing was listed using the names of the parties because this is the usual practice. It is also the case that the hearing before Sales LJ was in public and his order contains the names of the parties.

The core of Mr Adams's argument that the Turnbull Decision should not have been published by the UT(AAC) in an anonymized form and no anonymity (reporting restrictions) order should be made

38. His core argument is founded on the application of the fundamental common law principle of open justice. Pursuant to that principle cases are heard in public and full, fair and accurate reports naming those involved can and should be published (see, for example, Lord Diplock in *A-G v Leveller Magazine* [1979] AC 440 at 449H to 450C).

39. It was correctly accepted by the Secretary of State that both the anonymization of a published judgment and anonymization orders are exceptions or derogations from that principle of open justice.

40. Mr Adams argued that this common law principle created a human right or fundamental freedom and so a right that:

i) was not destroyed or replaced by the ECHR, and so a right that

ii) he is entitled to insist on pursuant to section 11 of the Human Rights Act 1998 (the HRA) and Article 53 of the ECHR.

Indeed, he argued that the failure of the courts to mention those provisions in cases where they have permitted private hearings, or decided cases by reference to the balance between competing Convention Rights or public interests, have been decided *per incuriam*. In particular it was asserted that this was the case in the leading and regularly applied decision of the House of Lords in *Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47; [2005] 1 AC 593 which decided that the relevant approach to restraining publicity (and so to anonymization) was now to balance Article 8 and 10 rights and that the earlier case law about the existence and scope of the inherent jurisdiction in this context need not be considered.

41. I do not accept this argument. The reason for this is that, although the fundamental common law principle of open justice is not a procedural rule (see *Al-Rawi* at [11] cited below) it does not create a right or freedom that litigants can insist on or waive as they can, for example, insist on or waive legal professional privilege.

42. It is made clear in *Scott v Scott* [1913] AC 417 (see for example Viscount Haldane at 436) that a court or tribunal cannot rely on an agreement of the parties to sit in private. This shows that the fundamental open justice principle is not founded on private rights but on the public interest in the due administration of justice (see, for example, Lord Diplock in *A-G v Leveller Magazine* at [1979] AC 450C where he says that the purpose of the general rule (set out in *Scott v Scott*) is to serve the ends of justice).

43. It follows from this foundation of the common law principle of open justice that even if it can be said to create a right or freedom it is not an absolute one that individuals can insist on and it has always been one that the court or rule maker could apply in a way that was opposed by a party.

44. It is also important to remember that as the principle is a common law principle it is founded on and forms part of a living system of law. This means that the courts can adapt it to the varying conditions of society and to the habits of the age in which we live to avoid the inconsistencies and injustice which arise when the law is no longer in harmony with the wants and usages and interests of the generation to which it immediately applies (see *Wilson v Walter* 4 QB 73 (1868) *per* Cockburn CJ at 93 cited with Duhaime's Law Dictionary).

45. So, and although in that case Cockburn CJ was addressing something that had not previously been addressed relating to the report of proceedings in Parliament, as a matter of common law and precedent the approach in *Scott v Scott* falls to be applied against the current law and conditions of society including the entry into our law of the HRA. The approach of the House of Lords and the Supreme Court in respectively *Re S* and *R(C) v the Secretary of State for Justice* [2016] UKSC 2 and in particular the passages from them cited in my decision in *V v Associated Newspapers Ltd & Others* [2016] EWCOP 21 at [71] and [92], are examples of this approach and these cases were not decided *per incuriam* by the House of Lords or the Supreme Court.

46. In argument, the ability of a court or tribunal to take such an approach, and so to depart from the principles of open justice or aspects of it, was correctly accepted by Dr Pelling on behalf of Mr Adams by his acceptance that in certain circumstances (eg danger of physical harm to a parent) injunctions preventing the disclosure of where a person lives can and should be granted. In accepting that, Dr Pelling was accepting that a litigant does not have a common law right that he can insist on in all circumstances.

47. However, Dr Pelling made it clear that he did not accept that the involvement of a child in cases relating to child support maintenance, or any of the particular circumstances of this case, warranted any departure from any aspect of the open justice principle.

48. And so he also made it clear that Mr Adams's position was that subject to exceptional circumstances, which did not exist here, Mr Adams and all litigants had a common law right that they could insist on that there should be no anonymization of cases, and particularly of cases heard in public, unless it was removed by primary legislation in clear terms. For the reasons I have given I do not accept that Mr Adams has such a right.

49. In my view the fundamental common law principle is applied to promote and so is qualified by the promotion of the public interest on which it was founded and so it has always been recognized that in some limited circumstances the interests of justice would be better served by a private hearing or anonymization (with or without a reporting restrictions order) and so a litigant cannot insist on a public hearing and unanonymized publication.

The application of the common law principle of open justice and the HRA and so the bases upon which the UT(AAC) applies them

50. Rule 37(2) and Rule 14 of the UT Rules provide respectively that the UT can sit in private and can make injunctions prohibiting the disclosure or publication of documents and information relating to the proceedings or any matter likely to lead members of the public to identify any person whom the UT considers should not be identified. These rules are made pursuant to the enabling power in section 22 of and Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (the 2007 Act). Paragraphs 7 and 11 of the Schedule are of particular relevance as they expressly provide that the UT Rules may provide that hearings can be in private and for the non-disclosure of information.

51. Mr Adams argues that these powers could not be validly granted, or are not available or cannot be used to remove his common law right. He does so in reliance on the principle that common law rights can only be abrogated by statutory provisions in the clearest terms. This reliance is misplaced because:

i) the relevant Rules do not purport to do anything other than grant a power in general terms as authorised by the primary legislation,

ii) the open justice principle does not confer common law rights upon individual litigants that they can insist on in all circumstances, and

iii) as the powers conferred by the UT Rules are in general terms, their exercise is based on the exercise of a judicial discretion that must take into account and apply the relevant common law and other principles and factors (including Convention rights).

52. The position is therefore that the UT(AAC) applies the principle of open justice and the relevant Convention rights in accordance with the authorities that have given guidance on this over the years.

53. I agree with Mr Adams that these cases show that:

i) the principle of open justice is a fundamental and very important one,

ii) no judge should depart from it without proper regard to its importance and the public interest on which it is founded, and

iii) no judge has "a general and arbitrary discretion to give privacy rights to parties or children whenever it feels it would be nice to do so, or to avoid supposed discomfort or embarrassment".

Rather departure from the principle of open justice must be based on a proper assessment of the relevant competing factors.

54. An example of the strength and importance of the principle is found in the judgment of Lord Dyson in *Al-Rawi v Security Service* [2012] 1 AC 531 at [10] and [11] where he said:

> "10. There are certain features of a common law trial which are fundamental to our system of justice (both criminal and civil). First, subject to certain established and limited exceptions, trials should be conducted and judgments given in public. The importance of the open justice principle has been emphasised many times: see, for example, *R v Sussex Justices, Ex p McCarthy* [1924] 1 KB 256, at p 259, per Lord Hewart CJ, *Attorney General v Leveller Magazine Ltd* [1979] AC 440, at pp 449H-450B, per Lord Diplock, and recently *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2) (Guardian News and Media Ltd intervening)* [2011] QB 218, paras 38-39, per Lord Judge CJ.
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> 11. The open justice principle is not a mere procedural rule. It is a fundamental common law principle. In *Scott v Scott* [1913] AC 417, Lord Shaw of Dunfermline (p 476) criticised the decision of the lower court to hold a hearing in camera as 'constituting a violation of that publicity in the administration of justice which is one of the surest guarantees of our liberties, and an attack upon the very foundations of public and private security.' Lord Haldane LC (p 438) said that any judge faced with a demand to depart from the general rule must treat the question 'as one of principle, and as turning, not on convenience, but on necessity'."

55. An aspect of that approach is that anonymization of a report of a hearing in open court, or of a judgment relating to a hearing in open court, is a departure from the default position founded on the public interest and so the burden of justifying that departure falls on the person seeking that anonymization.

56. In this context, I agree that [49] of the judgment of Thorpe LJ in *Dr Pelling v (1) Mrs Bruce-Williams and (2) the Secretary of State for Constitutional Affairs* [2004] EWCA (Civ) 845 shows that this justification is needed. After discussing the practice of the Court of Appeal, explained in *Re R (Minor) (Court of Appeal: Order against Identification)* [1999] 2 FLR 145, of including a standard and automatic reporting restrictions order in its orders in any child case, Thorpe LJ said:

> "49. In our judgment the only successful attack directed by Dr Pelling on the judgement of this Court in *Re R* is his third. We accept the submissions of the Crown that the time has come for the court to consider in each case whether a proper balance of competing rights requires the anonymization of any report of the proceedings and judgment following a hearing that was conducted in public and therefore open to all who cared to attend."

I have not investigated the extent to which the acceptance of this submission made on behalf of the Crown represents the current practice of the Court of Appeal in such cases when, as it generally does, it hears them in public.

57. If the present practice and default position of the Court of Appeal is to make a standard anonymity (reporting restrictions) order rather than one on a case by case basis, in my view this is a demonstration of a default position flowing from the way in which the relevant competing factors generally present in such cases have been weighed by that court, and so it does not undermine the point that anonymization should not be automatic or inevitable because a case relates to issues concerning a child under the Children Act that was heard in private at first instance. *A fortiori* that is the case when the hearing at first instance has been in public.

58. Cases concerning financial relief on a divorce have been described by Mostyn J in *DL v SL* [2015] EWHC 2621 at paragraph 11 as proceedings that are "quintessentially private business", and so they are protected by the anonymity principle he describes. I do not accept that financial relief cases should be so categorised and as a result be treated as cases in which the right to privacy will always or generally trump the right to unfettered freedom of expression. Indeed, it seems to me that the regularity with which the Court of Appeal names the parties to financial relief proceedings of the type before Mostyn J, and thereby indirectly identify the children of the divorcing couple, shows that the principle described by Mostyn J does not apply to them, even if it exists and forms part of the foundation for the default position at first instance under the relevant Rules.

59. Additionally, I do not accept that for the purpose of categorising the privacy, or degree of privacy, of their subject matter, and so whether they should be heard in private that financial relief proceedings on a divorce are significantly different to many other types of proceedings in which financial relief is sought and given. Indeed in *White v White* [2001] 1 AC 596 and so a leading ancillary relief case in which the higher courts named the parties, the husband and wife were business as well as matrimonial partners and, in my view, there are considerable similarities between the private nature of the issues in ancillary relief proceedings, partnership, private company, trust and probate disputes. Also they are all effectively adversarial processes between adults about money.

60. In any event, the practice of the Court of Appeal of naming the parties in financial relief proceedings shows that when the default position is that the hearing at first instance (or on appeal) is in public the categorisation of its subject matter as "private business" does not found the making of an anonymity order.

61. In my view, what the authorities and matters relied on by Mostyn J show is that in giving effect to the common law principle of open justice and the relevant Convention rights either when making a Rule about or exercising a judicial discretion on:

i) whether a hearing should be in public or private, and

ii) if in public, on what, if any, anonymity (with or without reporting restrictions order) there should be

the decision-maker should carry out an appropriately intense examination of the competing factors.

62. I set out my reasoning for this conclusion in *V v Associated Newspapers and Others* and point out that there is a staged process that can found a general default position (and so a default Rule for public or private hearings) but such a Rule is not the end of the matter. I also point out that the default Rule represents the outcome of the weighing exercise on what generally promotes the public interest in the administration of justice in the type or category of case to which it applies (see [9], [69] to [78], [90] to[96]).

63. So although a conclusion on a default position in certain categories of case can be said to mirror Mostyn J's "anonymity principle" inn *DL v SL*, because it is based on a conclusion that in those categories of case the balance falls in favour of private hearings, I consider that in weighing the competing factors at both stages it is important to remember and take into account:

i) the common law principle of open justice and its importance (see the citation from *Al Rawi* above), and

ii) the approach taken in *Scott v Scott* to secret processes in contrast to "wards and lunatics". As to the latter weight was placed on the paternal (now investigatory) jurisdiction involved which did not arise in respect of the private nature of the nullity proceedings in *Scott v Scott* (which it was held should not be heard in private) whereas the burden of displacing an open hearing in respect of secret (and so private or confidential) subject matter was based on the different footing of necessity to avoid the destruction of the subject matter of the dispute by publicity.

64. The weighing exercise is now based on Articles 8 and 10 rather than the inherent jurisdiction (see *Re S*). But this does not mean that the analysis begins and ends with the Strasbourg case law.

65. As explained by Lord Reed in [54] to [63] of his judgment in *R(Osborn) v Parole Board* **[**2013] UKSC 61; [2014] AC 1115 the decision-maker should consider how the fundamental rights and freedoms guaranteed by the Convention are provided by the common law, the development of which did not end with the passing of the HRA.

66. In my view, the approach set out by Lord Reed under which the courts endeavour to apply and, if need be, develop the common law, and interpret and apply statutory provisions, so as to arrive at a result which is in compliance with the UK's international obligations (see [62]), has the consequence that when the court is determining an open justice issue by weighing competing Convention rights it must have regard to the fundamental common law principle of open justice and the weight given to it, and thus the public interest reasons for it, by the courts in England and Wales. The exercise is fact and circumstance sensitive and, on this approach, a departure from open justice must be justified.

67. This means that an approach of the Upper Tribunal that was based primarily on an analogy with that taken by the Family Courts or the Court of Protection at first instance would be wrong. Further, and in any event:

i) the default position in a child support maintenance case in the F-tT (SEC) and the UT(AAC) is that the hearing is in public, and

ii) child support maintenance cases are based on a statutory regime as opposed to any paternal (now investigatory) jurisdiction and are effectively adversarial proceedings about the amount of money that is payable by one parent to the other under that regime.

Should I make a final anonymity (reporting restrictions) order?

68. I deal with this before addressing the practice of the UT(AAC) of anonymizing its decisions because the answer overrides or determines the application of that practice in a particular case.

69. The existing anonymity order is an interim order that preserves the ability of the parties to argue their respective positions.

Preliminary point

70. Dr Pelling argued on behalf of Mr Adams that no injunction could be made in reliance on the Article 8 rights of the child (N) without the child being a party because the child was the victim referred to in section 7 of the HRA. I do not agree. The injunction is not being, and does not have to be, sought under section 7 of the HRA. Rather, Miss Green and the Secretary of State rely on section 6 of the HRA and so the point that the court, as a public authority, cannot act in a way that is incompatible with a Convention right and so a Convention right of the child (N).

71. In my view, the effect of section 6 is that the UT(AAC) cannot act in a way, or enable others to act in a way, or fail to take steps to prevent others acting in a way, that, after the appropriate weighing exercise, would breach the child's Article 8 rights whether or not he is a party. So he need not be joined to enable him, or another party (and so Miss Green and the Secretary of State) to seek an anonymity order based on his Article 8 rights (by analogy see *Beoku Betts v Secretary of State for the Home Department* [2009] AC 115 and *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166).

The basis of the argument advanced for an anonymity order

72. The argument has been based on the harm that publication of the identity of the parties and so of the child would do to the child and so his Article 8 rights.

73. In my view, the nature of the issues in and so the evidence relevant to the child support maintenance proceedings in this case means that it cannot be, and it has not been, argued that unanonymized publication would harm or prejudice the administration of justice in the actual conduct of these child support maintenance proceedings. This is important and a distinction between this case, and others like it, relating to or that affect children in which this argument arises.

74. The primary legislation that governs the child support maintenance payments that are in dispute imposes statutory confidentiality (see section 50 of the Child Support Act 1991). In my view correctly, this statutory confidentiality as between citizen and the State, and the Article 8 rights of Miss Green have not been relied on to found the injunctive relief sought.

75. Also, and in my view correctly, the privacy and confidentiality of the Family Court hearings relating to Mr Adams, Miss Green and their child and the statutory provisions

relating to them (eg section 97 of the Children Act 1989 and section 12 of the Administration of Justice Act 1960 as to which see *Clayton v Clayton* [2006] EWCA Civ 878; [2007] 1 FLR 11) have not been directly relied on. Rather, what has been relied on are the risks that named publication of the decision in these proceedings and discussion and comment on it will cause harm to the child by:

i) including disclosure of issues in the Family Litigation, or

ii) prompting the child to think that, and so to react on the basis that, such issues are being disclosed.

76. Further, and in any event, it is asserted that the child will suffer harm and distress if publication is limited to the issues in the child support proceedings and he is aware of that.

77. The risk that issues in the Family Litigation will be disclosed is directed at both Mr Adams and Dr Pelling. I agree that, contrary to their positions, there is a risk that both of them may stray into breaches of the restrictions on the publication of issues relating to the Family Litigation.

78. In Mr Adams's case this risk was clearly shown by his intervention which Dr Pelling sought to discourage him from making. This intervention turned into a diatribe in which Mr Adams made it abundantly clear that in his view Miss Green was guilty of parental alienation and unless and until it was recognised that both of his parents should take an equal part in their son's life the weight that should be given to the views of their child was zero. The manner in which Mr Adams made his points:

i) showed how strongly he held them, and that in discussing issues relating to his son he became angry and so could easily raise issues that have been and are being dealt with in the Family Litigation, and

ii) confirmed the accuracy of his son's evidence to the effect that he was distressed at his most recent meetings by his father's approach, demands and attitude.

79. In Dr Pelling's case, the point was made that he is a strong and dedicated campaigner for open justice in Family proceedings who pushes the boundaries on what can be published. The example given to support this assertion was that Dr Pelling named Mr Adams and his son (together with his date of birth) in an analysis he had made of the Children, Schools and Families Bill that had been published. I accept that this establishes the risk referred to in [77] above. But I make it clear that (a) I did not hear oral argument on, and I am not indicating one way or the other whether, this publication is a breach of any obligation resulting from or relating to the Family Litigation, and (b) I am not indicating that such a risk would exist in another case. I accept that Dr Pelling takes care not to breach those obligations and that he believes and advanced written argument that this publication did not do that. But, on the hypothesis that his argument is right about this publication, the risk I accept in [77] is that in the future Dr Pelling may be wrong about a publication that relates to this family and so "stray into breaches of the restrictions on the publication of issues relating to the Family Litigation".

80. As to both of them, reliance was placed on an article entitled: "What's in A (Jewish) Name?" dated 18 September 2016 (and so after the posting on the Fathers4Justice website of

the Turnbull Decision) referring to the parties to the Turnbull Decision as CA and EG. It had been written by Dr Pelling at Mr Adams's request and it links the anonymization of decisions of the UT(AAC) to the identification of Jews by numbers in Nazi death camps and so to the way in which they were robbed of their identities there. At the end of that article it is said that "besides being a campaigner for Open Justice generally CA cannot forget the lessons of 75 years ago" and Dr Pelling points out that the anonymized judgment on the public database does give CA's residence as 18 Cedar Drive which he owns. I accept and find that this article gives confirmation, should it be needed, that both Mr Adams and Dr Pelling are campaigners for open justice and that they will both seek to put as much as they can into the public domain directly and by jigsaw identification (eg the link between this article and what is on the Fathers4Justice website in respect of the Turnbull Decision). The third paragraph of the article refers to the reported reference of the Turnbull Decision and its lawful unanonymized publication by a third party on a website Dr Pelling is not entitled to name – but which I conclude many could easily guess.

81. The second and third points relied on by Miss Green and the Secretary of State relate to the reactions of the child to publications that do not go beyond the issues in the child support proceedings. In this context the behaviour of his mother will plainly have an impact. In her correspondence with the UT(AAC) and her manner during her very limited attendances at hearings, she demonstrated that she does not try to hide from anyone her great hostility towards Mr Adams and that she does not act calmly or in a measured way when dealing with issues relating to him as the father of her child. This means that in her conduct of these proceedings she has not, in her approach to the anonymity issues, clearly addressed distinctions between the Family Litigation and the child support maintenance proceedings. And in my view that reflects her general approach.

82. Sadly, for this child it is clear that throughout his life he has been the subject of long running hostility and litigation between his parents of which he has been only too aware.

83. Dr Pelling is right to point out that the child's statement contains a number of points that do not distinguish between publication of issues relating to the Family Litigation and the child support maintenance proceedings and a number of assertions about Mr Adams whose force and source merits testing. These are the points that he indicated he would have wanted to cross examine on and I accept that they would have been fair and from Mr Adams's point of view potentially productive topics of cross examination.

84. However, the length and hostility of the various disputes between his parents and the fact that N lives with his mother means that it is unsurprising that the child and indeed his mother link them together in their reactions to publication of anything showing a dispute between the parents that relates to their child. In his diatribe Mr Adams demonstrated that he takes an equivalent approach because most of it was founded on the Family Litigation.

85. As indicated earlier, in my view an attempt to unravel the issues and to test reactions to them on that basis by hearing oral evidence was not necessary or appropriate.

Discussion and conclusion

86. I have set out the approach to be applied in [50] to [67] above.

87. I acknowledge the points made by the Secretary of State and Miss Green that the common law and Strasbourg case law has granted and permitted private hearings and

anonymization of proceedings concerning children. Indeed as shown by, for example, *B v UK; P v UK* [2001] 2 FLR 261 proceedings involving children are prime examples of proceedings where exclusion of the public and press are justified to protect the privacy of the child and the parties and to avoid prejudicing the interests of justice.

88. But:

i) the fact that a child is involved in, or will be affected by the result of, proceedings does not of itself mean that the hearings in such proceedings should be in private or that there should be any anonymization of reports of them,

ii) these proceedings involve the application of statutory tests to determine what should be paid by one parent to another in child support maintenance and so to assist in the support and upbringing of their child. Accordingly, in one sense the child is the subject of the proceedings. But he or she has no effective part to play in them and they are effectively adversarial proceedings between the parents of the child and the Secretary of State to determine what Mr Adams is required to pay to Miss Green under the statutory scheme, and

iii) as mentioned in [73] above the anonymity order is not sought on the basis that if it is not made this would prejudice the actual conduct of these child support maintenance proceedings and so the interests of justice in that way.

89. The default rules are for public hearings. And, in my view, this correctly confirms that the nature of proceedings for child support maintenance does not found a default rule for private hearings or public hearings with a standard anonymity order. This is so whether or not there are or have been Family proceedings between the parents (which would not be uncommon). It also confirms that there is a strong public interest in public discussion of the way in which this statutory scheme, which has a wide application, is being implemented on a case by case basis.

90. So, any anonymity order must be based on the particular circumstances of the particular case when one of the parents wants to disclose his or her identity and so the identities of the other parent and the child and on that basis discuss in public the issues in the proceedings and the other parent opposes this.

91. As I have pointed out:

i) the opposing parent must justify any limits to be imposed on unanonymized publication and discussion of the issues that have been the subject of a public hearing, and

ii) here, Miss Green and the Secretary of State seek to do so on the basis of the harm that publication and discussion of the proceedings in an unanonymized form and manner will or will be likely to cause the child.

92. The history of family litigation and the strength of the views of and the hostility between Miss Green and Mr Adams make this an exceptional case and I accept and find that they give rise to valid concerns in the mind of the child that unanonymized publication and

discussion of these (and the pending) child support maintenance proceedings will open "Pandora's Box" and so introduce unanonymized discussion of the Family disputes.

93. Also, in my view it is clear that both Mr Adams and Dr Pelling will use such publication and discussion as a vehicle to promote their views about proceedings being heard in private and anonymization in a way that will link Miss Green and the child to that discussion and by doing so may indicate that there have been Family proceedings that involve them. Further, I accept and find that there is a risk that in doing so either or both of them may infringe restrictions on publication imposed in or in respect of the Family Litigation and that the remedies available for such breach could exacerbate rather than reduce the harm this would cause to the child. But breach of obligations imposed in or in respect of the Family Litigation is a separate issue.

94. I also accept and find that if publication is limited to the issues in the child support maintenance proceedings and N understands this he will nonetheless suffer embarrassment, worry and some distress by reason of unanonymized publication and discussion of only the child support maintenance proceedings and the issues in them. I also find that it is likely this will be increased by the reactions of his mother as it is very likely that they will make it more difficult for him to ignore the publications and get on with his life.

95. In my view, it is asking too much of N and his mother and so unrealistic to proceed on the basis that they can compartmentalise their reactions in a way that differentiates or fully differentiates between the different types of proceedings themselves. But it is also unrealistic to suppose that none of the child's friends and their parents and, for example, none of his teachers know that his parents have been in dispute and do not live together. From that it follows:

i) that N can justifiably and reasonably be concerned that in forming views about him others are doing so on the basis that he has had a lifetime of family dispute, but also

ii) that it is likely if not inevitable that they are doing this anyway and perhaps on inaccurate information and will continue to do so whether or not an anonymity order is made in respect of these proceedings.

96. To his considerable credit it is clear that notwithstanding his history and the hostility between his parents that N is doing well, has a maturity at least commensurate with his age and sensibly says in his statement dated 21 June 2016, and so understands, that he must get on with his life. His evidence and his success at school indicate that this is what he is doing.

97. Also, no case has been advanced on the basis of any particular vulnerability of N. Indeed, in N's statement dated 21 June 2016 the harm relied on is described as worry, embarrassment and what others will think of him if, as he fears, his father is critical of him in published material even though he is referring to publication of issues about the Family Litigation as well as these proceedings.

98. I acknowledge and accept that N has, and it is readily understandable why he has, those concerns. But in my view, the nature and extent of the harm to this child that is likely to be avoided or ameliorated by the making of an anonymity (reporting restriction) order in respect of these child support maintenance proceedings is not of sufficient magnitude to outweigh the public interest in there being unanonymized discussion of the issues in them by which both

parties and the child, if they wish to, can make good their rival contentions about those issues, and so the implementation of the wide reaching statutory scheme governing child support maintenance through proceedings that are essentially a dispute between Miss Green and Mr Adams about the resources of Mr Adams that are to be taken into account under that scheme.

99. Returning to *Scott v Scott* the following passages:

> "A mere desire to consider feelings of delicacy or to exclude from publicity the details which it would be desirable not to publish is not, I repeat, enough as the law now stands. I think that justify an order for a hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order was not made (see Viscount Haldane at 439)
>
> The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means winning for it public confidence and respect (see Lord Atkinson at 463)"

are examples of the recognition that the application of the common law principle of open justice gives rise to problems for individuals involved in or affected by litigation such as those relied on by Miss Green and the Secretary of State to found the making of an anonymity order.

100. Also in this context the well-known passages in the speech of Lord Rodger speech in *In re Guardian News and Media Ltd* [2010] UKSC 1; [2010] 2 AC 697 about the public interest in and so the importance of naming the parties to litigation are relevant. He said:

> "63. What's in a name? 'A lot', the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: *News Verlags GmbH & Co KG v Austria* (2000) 31 EHRR 246, 256, para 39, quoted at para 35 above. More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd* [2004] 2 AC 457, 474, para 59, 'judges are not newspaper editors.' See also Lord Hope of Craighead in *In re British Broadcasting Corpn* [2009] 3 WLR 142, 152, para 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.

64. Lord Steyn put the point succinctly in *In re S* [2005] 1 AC 593, 608, para 34, when he stressed the importance of bearing in mind that

> 'from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer.'

Mutatis mutandis, the same applies in the present cases. A report of the proceedings challenging the freezing orders which did not reveal the identities of the appellants would be disembodied. Certainly, readers would be less interested and, realising that, editors would tend to give the report a lower priority. In that way informed debate about freezing orders would suffer."

101. In other words, in my view the well-established and powerful reasons why the open justice principle promotes the strong public interest in the administration of justice and there being public confidence in it through discussion that engages the interest of the public, even though it results in embarrassment, worry or distress and so some harm to parties and their children generally, and in this case to this child (and his mother), have the result that I should not make an anonymization (reporting restrictions) order

102. However, and subject to further order, I do so for a limited time by extending the existing anonymity order to enable the existing position to be preserved if there is an appeal. I have taken the same course to the anonymization of the decisions of the UT(AAC) in these proceedings because my conclusion that there should not be an anonymity order overrides its practice in this case (see paragraph 68 above).

The relevant practice of the UT(AAC) of anonymizing its decisions

103. I acknowledge that it might be said that:

i) this is now an academic issue in this case, and

ii) if an anonymity order is not made in this case one should not be made in most child support maintenance cases and so the practice should be abandoned leaving it open to the UT(AAC) to make orders for private hearings and/or anonymization as and when they are justified by the particular circumstances of the case.

104. But, in my view, I should address this practice and consider whether it should continue. As appears below:

i) I have concluded that with some modifications it should do so, and in reaching that conclusion

ii) I have considered why the limited impact of the practice of the UT(AAC) is a justified departure from the fundamental principle of open justice in a case when a private hearing would not be directed and/or a reporting restriction / anonymity order would not be made.

Some history

105. The UT(AAC), was established under the 2007 Act. It replaced the former Social Security and Child Support Commissioners, whose role can be traced back to the Umpires under the National Insurance Act 1911. The Commissioners' jurisdiction principally comprised second-tier appeals in relation to tribunal decisions on social security benefits, child support awards and war pensions appeals. The UT(AAC) now has a greatly increased jurisdiction. Nonetheless, in excess of 90 per cent of its caseload in terms of numbers of appeals (but not time) – is that of deciding appeals on points of law from decisions of the First-tier Tribunal (Social Entitlement Chamber) (F-tT(SEC)) relating to social security and child support and decisions of the First-tier Tribunal (War Pensions and Armed Forces Compensation) Chamber (F-tT(WP&AFCC) and the Pensions Appeal Tribunals relating to war pensions and awards under the Armed Forces Compensation Scheme (AFCS). These are effectively its "old" jurisdiction.

106. The existing UT(AAC) practice dates back to the era of the Social Security Commissioners when for many years social security proceedings before first instance tribunals were held in private (eg supplementary benefit appeals were always held in private until 1986). This is no longer the case.

107. As a result of the 2007 Act, the UT(AAC) now also has "new" jurisdictions, principally appeals from the First-tier Tribunal (Health, Education and Social Care Chamber) (F-tT(HESCC)), typically special educational needs and mental health appeals, and the First-tier Tribunal (General Regulatory Chamber) (F-tT(GRC)), principally freedom of information appeals. The UT(AAC) also has a judicial review jurisdiction, mainly in relation to decisions of the F-tT(SEC) in criminal injuries compensation cases, from which there is no statutory right of appeal. In addition, the UT(AAC) acts as the first-instance appellate body for appeals from decisions of the Disclosure and Barring Service under the Safeguarding Vulnerable Groups Act 2006 and from decisions of Traffic Commissioners.

108. Historically, the Umpires and then the Social Security Commissioners anonymized their decisions when publishing them. Cases were referred to by their file numbers or other numbers. Following the implementation of the 2007 Act, the UT(AAC) inherited and adapted the Commissioners' case registration system to accommodate its new expanded role. The result is that all UT(AAC) social security, child support, war pensions and AFCS decisions carry a unique case reference number, the prefix to which signifies the type of benefit concerned. Thus CCS denotes a child support case and, for example, CDLA denotes a disability living allowance case. Cases from the "new" jurisdictions are allocated different prefixes. So, for example, mental health and special educational needs appeals carry the prefixes HM and HS respectively. Freedom of information appeals use the prefix GIA, while cases transferred, rather than appealed, from the F-tT(GRC) use the modified prefix GI.

Practice

109. As I have already mentioned the default rule is that hearings in the UT(AAC) are in public (Rule 37(1) UT Rules). In the social security and child support jurisdiction, Rule 30(1) of the F-tT(SEC) Procedural Rules now provides that all hearings must be in public but gives power to the F-tT to sit in private. Moreover, Rule 19, relating to child support or child trust fund cases makes specific provision about the confidentiality of addresses (if sought) and so is founded on the persons being named.

110. As I have already mentioned, Rule 37(2) and Rule 14 of the UT Rules provide respectively that the UT can sit in private and can make injunctions prohibiting the disclosure or publication of documents and information relating to the proceedings or any matter likely to lead members of the public to identify any person whom the UT considers should not be identified. Rule 14(7) provides that, absent a direction, the person involved in mental health cases must not be made public and Rule 14(10) relates to national security.

111. The default position relating to listing in the UT(AAC) is to name the parties except:

i) in safeguarding, mental health, care standard and primary health care cases where the individuals involved are anonymized, and

ii) where specific instructions to anonymize the parties' names are given by the Judge/Registrar or the party's name has already been anonymized in the proceedings before the UT(AAC).

112. However, it must not be forgotten that a high percentage of appeals to the UT(AAC), whose jurisdiction is based on there being an error of law, are decided on the papers, albeit after a public hearing in the relevant F-tT and a statement of its reasons will have been prepared if the case is appealed. The practice of anonymizing the decision of the UT(AAC) also applies to its paper determinations.

113. Anonymization of citizen parties in the decisions is not universal in the UT(AAC). Even in the days of the Commissioners, a social security claimant might be named where he or she did not want anonymity (see eg R(IS) 1/93) or had lost it because the case was related to a published decision of a different tribunal or court (see e.g. R(IS) 3/07) or the individual claimants have sought and obtained publicity naming them (see eg *SSWP v Nelson* [2014] UKUT 525 (AAC); [2015] AACR 21).

114. But, generally, anonymity in the decisions is the default position in the UT(AAC)'s "old" jurisdictions. Moreover, in relation to the "new" jurisdictions, while anonymity in the decisions is generally preserved in criminal injuries compensation cases, special educational needs cases and mental health cases, parties in other cases are sometimes named in the same way as cases in the courts and that is the norm in Traffic Commissioner appeals and, now, freedom of information cases.

115. A copy of any decision on an appeal will be provided to any person who requests one from the records of the UT(AAC), if it is not on its public database.

116. The anonymization is generally achieved by the decision being written without referring to the individual parties by name and by providing a frontsheet / title with the parties' full names on only to the parties themselves.

117. A minority of decisions which are potentially of wider significance and of interest to members of the public and advisors are given a case name and neutral citation number (NCN) and placed on the UT(AAC)'s public database; the anonymity of citizen parties in most cases is maintained by the use of initials in the title. A sub-set of this minority of decisions that have been allotted a case name and NCN are later published in the series of Administrative Appeal Chamber Reports (AACR), again preserving citizen anonymity in most cases by the use of initials.

118. In both cases the decision will have the case reference number on it which would enable a member of the public to make enquiry about it including who the individual parties were and how they could be contacted.

Introductory discussion

119. The anonymization of decisions of the UT(AAC) in cases that have been heard in public before it (and now the FTT) and listed in a way before the UT(AAC) that identifies the parties is a long standing practice of the judges of what is now the UT(AAC). It is also applied to appeals that are determined without a hearing.

120. The practice represents a default judicial approach. As it does not involve the making of an order prohibiting publication of the names of the parties to whom the decision relates, it does not prevent anyone from publishing the identities of those involved in the proceedings.

121. The only relevant Practice Statement of which I am aware that applies directly to the UT(AAC) is "Form of Decisions and Neutral Citation First-tier Tribunal and Upper Tribunal on or after 3 November 2008" which at paragraph 8 provides that:

> "Where anonymity was previously given to a party in a tribunal case, that practice will continue pending further review."

122. There has been no such review in respect of or by the UT(AAC) and in [9] of his decision in *CC v Standards Committee of Durham County Council* [2010] UKUT 258 (AAC) Upper Tribunal Judge Ward correctly sets out the general practice of the UT(AAC) as follows:

> "Before turning to substantive matters, I should also mention that it is the general practice of the Administrative Appeals Chamber (AAC) of the Upper Tribunal to anonymize its decisions, unless the judge considers that this is not appropriate. The AAC hears a lot of cases about matters of considerable sensitivity for individuals and where there is little or no legitimate public interest in knowing the identity of the individuals involved, such as social security, mental health or special educational needs. The same considerations in my view do not apply to decisions about local government standards, where clearly there is a legitimate public interest in relation to appeals affecting elected representatives and accordingly this case is published without anonymizing, as I envisage others in the field may come to be also. Such was of course also the practice when under the previous legal regime appeals lay to the Administrative Court."

123. The sensitivity referred to by Judge Ward is reflected in confidentiality provisions in the primary legislation that governs many of the payments or issues in dispute (eg section 50 of the Child Support Act 1991 and Part VII of the Social Security Act 1992). Similar provisions are included in the Commissioners for Revenue and Customs Act 2005, which have recently been considered by the Supreme Court in *R(on the application of Ingenious Media Holdings Plc (and another) v Commissioners for HMRC* [2016] UKSC 54. But this statutory confidentiality as between citizens and the State does not of itself found private hearings, the making of anonymity orders or the anonymization of the judgments or decisions in proceedings heard in public as between citizens and the State.

124. However, in my view such statutory confidentiality is a relevant and important factor in the consideration of whether the limited inroads of the practice of the UT(AAC) into the fundamental principle of open justice is justified in respect of proceedings before it as a tribunal that are investigative and so far as practicable informal.

125. The sensitivity referred to by Judge Ward extends beyond issues relating to children. It also recognises that anonymization in the sense of there being a private hearing or an anonymity (reporting restrictions) order would serve the wishes of many if not most individuals involved in appeals to the UT(AAC). But it is clear that such wishes are not a sufficient reason for a private hearing or for an anonymity (reporting restrictions) order. See, for example, the passages from *Scott v Scott* cited in [99] above.

126. However, it seems to me that care needs to be taken to the application of statements such as those in those passages in *Scott v Scott* to a practice or a default position of a public hearing and a published decision or judgment in an anonymized form without any anonymity (reporting restrictions) order and so without a prohibition on the publication of the identities of the parties.

The issue

127. The limited issue is whether the UT(AAC) should change its default practice described above in child support cases.

128. I shall address this on the basis that the UT(AAC) changes its practice to make it clear to the parties that subject to further order by the UT(AAC) it will only be applied if no party objects to it, and:

i) its only effects are that:

a) non-parties who obtain copies of the decisions from the UT(AAC) or search the UT(AAC)'s public database or its reported decisions (or otherwise obtain copies of them as prepared and published by the UT(AAC) will read them in an anonymized form, and

b) if someone asks the UT(AAC) for the identity of the anonymized persons the parties will be notified of that request and be given an opportunity to object to it being complied with,

ii) it does not prevent publication by a party or anyone else of the identities of the individuals involved in the case, and so

iii) if a party wants such an injunctive order they should ask for one.

129. In my view, if the practice is to be continued that clarification is necessary because at present I suspect that many may think that the practice prevents publication of the identity of the anonymized persons.

130. That clarification would be provided at an early stage of the appeal process. If a party objects to the practice being applied that would became an issue in the appeal.

131. If such clarification had been given in this case it would have been at least highly likely that Judge Turnbull would have had to deal with an application for:

i) a hearing in private, and / or

ii) injunctive relief under Rule 14 of the UT Rules.

132. As mentioned earlier, I accept that the practice is an inroad into the fundamental principle of natural justice and so it needs to be justified.

Conclusion

133. In my view, the practice is justified in child support cases. I am only dealing with such a case but my reasoning can be extended to other types of case.

134. This conclusion is in line with the conclusion and reasoning of the Supreme Court in *R (on the application of C) v Secretary of State for Justice* [2016] UKSC 2 and of the Court of Appeal in *X v Dartford and Gravesham NHS Trust (Personal Injury Bar Association and another intervening)* [2015] EWCA Civ 96; [2015] 1WLR 3647. Both are dealing with different types of proceedings and with reporting restrictions orders. But in *R(C)* the justification of a default position was also addressed.

135. In *R(C)* the earlier proceedings in a mental health case in the First-tier Tribunal had been held in private pursuant to its default Rule (see [23]) but in the proceedings for judicial review there was no equivalent to Rule 14(7) of the UT Rules prohibiting the naming of the persons involved and the relevant default Rule for the judicial review (see paragraph 14) was for a public hearing and at paragraphs 1 and 36 Lady Hale said:

> "1. The principle of open justice is one of the most precious in our law. It is there to reassure the public and the parties that our courts are indeed doing justice according to law. In fact, there are two aspects to this principle. The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. The court should not hear and take into account evidence and arguments that they have not heard or seen. The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge. The rationale for the second rule is not quite the same as the rationale for the first, as we shall see. This case is about the second rule. … The second issue is whether there should be an anonymity order on the facts of this particular case.

Conclusion in principle

> 36. … It would be wrong to have a presumption that an order should be made in every case. There is a balance to be struck. The public has a right to know, not only what is going on in our courts, but also who the principal actors are. This is particularly so where notorious criminals are involved. They need to be reassured that sensible decisions are being made about them. On the other hand, the purpose of detention in hospital for treatment is to make the patient better, so that he is no longer a risk either to himself or to others. That whole therapeutic enterprise may be put in jeopardy if confidential information is disclosed in a way which enables the public to identify the patient. It may also be put in jeopardy unless patients have a reasonable expectation in advance that their identities will not be disclosed without their consent. In some cases, that disclosure may put the patient himself, and perhaps also the hospital, those treating him and the other patients there, at risk. The public's right to know has to be balanced against the potential harm, not only to this patient, but to all the others whose treatment could be affected by the risk of exposure."

The answer to the second question in *R(C)* was that the balance in that case founded the making of an anonymity order.

136. At [18] of her judgment Lady Hale says:

> "18. However, in many, perhaps most cases, the important safeguards secured by a public hearing can be secured without the press publishing or the public knowing the identities of the people involved. The interest protected by publishing names is rather different, and vividly expressed by Lord Rodger … "

137. This paragraph and its cross reference and so its reasoning (cited in [100] above) recognise the point that the public interest in the publication and discussion of, amongst other things, a point of law raised and decided at a public hearing by lawyers and others, and so in the public knowing the legal reasoning, can often be satisfied by anonymized reporting. Discussion of legal and so technical issues is not in my view the focus of Lord Rodger's reasoning.

138. *X v Dartford and Gravesham NHS Trust (Personal Injury Bar Association and another intervening)* [2015] 1WLR 3647 in particular at [25] to [35], relates to anonymity orders in respect of the settlement of cases for damages for personal injuries, and so has a closer analogy to social entitlement and other cases within the jurisdiction of the UT(AAC) because of the medical evidence in them. In *X*, the Court of Appeal concluded that normally it should be recognised that the court is dealing with what is essentially private business albeit in open court and so should without the need for any formal application normally make an anonymity order (ie an order that prohibits the identification of the claimant and his or her immediate family and his or her litigation friend (see [34])).

139. So these two cases go further than the relevant practice of the UT(AAC) because they address the making of an anonymity order but, in my view, they show that a flexible approach should be taken having regard to both aspects of the principle of open justice referred to by Lady Hale (ie public hearings and named reporting).

140. The practice of the UT(AAC) does not go so far as holding or listing the hearing in private (although, as I have said, many of its cases are decided without a hearing) and does

not impose any reporting restrictions order. Indeed, it is based on the proposition that such an order has not been made and importantly may well not be made on the facts of the given case.

141. So the limited impact of the practice of the UT(AAC) gives rise to the question: *Why is it a justified departure from the fundamental principle of open justice in a case when a private hearing would not be directed and/or a reporting restriction/anonymity order would not be made?*

142. Mr Adams argued that the limited effect of the practice would mean that he was inhibited in discussing the issues in the child support maintenance case (described as somewhat arcane in the Fathers4Justice publication and in submission by Dr Pelling) with others because it made it difficult for others to make contact with him about the interpretation of the relevant Regulation in the Turnbull Decision. I am very doubtful that there are many who would wish to contact Mr Adams for this purpose. The issue is one of law on which permission to appeal has been refused and Judge Turnbull's reasons are fully explained and so, in my view, any non-resident parents who are beneficiaries under a discretionary trust would be unlikely to seek the views of Mr Adams on that issue of law. Further:

i) the issue can be just as well explained and publicised in published articles without identifying the parties (eg by any lawyer or member of the public who was interested and thought others would be too), and

ii) the practice does not, as asserted in the Fathers4Justice publication prevent the naming of the parties and so Mr Adams drawing attention to himself in that way.

143. Whatever its merits this point about others finding out about him from what the UT(AAC) publishes, in my view it is not Mr Adams's main motivation for attacking the practice. His main motivation is his view on open justice and so whether or not an anonymity order should be made. And, in any event the change I propose means that he and anyone in his position can invite the UT(AAC) not to apply the practice and not to make such an order.

144. I acknowledge that the reverse could be said and so any party who wants the practice to be applied or an anonymity order should apply for this. But in my view it is likely that this change in a practice that has worked well and without complaint for years would lead to more applications and more confusion than the preservation of the practice with the change I propose. If it turns out that the change I propose triggers a number of applications that practice can be revisited.

145. In my view the following factors justify the continuance of the UT(AAC) practice of anonymizing decisions with the change I propose:

i) There is very limited publication of F-tT proceedings and decisions and, such that there might be, would not undermine the continuation of the practice of the UT(AAC) (see by analogy *Goodwin v NGN Ltd* **[**2011] EWHC 1437 (QB); [2011] EMLR 27 at [85]).

ii) It applies when the hearing before the UT(AAC) has been in public and when there has been no hearing before the UT(AAC).

iii) A difference in practice between paper determinations and determinations after hearings would be confusing and likely to give rise to misapplications of the practice and might discourage parties from seeking an oral hearing or lead to unnecessary arguments about this.

iv) The change I propose explains the limited effects of the practice and makes it clear that anyone who wishes to argue that the practice should not be applied to their case or that their case should be heard in private or that an anonymity order should be made can do so.

v) It does not reduce or significantly reduce the publication of the way in which the relevant statutory scheme is being applied or of the relevant legal issues and determinations. Rather, its limited effect is to protect parties from being readily identified by anyone searching the UT(AAC)'s public database or its reported decisions or receiving a copy of a decision from the UT(AAC) to assist them in making claims or arguing their cases.

vi) It reflects the statutory confidentiality between citizens and the State in respect of a statutory scheme that provides for appeals to be before tribunals. Firstly, on issues of fact and law to the F-tT and then on points of law to the UT(AAC).

vii) It promotes the underlying ethos of tribunals to provide a readily accessible and investigatory forum that seeks to promote informality for litigants in person and their representative, if they have one. And so it promotes the administration of justice through, and public confidence in, the tribunal system as a whole which has an analogy with the general point made in the last sentence of [38] of the judgment of Lady Hale in *R(C)* (cited in [135] above).

viii) It has worked satisfactorily for a long time both from the viewpoint of most individual parties, the government department and others involved in implementing and giving advice about the statutory scheme, and if the change I propose (and the understanding and clarity it brings about the practice) causes problems, by triggering applications or otherwise, these can be addressed.

146. This decision incorporates my conclusions on the application of Rule 42 of the UT Rules to the comments made by Dr Pelling and Miss Green on the decision dated 13 January 2017 and as revised dated 30 January 2017 that were issued to the parties but have not been published by the UT(AAC)

SCHEDULE

PART A

THE ORDER dated 22 JUNE 2016

If any person disobeys the orders in paragraphs 1, 2 and 3 of this Order they may be found guilty of contempt and may be sent to prison, fined or have their assets seized. They have the right to ask the Upper Tribunal to vary or discharge the order

OBSERVATIONS

1. This application concerns whether the parties to these proceedings and the child whose child support maintenance is in dispute in these proceedings should be anonymized.
2. Public identification of those persons prior to the determination of the application would undermine the purpose of the application.
3. An Interim Hearing was held in public on 22 June 2016. At that start of that hearing an order was made restraining publication and copies were provided to those who were present and at the hearing the tribunal concluded that the orders set out below should be made.
4. Subject to further order the hearing of the application will be in public.

ORDER

1. Until 4.30 pm on the day after the decision on this application is promulgated or further order in the meantime the following persons namely:
    a. the parties and their representatives,
    b. all persons who attend all or any part of public hearing of this application,
    c. all persons who by any means obtain or are given an account or record of all or any part of such a public hearing or of any order or judgment made or given as a result of such a hearing, and
    d. any body, authority or organisation (and their officers employees, servants and agents) for whom any such person works

    are not directly or indirectly to publish or further publish or cause to be published or further published by any means any decision in these proceedings in an unanonymized form or any information that identifies who the parties to these proceedings are or who the child whose child support maintenance is in dispute in these proceedings is.

2. Mattie O'Connor is to forthwith take down or cause all necessary steps to be taken to take down and completely remove from the Fathers4Justice website any unanonymized version of any decision or judgment in these proceedings and any information that identifies who the parties to these proceedings are or who the child whose child support maintenance is in dispute in these proceedings is.

3. The Appellant and his representative Dr Pelling are to take such steps as are practically open to them to ensure that any unanonymized version of any decision or judgment in these proceedings and any information that identifies who the parties to these proceedings are or who the child whose child support maintenance is in dispute in these proceedings is are forthwith removed completely from the Fathers4Justice website.

4. Any person who is bound by or affected by this order has permission to apply to vary or discharge it.

PART B

JUDGMENT

DELIVERED ON 22 JUNE 2016

This judgment is subject to a reporting restrictions order and so although it was delivered without anonymizing the parties this transcript does anonymize them

MR. JUSTICE CHARLES:

1. This matter comes before me pursuant to my directions to address a number of matters. I think it is important to go back and remember what this application is actually about. What this application is about is whether or not the judgment of Upper Tribunal Judge Turnbull should be published in an anonymized or unanonymized form and whether or not the practice of the Upper Tribunal in respect of the anonymization of that judgment (and others in similar cases) is appropriate, not appropriate or should be added to by the making of orders under Rule 14.

2. To my mind when this issue was first raised in these proceedings, as appears from the directions given by Judge Turnbull, it was raised responsibly by Mr A and Dr. Pelling, his representative. The natural inference from the stance that they were taking (which was to challenge essentially the practice of the Upper Tribunal) was that until that challenge had taken place there would be no publication of that judgment in an unanonymized form. That was the position for a considerable period of time. The way in which this application came back to this Tribunal was that after permission to appeal on other grounds before the Court of Appeal had been refused, the issue which was called the "open justice issue" then became live again before the Upper Tribunal. All well and good: the issue then was made live. I directed it be heard by me rather than Judge Turnbull and so matters were put into progress.

3. What then happened was that the judgment of Judge Turnbull was published on the Fathers4Justice website. Understandably, the mother in this case, Ms. G, was upset by that. It goes against, if I may put it, the way in which this application was raised and the way it had been pursued up until that moment. However, it was made, to my mind in any event, abundantly clear by Judge Turnbull in his second direction dated 10th November, that he had not made an order under Rule 14 of the Tribunal Rules prohibiting parties or anyone else from identifying the name of the parties to these proceedings. So there was no extant order/injunction restraining identification of the parties. This is the point made in the publication on the website:

> "Meanwhile, there being no law or judicial order which prevents full publication of the judgment, Fathers4Justice is pleased to assist by lawfully publishing the unanonymized version …"

There was no explanation as to how they got the unanonymized version and who invited them to take that course.

4. The issue having been raised in that way, I made a Rule 14 order to prevent the father and others from further publishing information as to who the parties of these proceedings and/or the child are. Today, at the beginning of the hearing – which is in public – I made what is often referred to as an "anonymity order" preventing anybody who has attended or who finds out anything about what is happening or has happened today from identifying the parties or the child to these proceedings.

5. An issue remains as to whether or not today I should make a Rule 14 order ordering that the present publication on the website is taken down. In my judgment I have jurisdiction to do that under Rule 14 which reads:

"(1) The Upper Tribunal may make an order prohibiting the disclosure or publication of –

(a) specified documents or information relating to the proceedings; or

(b) any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified."

6. It might be said in the context of that "the cat is out of the bag" and the Tribunal and the Court can do nothing about it. That would be a misinterpretation of the law: see for example, *Goodwin v. News Group Newspapers Ltd. (No. 3)* [2011] EWHC 1437 (QB); [2011] EMLR 27 at [5] which refers back to the passage in the speech of Lord Keith in the "*Spycatcher"* litigation, *Attorney-General v Guardian Newspapers Ltd (No. 2)* [1990] 1 AC 109 at 260 E to H which makes the distinction between matters of national security (public interest in that sense) and private matters and the point that continuing or re-publication can do harm.

7. Here the whole point of this responsibly brought application is to determine whether or not in this case, and in cases of this type, a publication such as that on the Fathers4Justice website should be made and/or whether simply the AAC's website should have all the names of the parties on it, there having been a public hearing.

8. In those circumstances it seems to me appropriate – now that all the parties have had an opportunity to be heard, rather than dealing with this on an ex parte without notice basis by application from one side or the other – that I should, exercising my power under Rule 14, direct that that publication is to be taken down.

9. Mr A and Dr Pelling inform me that they can do nothing about that. So what I propose to do is to make an order against them that they do take such steps as are practically open to them to ensure or seek to ensure that that publication is taken down.

10. I propose to consider for the same reasons as and when I draft the order and have it sent out – which, hopefully, will be tomorrow – whether or not I will also add an order against the relevant people at Fathers4Justice which clearly would be a without notice order and they would obviously have an opportunity to come back to me to argue that I should not have made that order.

11. Other issues that have arisen in the context of these proceedings relate to the participation in them of the child, C, who is 15. In that context I made a number of written observations and directions, the underlying thinking of which, I think, is clear from them but in any event has been made clearer today. It is that if the Secretary of State was of the view that anonymity should generally be preserved in proceedings of this type, the Secretary of State would be arguing the points of law which those who wish to preserve that anonymity would also wish to argue in this context, namely Ms G, and C who has made clear assertions to the effect that that is also his view. Unsurprisingly, given the history of this case, the father, Mr A, asserts that inappropriate influence has been exerted on C in giving these views. I record that as an allegation.

12. The position today – and I am grateful for Mr Cooper, on behalf of the Secretary of State, for making it clear to the Tribunal – is that disregarding the position of Ms G, C and indeed Mr A, the Secretary of State's view is that balancing the relevant competing Convention rights and having regard to fairness and other relevant issues, the norm should be that judgments in proceedings of this type should be anonymized so that the parties and the subject children are not identified publicly. He points out that pragmatically the practice of the Tribunal over the years

has served that purpose because generally everybody involved in these types of proceedings has no wish for their identities and those of their children to be published. That is not the case so far as Mr A is concerned, hence the issue.

13. Against that backdrop I have to consider whether or not C should remain a party. It seems to me that he should not remain a party and I will discharge him as a party. But, having done that, I wish to repeat what I said during the course of the hearing namely: that I am not in any sense to be taken as discouraging C from making his views known to this Tribunal. The issue as I see it – and I think it should be so explained to him and, if I may say so, his mother – is whether representation of C will result in any value added to the decision-making process.

14. From my perception there will be no value added and all there will be is pressure and potential emotional harm to C. C is perfectly free to disagree with that as a proposition and make his own mind up about it. I have indicated that if applications are made that C should give oral evidence and/or speak to me, I will consider them. It is quite apparent to me that such an application may not be agreed to by Mr A. For example, he may or may not agree to C giving oral evidence in a cleared Tribunal/Courtroom. He may or may not agree to me seeing him on a recorded basis. I have tried to make clear to Mr A that any communication I have with C would be on the basis that there is full disclosure of everything that passes between us to him and indeed to C's mother.

15. I think I can say no more about that and I can leave it to C and those who advise him to make up their minds as to what they want to do. If he wants to make another application to be made a party, he should do so. In this context I make it clear that he needs to make it in a more formal way than he made the last one and he needs to make sure that it is served on the other side so that they know what is happening and then I will deal with it. Any other application that is made as to how C's views are made known to me should also be fully disclosed and served on the other side so that it can be dealt with appropriately. If I cannot deal with any such applications on paper, I will convene a hearing.

16. I made it clear to the parties that what I am not going to do in this case is to spend a disproportionate amount of time trying to sort out e-mails flying from one side to the other both sometimes in fairly intemperate terms.

17. That conclusion on C's party status deals with the question as to whether or not an e-mail which is referred to in the correspondence which comes from C's solicitor should be disclosed to Mr A because that e-mail was directed to the joinder application. In any event, it seems to me that C would have to be given the opportunity to determine whether or not he wished to claim legal professional privilege in respect of that document. But that, I think, is water under the bridge.

18. The other issue that was argued before me today is the role of Dr Pelling in these proceedings as a representative of Mr A. I have expressed and repeat my view on that. It seems to me that the context of the issues in these proceedings it is in fact fairly narrowly focused. There are wider issues in other proceedings under the Children Act which may lead to different conclusions as to whether or not Dr Pelling should be a representative of Mr A. For these proceedings – and here I understand Ms G's point that the publication may have undermined to some extent the impact of them – the issue is as to whether or not the judgment should be published or further published and so, more generally, although of little interest to Ms G but possibly of some interest to Mr A, what the general approach to be taken by the Upper Tribunal to the publication of such judgments should be.

19. Given that narrow focus; given that the legal arguments will be advanced by the Secretary of State obviously in opposition to those advanced by Dr Pelling; given that Ms G herself will also be able to advance her legal arguments; it seems to me that to remove Dr Pelling from this fray or this skirmish or battle (however you wish to call it) is unnecessary and the Upper Tribunal will derive benefit from hearing Dr Pelling's submissions on a subject of which he has significant and long-standing experience. So, absent a significant change in circumstances, I will not be revisiting that issue and I would expect Dr Pelling to be the representative of Mr A at the substantive hearing.

20. I should confirm to those sitting at the back of the court that I have made an order today which means that if they, through any form, encourage or themselves identify the parties to these proceedings from information they have obtained, either today or indirectly through other sources, they will be at risk of proceedings for contempt against them. I make that point, I hope clearly, to them. They should not regard it as an idle assertion.

21. I think that deals with all the outstanding issues today. The timetable, essentially, has been agreed. I will set that out in an order.

22. I should add this. Ms G sought to bring, and indeed I have on an informal basis treated as before me, an application by her for committal against Mr A and, as I understand her application, Dr Pelling, for the publication on the Fathers4Justice website. As I explained to her in correspondence and as I have explained to her representative today, whatever part – and they say they did not take any part – Dr Pelling and Mr A had in that publication, her committal application is misconceived because there is no enforceable order in existence against them that would have prevented them from doing that. The publication may be, and I think probably is, properly regarded as "stealing a march", but it is not a breach of an order punishable by contempt proceedings.

23. So I dismiss that application for committal. I grant, in the way that I have indicated, the application in respect of continuing the prohibitive injunction and then the mandatory injunction to take down. I discharge C on the basis that I have indicated. The timetable is that the Secretary of State will put in his skeleton by 31 July. Ms G and, if so advised, C will put in their skeletons plus any other matters they wish to rely on by 10 September. Mr A will have an opportunity to respond to all of those documents, if so advised, by 30 September.

DR. PELLING: Mr A did ask me to request that if C is going to be properly applying then a time limit should be set.

MR. JUSTICE CHARLES: By the 10 September.

DR. PELLING: I am grateful.

MR. HOLDEN: My Lord, the mandatory injunction should have a guillotine time limit just simply to tell Dr. Pelling and/or Mr A to remove it. Without a time limit it is meaningless because …

MR. JUSTICE CHARLES: I think I said all practicable steps, as soon as practicable. I will do that, that is fine. I cannot give a time limit because all you do then is come back and we will have all sorts of arguments as to whether or not they have or they have not done it.

I have made the order I propose to make.

MR. HOLDEN: The difficulty I have is, how does one know what steps they have taken, if they have taken any steps?

MR. JUSTICE CHARLES: You do not. That is the difficulty you have. Thinking about it, this is why I am also going to make a direct order against Fathers4Justice.

MR. HOLDEN: That is probably the more important one.

MR. JUSTICE CHARLES: I have been thinking about it. Because of those practical difficulties I will also be making an order against Fathers4Justice. They, of course, will have liberty to apply to vary or discharge that order.

(Discussion followed re people sitting at the back of the court)