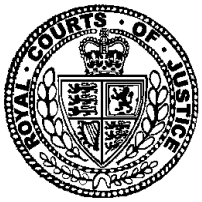

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Case No: WR18C00163 / WR18C00182 / WR20C00114

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/05/2022

Before :

MRS JUSTICE LIEVEN

- -

Between :

LOUISE TICKLE

Applicant

and

HEREFORDSHIRE COUNTY COUNCIL

First Respondent

and

ANGELINE LOGAN

Second Respondent

and

THE FATHER

Third Respondent

and

THE CHILDREN
(through their Children's Guardian)

Fourth to Eighth Respondents

- -

Ms Louise Tickle appeared in person and **represented herself**
Mr Malcolm Chisholm and Ms Niamh Daly (instructed by **Herefordshire County Council**) for the **First Respondent**
The Second Respondent appeared in person and **represented herself**

The Third Respondent did not appear and **was not represented**
Mr Timothy Bowe (instructed by **Talbots Law**) for the **Fourth to Eighth Respondents**

Hearing dates: **31 March 2022 and 13 April 2022**

- -

Approved Judgment

.....

MRS JUSTICE LIEVEN

This judgment is being handed down in private on 4 May 2022. It consists of [79] paragraphs. The judge hereby gives leave for it to be reported.

Mrs Justice Lieven DBE :

1. This is an application by a journalist, Ms Tickle, relating to a completed Children Act 1989 care case involving Herefordshire County Council ('HCC'). Ms Tickle wishes to be allowed to see certain documents and to screen an interview with the Mother in that case ('Ms Logan') within a forthcoming BBC Panorama programme. The intention is that Ms Logan would be named and her face and voice unaltered. There is also an application by HCC for a Reporting Restriction Order ('RRO') to place restrictions on what can be reported, including the naming of any employees of HCC.

2. Ms Tickle represented herself, HCC was represented by Mr Malcolm Chisholm of counsel, and the Children's Guardian by Mr Timothy Bowe of counsel. I heard fairly briefly from Ms Logan as to why she supported Ms Tickle's application and wanted to be able to "tell her story" in public.

3. I held two hearings on 31 March 2022 and 13 April 2022; I adjourned the decision after the first hearing so that the Guardian could meet with Ms Logan and discuss with her the impact of the proposed programme on the children. In the course of those hearings the parties' positions, and in particular that of HCC, have changed somewhat and I will record that changing position below.

4. By the time of the first hearing before me, HHJ Plunkett had ordered that Ms Tickle could listen to the audio recordings of various hearings in the earlier proceedings, and no party was resisting Ms Tickle seeing the documentation in issue. The dispute therefore rested on whether Ms Logan could be identified, the steps that should be taken to protect the identity of the children, and whether I should order that employees of HCC should not be identified.

5. The context of the application and the Panorama documentary is a series of judgments given by Mr Justice Keehan between 2018-2021 containing serious criticism of Herefordshire County Council's Children's Services Department ('CSD'). Mr Justice Keehan was at the time the Family Division Liaison Judge for the Midlands. Those four judgments are as follows:

   Herefordshire Council v AB [2018] EWFC 10

   Herefordshire v A, B, C [2018] EWFC 72

   BT & GT (Children : twins - adoption) [2018] EWFC 76

   Re YY (Children) (Conduct of Local Authority) [2021] EWHC 749 (Fam)

6. Ms Tickle also referred to the report of Ofsted in its latest focused visit in August 2021 to Herefordshire CSD in which it said: *"The local authority has made little progress in improving the quality of practice for children in need and those subject to child protection planning since the inspection in June 2018."* This Ofsted Report was the latest in a line of such reports which have been critical of the quality of the practice of the CSD. She also refers to the concerns expressed by Herefordshire councillors both in public meetings and to Ms Tickle directly about what has been happening within the

CSD. Ms Tickle argues that against this background there is a very strong public interest in a documentary revealing the longstanding problems at HCC.

7. At the time of the proceedings in Ms Logan's case she had three children, who are now aged 8, 4 and 3. An application for an Interim Care Order was made in August 2018 and an Interim Care Order was made with the children continuing to live at home. A final Care Order was made, and about a year later Ms Logan applied to discharge the Care Order; that was done in October 2020. The nature of the case was not, in the context of public law children's cases, particularly unusual, although of course each case is unique on its own facts. The matters pleaded in the original Threshold Document involved a history of domestic abuse between the parents and allegations of fabricated or induced illness ('FII') based inter alia on the very high frequency of visits for medical interventions for the children.

8. There were a number of interlocutory Case Management Hearings ('CMH'), largely before HHJ Plunkett, but there were no judgments given, as is quite normal in this type of case. I have not listened to the recordings, but I understand that at points the Judge is somewhat critical of the handling of the case by HCC. An expert paediatrician was appointed, Dr Ward, who produced two very long and detailed reports. Throughout the proceedings the children remained at home with Ms Logan under the terms of the Orders.

9. Ultimately, HCC decided not to proceed with the FII part of the case, and an Agreed Threshold was produced which did not refer to FII. The proceedings came to an end when the Care Order was discharged and therefore s.97 of the Children Act, to which I will refer below, does not apply to those proceedings.

10. Ms Tickle was introduced to Ms Logan by one of the HCC councillors who had been particularly concerned about her case, as well as about wider issues concerning the quality of HCC's social work. On 2 March 2022 Ms Tickle wrote to HHJ Plunkett, the Designated Family Judge for Worcester and Hereford, asking for permission under s.12 of the Administration of Justice Act 1960 ('AJA') to interview and quote Ms Logan and anyone else in the case who was prepared to speak to her about it, see the documentation in the proceedings, see any transcripts, listen to the audio recordings and identify any adults in the case who consented to be identified. She also requested that her editorial team and the BBC lawyers be permitted to listen to the audio tapes.

11. I note, in passing, that Ms Tickle's application was made in a rather informal manner by email and not copied to HCC or Cafcass. Given the growing support for transparency within the family justice system and therefore the likelihood of such applications becoming more common, it is important that journalists who make applications of this nature always copy in the relevant parties so that matters can be dealt with in as effective and proportionate way as possible.

12. HHJ Plunkett held a CMH on 21 March 2022. At that hearing he ordered that the children be joined to the application and a Guardian be appointed, ordered that Ms Tickle be provided indices from the previous proceedings, relaxed s.12 AJA to allow Ms Tickle to speak to Ms Logan about the case and to listen to the audio recordings of the hearings, and made various case management directions. He also transferred the case to me as the current Midlands Family Division Liaison Judge.

13. The matter came before me on 31 March 2022. By that date Ms Tickle had listened to the audio recordings and had set out a list of documents from the proceedings that she wished to have disclosed to her in order to inform her as to *"the salient facts, evidence and decision making in the case".*

14. At the hearing HCC indicated that it did not object to the documents being disclosed to Ms Tickle but sought a RRO in the following terms:

> *"This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, sound or television broadcast or cable or satellite programme service of:*
>
> *a. The names and address of:*
>
> *i. The children …[redacted];*
>
> *ii. The children's parents ("the parents"), whose details are set out in Schedule 2 to this order;*
>
> *iii. Any individual having day-to-day care of or medical responsibility for the children ("a carer"), whose details are set out in Schedule 3 to this Order;*
>
> *b. any picture being or included of either the mother, the father or the children;*
>
> ***c. any other particulars or information relating to the children, including their gender, date of birth, address or anything which identifies the children, including the precise number of children in the children's sibling group;***
>
> *d. the age of the mother; for the avoidance of doubt it shall be permissible to publish the fact that the mother is "in her thirties";*
>
> *IF, BUT ONLY IF, such publication is likely to lead to the identification of the children as being the children of the mother and father;*
>
> *And:*
>
> ***e. the names of any employee of the First Respondent local authority who is working with, or has worked with, the children in the course of their employment."***
>
> [The parts in bold are those which are at the centre of the dispute before me.]

15. It became clear during the hearing that HCC sought for Ms Logan only to be interviewed on camera with her face not shown and her voice disguised. It was also apparent from Mr Chisholm's submissions that the application for no employees to be named was separate from any issue about preserving the anonymity of the children and was not based on any risk of identification of the children through that source.

16. At the end of the first hearing I adjourned the matter so that the Guardian could speak to Ms Logan about the potential impact of the interview on the children, the format of the interview and what would be broadcast. By the time of the second hearing on 13 April, HCC had accepted that the terms of paragraph (c) above were too wide because almost any information was theoretically capable of identifying the children. It was therefore agreed that this would be limited to specific identifying features, such as name, date of birth and relevant addresses. HCC also narrowed (e) to any employee involved with Ms Logan, although as I explain below that remained very wide on Mr Chisholm's interpretation.

17. During the second hearing Mr Bowe raised that it had been suggested to the Guardian that words stated by the older child, aged 8, should themselves be shown on the programme. This was the first time that there had been any indication that the child him/herself would be speaking. Ms Logan told the Court that she had recorded the child saying something about the social workers and how upset s/he had had been about their visits. I expressed some discomfort with the suggestion that the child should be recorded, both because of the increased potential for identification and because there was a potential intrusion into the child's own private life that had not previously been raised. However, given that this matter had arisen so late in the proceedings, and the urgency given that the programme was due for editorial close shortly after Easter, I left the matter for the Guardian and the parties to consider further as to whether any application would be made to the Court.

The law

18. Section 12 of the Administration of Justice Act 1960 states:

> *"**Publication of information relating to proceedings in private.***
>
> *(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—*
>
> *(a) where the proceedings—*
>
> *(i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;*
>
> *(ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or*
>
> *(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;*
>
> *(b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;*

> *(c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;*
>
> *(d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;*
>
> *(e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.*
>
> *(2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.*
>
> *(3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.*
>
> *(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).”*

19. The effect of s.12 was considered by Munby J in *Re Webster* [2007] 1 FLR 1146 at [49]:

> *“49. There is no need on this occasion for any detailed exegesis of section 12. It suffices for present purposes to note that the effect of section 12 is to prohibit the publication of accounts of what has gone on in front of the judge sitting in private, as also the publication of documents (or extracts or quotations from documents) such as affidavits, witness statements, reports, position statements, skeleton arguments or other documents filed in the proceedings, transcripts or notes of the evidence or submissions, and transcripts or notes of the judgment. On the other hand, section 12 does not of itself prohibit publication of the fact that a child is the subject of proceedings under the Children Act 1989; of the dates, times and places of past or future hearings; of the nature of the dispute in the proceedings; of anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing in private is taking place; or of the text or summary of any order made in such proceedings. Importantly, it is also to be noted that section 12 does not prohibit the identification or publication of photographs of the child, the other parties or the witnesses, nor the identification of the party on whose behalf a witness is giving or has given evidence.”*

20. Section 97(2) of the Children Act 1989:

> *"97 Privacy for children involved in certain proceedings.*
>
> *(2) No person shall publish any material which is intended, or likely, to identify—*
>
> *(a) any child as being involved in any proceedings before in which any power under this Act may be exercised by the court with respect to that or any other child; or*
>
> *(b) an address or school as being that of a child involved in any such proceedings."*

21. By FPR r 27.11 members of the Press are permitted to attend proceedings held in private, but are not entitled to receive or peruse court documents.

22. The question of what is information relating to proceedings within the meaning of s.12 AJA was considered by Munby J in *A v Ward* [2010] EWHC 16.

23. There are two applications before me. Ms Tickle applies for an order allowing her to identify Ms Logan, and thus give information relating to the proceedings, as a protection against any action for contempt under s.12. HCC apply for a RRO under the High Court's inherent jurisdiction as allowed under s.100(4) of the Children Act 1989 in order to place restrictions on the form of the publication, as set out in [14] above.

24. In any application such as this, for publication of information about proceedings held in private concerning children, there will inevitably be a balancing exercise between the children's right to privacy under Article 8, the parent's right to tell their own story under Article 8 and 10, and the press and public's right to free speech under Article 10.

25. Article 8 ECHR provides as follows:

> *"Right to respect for private and family life*
>
> *1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

26. Article 10 provides as follows:

> *"Freedom of expression*
>
> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and*

> *regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

27. The balancing exercise to be undertaken between these competing rights was considered by Lord Steyn in *Re S (Identification: Restrictions on Publication)* [2005] 1 AC 593 at [17]:

> *"The interplay between articles 8 and 10 has been illuminated by the opinions in the House of Lords in Campbell v MGN Ltd [2004] 2 AC 457. For present purposes the decision of the House on the facts of Campbell and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case."*

28. The importance of open justice has been set out in numerous judgments including *Cape Intermediate Holdings v Dring* [2020] AC 629. Baroness Hale highlighted two principles of open justice at [42]:

> *"42. The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases—to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly…"*

29. The law in the area of transparency in the Family Court has been considered in two recent Court of Appeal judgments: *Newman v Southampton City Council* [2021] 1 WLR 2900 and *Tickle v Griffiths* [2021] EWCA Civ 1882.

30. The importance of, and the move towards, greater transparency in the family justice system over recent years is recorded in *Newman* between [14] and [19] and does not need to be repeated here.

31. In *Newman* the specific issue was whether Ms Newman could have access to documents relating to concluded care and placement applications. The Court held that Roberts J had conducted an appropriate Article 8 and Article 10 balancing exercise in determining that the applicant (a journalist) could only have limited access to some of the documentation, see [85]-[86].

32. In *Griffiths v Tickle* [2021] EWCA Civ 1882, the Court of Appeal considered the circumstances in which a judgment involving a finding of rape and domestic abuse could be published, with the names of the parties given, even though this would inevitably give rise to some ability to identify the child. There is a very careful analysis of the caselaw and the principles to be applied, and much of what is said in that case is of relevance here. One aspect of *Griffiths v Tickle* which does not emerge from the other cases is the right of the mother to tell her own story:

> *"27. The right to freedom of expression, protected by Article 10 of the Convention, encompasses a right to speak to others, including the public at large, about the events and experiences of one's private and family life. As Munby J (as he then was) pointed out in Re Angela Roddy [2003] EWHC 2927 (Fam), [2004] EMLR 8 [35-36] this is also a facet of the right to respect for private and family life:*
>
> *"... amongst the rights protected by Article 8 ... is the right, as a human being, to share with others – and, if one so chooses, with the world at large – one's own story..."."*

33. The Court of Appeal endorsed my decision at first instance to allow the fact finding judgment to be published. In respect of the issue of the mother's right to tell her own story the Court said:

> *"70. The Judge's approach to the mother's right to tell her story was firmly grounded in principle and authority. Lieven J may, if anything, have slightly undervalued this aspect of the case."*

34. At [71] the Court set out the approach that should be adopted when carrying out the balance in applications such as this:

> *"71. The critical question, therefore, is whether the best interests of the child, treated as a primary consideration, are weighty enough to justify maintaining that fetter, during the course of the proceedings under s 97(2) Children Act, and indefinitely as a consequence of s 12 AJA. Put another way, do the child's best interests make it necessary and proportionate to impose those restrictions on the Article 8 and 10 rights relied on by the applicants and the mother? On the unusual facts of this case, given the age of the child and all the other circumstances identified by the Judge, the Guardian's expert assessment was that the answer was no. The Judge agreed, and so do we."*

35. The following principles can be extracted from the caselaw.

36. Firstly, neither Article takes precedence over the other, but the Court must undertake an "intense focus" on how the competing rights apply in the particular case; *Re S* at [17].

37. Secondly, the child's interests, whilst neither paramount not determinative, are a "major factor" and "very important"; *Re Webster* at [56]. The child's interests should be considered first though they can be outweighed by the cumulative effect of other factors; *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166 at [33].

38. Thirdly, the Court should not treat it as inevitable that publicity would have an adverse impact on children. In each case the impact must be assessed by reference to the evidence before the Court rather than to any presumption of harm; *Clayton v Clayton* [2007] 1 FLR 11 at [51]. Although I note Lady Hale in *PJS v News Group* [2016] UKSC 26 emphasising that children have their own privacy rights independent of those of their parents.

39. Fourthly, the Court should give weight to a party's right to "tell their own story" so as to vindicate their Article 8 rights, see *Tickle v Griffiths* above.

40. There is a separate and distinct issue about whether any restriction should be placed on the naming of social workers or other employees of HCC. As is set out at [15] above, Mr Chisholm's original application was that no employee of HCC should be named, and it became clear that this included senior employees such as Ms Ambrose, Head of Service of Assessment, Children Protection and Child in Need Service at HCC. By the second hearing he accepted that this was too broad and merely advanced that any social worker currently involved with Ms Logan should not be named.

41. It is important to keep distinct the powers of the Court to restrict publication of information about proceedings, contrary to the normal principles of open justice, for the purposes of preserving the anonymity of the children, whether under statute or the inherent jurisdiction, and restricting the publication of information about adults concerned in a case. In general, it is not for the Court, certainly not the Family Court, to restrict the media from publishing comment about employees of public authorities or private companies, save in very particular circumstances. If such comment is unfair or untrue there are other mechanisms of redress.

42. There are circumstances where the Court has been prepared to grant RROs to restrict the naming of treating healthcare professionals in highly sensitive medical cases concerning children where there has been evidence of potential vilification and harassment of those professionals, see *Abbasi v Newcastle Upon Tyne Hospitals NHS Trust* [2022] 2 WLR 465. The approach of the President of the Family Division is set out at [97] onwards. At [96] he said:

> *"96. I would, with every due respect to Sir James Munby, go further and record that I do not agree with his evaluation of the situation as it was even in the context of 2014. In particular, I would dissociate myself from the following passage in A v Ward , which, in my view, is simply wrong:*
>
> *'One can sympathise with conscientious and caring professionals who cannot understand why they should be at risk of harassment and*

> *vilification for only doing their job – and a job, moreover, where participation in the forensic process is not, as it were, part of the 'job specification' as in the case of social workers and expert witnesses. But the fact is that in an increasingly clamorous and decreasingly deferential society there are many people in many different professions who, however much they might wish it were otherwise, and however much one may deplore the fact, have to put up with the harassment and vilification with which the Internet in particular and the other media to a lesser extent are awash.'*
>
> *Why should the law tolerate and support a situation in which conscientious and caring professionals, who have not been found to be at fault in any manner, are at risk of harassment and vilification simply for doing their job? In my view the law should not do so, and it is wrong that the law should require those for whom the protection of anonymity is sought in a case such as this to have to establish 'compelling reasons' before the court can provide that protection."*

43. There are a series of earlier cases in which judges have declined to grant orders preventing the naming of social workers. In ***BBC v Rochdale MBC*** [2005] EWHC 2862 (Fam) Ryder J carried out a detailed ***Re S*** balancing exercise between the competing rights and held that there was no pressing social need to anonymise two social workers where the facts did not establish an exceptional case for interfering with the broadcaster's Article 10 rights. At [39] he said:

> *"39. This court has not received any direct evidence touching on the arguments of frankness, deterrence or the availability of child protection professionals, although strong submissions have been made to that effect. Despite this, I take notice of the fact that there is a continuing shortage of social care professionals, particularly in child protection and that there have been and are campaigns against them which can have a serious effect upon an individual's private life. Further, there is a public interest in encouraging social workers and others to engage in this difficult work. Great weight is placed on this by the local authority and by X and Y, and although I should take these factors into account and I do, no-one suggests that they are the determinant or predominant factual issues in this case."*

44. Although Mr Chisholm referred to that caselaw in the first hearing, by the time of the second hearing he was no longer seeking to rely upon them. He accepted that the present case did not reach the bar set by the President in ***Abbasi***.

The position of the parties

45. Ms Tickle argues that there is a strong public interest in the failings of Children's Services in Herefordshire being widely known and publicised. There is a particular public interest and benefit in Ms Logan being able to tell her story in a public forum. Having an identifiable individual speaking of her own interactions with CSD brings a human interest and connection to the programme which merely recounting anonymised histories would fail to do.

46. Ms Logan wishes to be able to recount what happened to her and her family, and to do so unanonymised in her own voice and with her face shown. She wants to give her assessment of the social work carried out and the impact it has had on her and her children.

47. Ms Tickle emphasises that there are currently no restrictions on the BBC publishing the names of Ms Logan and the children because there are no current proceedings and Ms Logan has parental responsibility for them. The restriction under s.12 AJA is solely upon Ms Logan talking about the care proceedings, the conduct of litigation and what happened in court.

48. Ms Tickle referred me to matters which she said suggested that there had been default by HCC in their handling of Ms Logan's case and in more recent interactions between HCC and Ms Logan. I am not in a position to judge whether there is any justification in these criticisms or not. As I explain below, in my view it is not the function of the Court to determine whether the criticisms that Ms Logan, and possibly Ms Tickle, wish to make of HCC's handling of her case are valid or not. It is important that the Court does not become a quasi-Press regulator trying to judge the quality or accuracy of the proposed media comment.

49. In relation to the impact on the children, Ms Logan said that her and the children's friends already know about the involvement of CSD, including having met and seen social workers both at their home and in the school. Therefore, there will be no surprise in this fact becoming known in the immediate local community. She says that there is no evidence of likely harm to the children, particularly given their young ages and the fact that there were no allegations of abuse or harm in the case.

50. Ms Tickle argues that there is no lawful justification for the attempt by HCC to prevent the naming of individual social workers. Section 12 AJA exists to protect the privacy of children and the good administration of justice, not to protect public authorities or their employees.

51. Mr Chisholm on behalf of HCC submits that all necessary steps should be taken to preserve the anonymity of the children. If Ms Logan is shown on film and named, then it is inevitable that the children will be widely identified. This will open them up to curiosity at their school and in the community and to the potential of being bullied at school.

52. It is of some importance that there is no specific evidence of potential harm to the children in terms of either their vulnerabilities or specific facts about the case. Mr Chisholm, and this is not a criticism, simply relies on the general possibility of wider identification and bullying. He refers to the fact that there may well be comment about the case and the children on social media, and that will remain available on the internet in perpetuity.

53. In respect of the part of his application which relates to not naming employees of HCC, he refers to the great difficulty HCC has in recruiting and then retaining social workers. This is necessarily exacerbated if social workers are publicly named and criticised and may make people very unwilling to work for HCC.

54. He does not point to any specific threat or risk to social workers if they are named. However, he suggests that they may be subject to adverse comment in their local community.

55. Mr Chisholm and the Guardian both argue that the present social worker should not be named as that could have a direct impact on their ability to work with the family, and thus be detrimental to the best interests of the children.

56. At the first hearing Mr Chisholm also argued that no employees of HCC CSD should be named. He relied upon a statement by Ms Ambrose, Head of Service of Assessment, Children Protection and Child in Need Service at HCC. This set out the problems with recruitment and retention of social workers in HCC and the high level of locum staff that are relied upon. She referred to the fact that Herefordshire is a largely rural community and that many of the social workers live in the local area and they and their children are easily identifiable. This is to be contrasted with an urban local authority where social workers are much less likely to be identified where they live.

57. At the conclusion of the hearing on 31 March 2022 I adjourned so that the Guardian could meet with Ms Logan and discuss the programme and the potential impact on the children with her. I then held a further hearing for the Guardian, through Mr Bowe to report on that conversation and give me her final view.

58. The Guardian was satisfied that Ms Logan had considered the impact on the children, and that her motivation was to "help other families who work with Social Services". The Guardian states that in her view there is no evidence the children will experience any additional harm over and above that attributable to any other child of their age being indirectly identified. She believes that with the right reporting restrictions Ms Tickle's application can be allowed.

59. The Guardian suggested that the following information in respect of the children should not be reported – names (gender can be reported); dates of birth (age can be reported); home address; school name or location; details of places children do activities and personal medical histories.

60. The Guardian also feels there is no justification for any filming of the children.

Conclusions

61. This is a case where the factors militate in favour of allowing Ms Logan to speak openly about her experiences and not to require her to be anonymised. I therefore consider that the restrictions that HCC seeks to impose on Ms Tickle's interview and the Panorama programme are too wide.

62. Firstly, I accept that there is a strong public interest in issues surrounding HCC's social work practice and children's social care being known and subject to public debate. There have been a number of critical judgments in the Court and adverse reports by Ofsted. That is in itself a matter of public concern and of wide potential interest.

63. Secondly, there is a broad public interest in both the operations of children's services and of the family justice system in being transparent and open so that the public have a

greater understanding of what happens in these cases, both in terms of good practice and bad.

64. Thirdly, there is a considerable difference between the media being able to report on the generality of concerns and being allowed to interview a named and identifiable individual who can tell their own story in an unanonymised form. I therefore accept there is a justifiable reason under Article 10 for Ms Tickle being able to interview Ms Logan in an unanonymised form.

65. Fourthly, considerable weight should be given to Ms Logan's right to tell her own story, in her own words and as an individual who can be recognised. That does not mean that I accept the accuracy of what she wants to say, let alone all her criticisms of HCC. As in so many of such cases, she may have a one-sided view of events and may have failed, and continue to fail, to appreciate legitimate concerns of HCC about the safety of her children. However, that does not remove or even lessen her right to say what she wants in a public forum.

66. It is important to have closely in mind that it is not for the Court to censor an individual's Article 10 rights, or to only permit things to be said in public which the Court agrees with or approves of. At the second hearing in this matter Ms Tickle produced a short list of matters she wished to cover in the broadcast and Mr Chisholm made some submissions on what should or should not be covered. I made clear that I did not consider this to be a matter for the Court. The Court's role is to protect the best interests of the children. It is not the role of the Court to become a quasi-Press regulator, seeking to judge the accuracy of the material which the media wishes to report. Although this may to some degree become inevitable in undertaking the Article 8 and 10 balance, it is not the focus of the Family Court's consideration.

67. Balancing against those factors is the potential harm to the children from their mother being identified and it therefore being inevitable that they too will be identifiable, at least in their immediate community and possibly on the internet. There are a number of factors which lead me to the conclusion in this case that the harm to the children is relatively limited and therefore the ***Re S*** balance lies in favour of Ms Tickle's application.

68. The children are all at or under the age of 8. Their use of social media is still limited (to a degree) and Ms Logan can act to protect them in a way that would be more difficult if they were older. Their immediate community already knows about the involvement of Children's Services so the programme will not come as a surprise to that immediate community as would often be the case.

69. Most importantly, this case does not involve the kind of distressing and highly personal information which is sadly common in care proceedings. There are no allegations of sexual or physical abuse, and no psychologically deeply personal matters relating to the children are set out in the court records. Any reference to care proceedings will to some degree interfere with the children's Article 8 rights to private life, but the intrusion here is not of the level engaged in many public law children's cases. If there were such very personal matters, I would be much more reluctant to allow any risk of wider identification of the children.

70. I accept that it is inevitable that those in the immediate community will be able to identify the children, and that there will be some risk of wider identification, and there may therefore be some impact upon them. However, this is significantly less than would often be the case. I also accept that comment on social media will, to varying degrees, remain on the internet for a very long time.

71. However, I agree with what was said in *Clayton v Clayton*, that it should not always be assumed that publicity and identification of children is harmful to them, let alone is necessarily a barrier to transparency.

72. Further, there may be benefit in this case for the children in their mother being able to tell her story, feel that she has been listened to, and believe that she is acting for the wider benefit of other children.

73. I also note, in assessing the harm to the children and the overall balance, that in criminal cases the kind of restrictions that are routinely imposed in family cases do not apply. The defendants are invariably named even though that will often give rise to a risk of identification of children. In those cases, the public interest in open justice is considered to outweigh any potential harm to the children. There is a particularly strong public interest in open justice within the criminal justice regime, whereas in family cases the interests of the children are central. However, it is in my view relevant that the broader societal interests in open justice in that context are accepted to outweigh any potential harm to children impacted by the proceedings.

74. I am supported in these conclusions by the fact that the Guardian considers that, subject to appropriate restrictions, Ms Tickle's application should be acceded to.

75. Therefore, I will allow Ms Logan to be named and interviewed on camera. I will impose the restrictions set out at 14 above, in order to limit the potential for the children to be more widely identified and to limit intrusion into their private lives by their being filmed. The position in relation to the children themselves being filmed is now that it is agreed they will not speak on camera and they will not be filmed in a way that could lead to their wider identification. All of this is subject to the comments I have made earlier about the inevitability of some identification within the immediate community.

76. There is a separate issue about whether I should order that employees of HCC should not be named. The power under the inherent jurisdiction and the statutory restrictions in s.12 AJA are entirely focused around the best interests of the children. However, with the exception of the application in respect of the current social worker, Mr Chisholm did not rest his application on potential harm to the children, but rather on more generalised harm to the interests of HCC and its ability to recruit and retain staff. Although by the end of the second hearing Mr Chisholm had accepted that his application for anonymity of employees of HCC was too wide, I will set out here my conclusions for the purposes of considering similar future applications.

77. I am extremely aware of the problems with the recruitment of social workers nationally and in the Midlands. I also accept Ms Ambrose's evidence that there is a particular issue in Herefordshire, both because of its troubled recent history and the rural nature of the community. The role of a social worker is an enormously difficult one, so often being caught between the need to safeguard children, and the impact their work can have on parents in particular.

78. However, the powers of the Court to order anonymisation in relation to professionals need to be exercised with considerable care. Social workers are employees of a public authority conducting a very important function that has enormous implications on the lives of others. As such, they necessarily carry some public accountability and the principles of open justice can only be departed from with considerable caution.

79. This is not a situation where the type of vilification and harassment which was raised in ***Abbasi*** and has become sadly not infrequent in highly emotionally fraught children's medical cases, is in issue. The social workers here are not being made subject to a campaign of harassment of the type in issue in ***Abbasi.*** Therefore any interference in the social workers Article 8 rights is certainly not of the level considered in that case, and is no different to any individual who may be commented upon or criticised in a public broadcast. Ms Tickle and the BBC are undertaking a documentary programme with all the journalistic standards that are applicable. For those reasons I do not conclude that there is a justification for anonymity sufficient to justify the interference with Article 10 rights.