



Neutral Citation Number: [2023] EWHC 3470 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
SITTING AT SHEFFIELD FAMILY COURT

Date: 3rd November 2023

Before:

THE HONOURABLE MR JUSTICE POOLE

Between:

KIRKLEES COUNCIL	<u>Applicant</u>
- and -	
(1) P	<u>Respondents</u>
(2) MARCUS OSBORNE	
(3) Q	
(4) – (7) THE CHILDREN	
(Through their Children’s Guardian)	

Iain Hutchinson (instructed by Kirklees Council) appeared on behalf of the **Applicant**
Keith Kershaw (of Makin Dixon Solicitors) appeared on behalf of the **First Respondent**
Charlotte Worsley KC (instructed by JWP Solicitors) appeared on behalf of the **Second Respondent**

Will Tyler KC (instructed by Wilkinson Woodward) appeared on behalf of the **Third Respondent**

Harriet Williams (instructed by Eaton Smith Solicitors) appeared on behalf of the **Children’s Guardian**

Claire Overman (instructed by the Director of Legal Services for BBC) for **the BBC**

Hearing Date: 3rd November 2023

JUDGMENT

This judgment was delivered in private and a Transparency Order and a reporting restrictions order are in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

MR JUSTICE POOLE:

1. This is an ex tempore judgment. I am concerned with four children: A, who is now ten; B, who is nine; C, who is four; and D, who is one. They are the subject of public law proceedings.
2. This is an application by the Local Authority for a reporting restrictions order. The Local Authority's proposed order extends beyond restrictions relating to the family proceedings, to restrictions relating to criminal proceedings. It is supported by P, who is the First Respondent and father of the older two children; by Mr Osborne, who is the father of the younger two children; Q, who is the maternal grandparent; and the Children's Guardian. It is opposed by the BBC, which is represented at this hearing.
3. The appalling circumstances giving rise to the Local Authority's application for public law orders is that on 15 May 2023, Marcus Osborne murdered both the children's mother, Katie Higton, and another man, and raped another woman. I know who that other woman is but there is no need for me to name her or to give any details now. I understand the children were in the house at the time, or in the vicinity, and they witnessed some of the aftermath of this appalling event.
4. Marcus Osborne has pleaded guilty to these crimes. He will be sentenced to life imprisonment for the murders, but the sentencing hearing has not yet been fixed and I do not know the date when sentencing will take place. I take notice that it will be within the next few weeks or months.
5. The children are the subject of interim care orders and are in foster care.
6. These proceedings are held in private but are within the Transparency Reporting Pilot which is ongoing in Leeds and two other courts. HHJ Hillier made a transparency order on 18 May 2023 and later revised it on 23 August 2023. It allows for reporting of the family law proceedings by pilot reporters even though those proceedings are heard in private. They may not only attend the private hearings, but they can report on them subject to the restrictions within that order.
7. Irrespective of the transparency order, there are two important statutory provisions that apply to restrict reporting and publication of information from family proceedings, specifically those held in private. They are Section 12 of the Administration of Justice Act 1960 and Section 97 (2) of the Children Act 1989. Section 12 provides that:

“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:

- (a) where the proceedings –
 - (i) relate to the exercise of the inherent jurisdiction of the High Court with respect for 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.”

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

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

9. In *Re B (A Child) (Disclosure)* [2004] 2 FLR 142, Munby J reviewed the case law on Section 12 of the Administration of Justice Act 1960 and noted that it does not of itself prevent publication of the fact that a child is the subject of proceedings under the Children Act 1989 or the name, address or photograph of such a child, but it does prevent publication of accounts of what has gone on in front of the Judge sitting in private.

10. Whilst section 12 continues in force after the conclusion of the relevant family proceedings, section 97 (2) does not do so. It ends with the conclusion of the proceedings.

11. No-one in this case doubts that the court has the power to extend the statutory reporting restrictions in the exercise of its inherent jurisdiction, but when considering whether to do so, the court must carry out a balancing exercise having regard to the principle of open justice and Convention rights, in particular those under Articles 6, 8 and 10. The need for that exercise was articulated by Munby J in *Re J (A Child)* [2013] EWHC 2694 (Fam) when he applied the important decision of the House of Lords in *Re S* [2004] UKHL 47, [2005] 1 AC 593.

12. Guidance for applying for a reporting restriction order in the Family Division is found in the Family Procedure Rules at PD12J, in a Cafcass practice note which was updated in 2015, and in the President's guidance as to reporting in the family courts, dated 3rd October 2019.

13. The requirements of the practice direction have been met in relation to this application, including notice to the media.

14. In *Re J*, Munby J said, importantly, at paragraph 22 to 24:

“[22] The Court has power both to relax and to add to the automatic restraints. In exercising this jurisdiction, the court must conduct the balancing exercise described in *In re S (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593, [2005] 1 FLR 591, and in *A Local Authority v W, L, W, T and R (by the Children's Guardian)* [2005] EWHC 1564 (Fam), [2006] 1 FLR 1. This necessitates what Lord Steyn in *Re S* at paragraph 17 called 'an intense focus on the comparative importance of the specific rights being claimed in an individual case'. There are typically a number of competing interests engaged protected by Article 6, 8 and 10 of the Convention. I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [93], and in *Re Webster; Norfolk County Council v Webster and*

Others [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, at para [80]. As Lord Steyn pointed out in *Re S*, para [25], it is "necessary to measure the nature of the impact ... on the child" of what is in prospect. Indeed, the interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166, para [33]."

[23] I should add two further points. The court may, by an appropriate injunction, extend the anonymity of the child beyond the point at which section 97 of the 1989 Act ceases to have effect in accordance with *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83, [2007] 1 FLR 11. But it is important to note the views expressed in that case by each of my two immediate predecessors as to the likely need for specific orders protecting a child's identity beyond the conclusion of the proceedings. Both were sceptical. Sir Mark Potter P said this (para [51]):

"given the existence of section 12 of the Administration of Justice Act 1960 which is apt to prevent publication or reporting of the substance of, or the evidence or issues in, the proceedings (save in so far as permitted by the court or as revealed in any judgment delivered in open court), I do not think that, as a generality, it is right to assume that identification of a child as having been involved in proceedings will involve harm to his or her welfare interests or failure to respect the child's family or private life."

Wall LJ, as he then was, said (para [145]):

"My impression is that there are unlikely to be many cases in which the continuation of that protection will be required."

[24] The court may likewise, by an appropriate injunction, afford anonymity to other participants in the process, for example, an expert, a local authority, or a social worker. Such injunctions, however, will not readily be granted"

Then after a long and interesting section on transparency, he made three matters clear. He said at paragraph 26:

"The first matter relates to what has become conventional to call transparency. There is a pressing need for more transparency, indeed, for much more transparency in the family justice system."

At paragraph 31:

"The compelling need for transparency in the family justice system is demanded as a matter of both principle and pragmatism. So far as concerns principle I can do no better than repeat what Lord Steyn said in *R v Secretary of State for the Home Department ex p Simms* [2000] 2 AC 115, 126, where, having referred to Holmes J's dissenting judgment in *Abrams v United States* (1919) 250 US 616, he continued: "freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. ... It facilitates the exposure of errors in the ... administration of justice of the country."

He then continued at paragraph 32 with his second point about transparency, saying:

“It is vital that public confidence in the family justice system is maintained or, if eroded, restored. There is a clear and obvious public interest in maintaining the confidence of the public at large in the courts. It is vitally important, if the administration of justice is to be promoted and public confidence in the courts maintained, that justice be administered in public – or at least in a manner which enables its workings to be properly scrutinised – so that the judges and other participants in the process remain visible and amenable to comment and criticism. This principle, as the Strasbourg court has repeatedly reiterated, is protected by both Article 6 and Article 10 of the Convention. It is a principle of particular importance in the context of care and other public law cases.”

15. The third matter that he raised was at paragraph 37 where he said:

“It is not the role of the judge to seek to exercise any kind of editorial control over the manner in which the media reports information which it is entitled to publish. As I explained in *Re Roddy (A child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 2 FLR 949, para [89]:

"A judge can assess what is lawful or unlawful, a judge in the Family Division may be called on to assess whether some publication is sufficiently harmful to a child as to warrant preventing it. But judges are not arbiters of taste or decency ... It is not the function of the judges to legitimise 'responsible' reporting whilst censoring what some are pleased to call 'irresponsible' reporting ... And as the Strasbourg jurisprudence establishes (see *Harris v Harris; Attorney-General v Harris* [2001] 2 FLR 895, at [373]), the freedom of expression secured by Art 10 is applicable not only to information or ideas that are favourably received, or regarded as inoffensive, but also to those that offend, shock or disturb the state or any section of the community. Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. It is not for the court to substitute its own views for those of the press as to what technique of reporting should be adopted by journalists. Article 10 entitles journalists to adopt a particular form of presentation intended to ensure a particularly telling effect on the average reader. As Neill LJ recognised [in *Re W (Wardship: Publication of Information)* [1992] 1 FLR 99] a tabloid newspaper is entitled to tell the story in a manner which will engage the interest of its readers and the general public."

As the Strasbourg court has repeatedly said, "journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation:" see, for example, *Bergens Tidende v Norway* (2001) 31 EHRR 16, para 49.

16. I have received very helpful written and oral submissions from Counsel for the parties. I adjourned this hearing on 26th October 2023 to allow for discussions to take place, in particular between the Local Authority and the BBC. Those discussions resulted in a new draft reporting restrictions order being proposed by the Local Authority which is narrower in its ambit and wording than the earlier draft order on which it relied. Nevertheless, the parties have not come to an agreement as to the making or terms of any reporting restrictions order. The BBC opposes the making of any such order and, in the alternative, opposes the terms now proposed by the Local

Authority. In any event, even if the parties were to have agreed on a proposed order, it is a matter for the Court not the parties to decide whether to make such an order.

17. Turning first to the existing transparency order. It is an unusual feature of this case that a transparency order is already in place. That is so because it was made in the Transparency Reporting Pilot. The transparency order applies to the parties and their lawyers; any witness in the case; anybody who attends some or all of the hearing in the case; any authority, body, organisation for whom any such person works or is employed or engaged; and anybody who is served with a copy of the order or is aware of its contents. The order is to remain in force until further order or when “the children”, by which I infer the youngest child, attains the age of 18. That will be in 2040.
18. By paragraph 13 of the transparency order, a pilot reporter may publish any information relating to the proceedings save for that which is restricted under paragraph 14. Those restrictions are themselves subject to a carve-out inserted by the August 2023 amendment, which relates to an agreed statement of “chronological information” which is now annexed to the amended order. I need not refer to that “chronological information”, but the specific information set out in paragraph 14 of the transparency order, which no person covered by the order may publish, includes the name or date of birth of any subject; the name of any parent or family member who is a party or who is mentioned in the case or whose name may lead to the children being identified; the name of any person who is a party to the proceedings; the address of any child or family member; the name or address of any foster carer; the school, hospital, placement name or address, or any identifying feature of the school of the child; photographs or images of the child, their parents, carer or any other identifying person; the names of any medical professional who is or has been treating any of the children or family member; and for the purposes of Section 97 of the Children Act 1989, any other information likely to identify the child as a subject child or former subject child.
19. Paragraph 16 provides:

“For the avoidance of doubt, no body, agency or professionals may be identified in any information relating to proceedings published to the general public or a section of it by a pilot reporter save for:
(a) the Local Authority involved in the proceedings.”
20. It is made clear in the transparency order that it applies until the end of the criminal proceedings involving Mr Osborne. It provides:

“For the avoidance of doubt, in relation to the content of the paragraphs within this order, reporting will not be permitted until the criminal proceedings relating to Mr Marcus Osborne have concluded until otherwise varied by the Court.”
21. That, then, is the transparency order, and it seeks to control the publication of information which is obtained by the attendance of a pilot reporter at family proceedings heard in private.
22. The transparency order is effective against the identified persons only, and so not, as it were, against the world, and not against the media generally, other than the pilot reporters, unless they become aware of the contents of the order.

23. The information that is prevented from being published by the transparency order is information that relates to the family proceedings. That is also the terminology used within Section 12 of the Administration of Justice Act 1960.
24. The Local Authority now seeks a reporting restriction order that applies to all media organisations and that extends to the criminal proceedings involving Mr Osborne. In its draft form, the proposed reporting restrictions order relates to any reporting regarding the members of the family. The draft order provides at paragraph, 13, that the prohibited information shall be:

- “(a) the names, dates of birth and genders of the children;
 - (b) the name of any person other than Marcus Osborne who is a party to or intervening in the proceedings;
 - (c) the address of any of the subject children or family member;
 - (d) the name or address of any carer for any of the children;
 - (e) the school, hospital, placement name or address or any identifying features of any school of the child;
 - (f) photographs or images of the children and any carer.
 - (g) photographs or images of any other identifying person or any of the locations specified;
 - (h) any photographs of Katie Higton and/or Marcus Osborne must not include any detail in the background that would lead to the identification of the children.”
 - (i) for purposes of Section 97 (2) of the Children Act, any other information likely to identify the child as a subject child or former child.”
- If, but only if,
- (i) such publication is likely, whether directly or indirectly, to lead to the identification of any one of the children as being a child as being the subject of proceedings under the Children Act 1989 or the Adoption and Children Act 2002 or,
 - (ii) in respect of reporting of the ongoing criminal proceedings involving Marcus Osborne such publication is likely, whether directly or indirectly, to lead to the identification of any one of the children.”

25. The BBC, in opposing the application, maintains that:
- i) the transparency order adequately meets the balance of Convention rights in relation to the family proceedings;
 - ii) the issue of reporting restrictions in the Crown Court is properly left to that court to determine and is not matter on which this court should make an order.

Ms Overman, representing the BBC, accepts that this court does have the power under its inherent jurisdiction to extend a reporting restriction order to the reporting of the criminal proceedings but maintains that the court should not do so, not least because the Crown Court is better placed to consider the issue of reporting restrictions in relation to the proceedings before it. Firstly, although notice of this hearing has been given to the media in accordance with the practice direction, only the BBC have attended and made representations, whereas the reality is that it is much more likely that other members of the media and the press will be present at the Crown Court proceedings for the sentencing of Mr. Osborne. Secondly, Ms Overman submits that the Judge conducting the criminal proceedings involving Mr Osborne will be much better placed to know what information will be before the court on that occasion which might, subject to any order, be reported by those present.

26. The onus is on the Local Authority to make out a case for this court to make the reporting restriction order in whatever form it is made, and it is accepted that on the authorities the court would need to identify exceptional circumstances to justify making the reporting restriction order that is sought. That is so, whether or not it extends to the criminal proceedings.
27. In relation to the evidence, I have full regard to the witness evidence of Mr G, social worker. The older two children are acutely and painfully conscious not only of the horrific events in which they and their family have been involved, which is also true, of course, of the younger children, but also of the scrutiny of them within their local community. They are extremely anxious and distressed by the unwanted attention that they have been subjected to, including thoughtless and insensitive questioning of them at their schools.
28. Work has been done with the children, and will continue to be done with them, surrounding media attention and the impact on them of reports about the circumstances of their mother's death.
29. Even without their names having been published - and I have not been referred to any reporting in which the children's names or their addresses or schools have been published - they are easily identifiable within the local community, and they have been identified as related to Mr Osborne and their deceased mother. I accept the clear evidence that the identification of the children, even if their names are not published, is traumatic for them and exacerbates the trauma caused to them by the terrible events themselves.
30. Identification of the children in this case, particularly the older children, will cause them distress and harm both now and in the future. Although I have no specific evidence on this, it may have an impact on their placement and the ability to find a suitable placement for them. It may have an adverse impact on the work to be done with the children as they seek to make sense of what has happened to them and to their mother and as they seek to make sense of the descriptions in the media about the events of May 2023.
31. I should note that another feature of this case is that the public authorities, in particular the police, were contacted prior to the murder and that there is likely to be a public interest in the scrutiny of the conduct of public authorities in the lead up to the events of 15th May 2023.
32. The Court's sympathy is very much with these children. Their suffering is unimaginable and will have life-long consequences. However, this court cannot control or cancel the knowledge that those in their community already have, or will have as discussions within the community, including at the children's schools, continue. Furthermore, it is inevitable that there will be reporting of the criminal proceedings of which members of the local community and people from further afield will become aware. The truth is that their father, or stepfather in the case of the elder two, has murdered their mother in appalling circumstances. Unless the press and media were prevented from reporting the identity of the deceased, Katie Higton, or the murderer, Marcus Osborne, reports of the criminal proceedings and the crimes themselves will allow the children to be identified by those who know the family or know of the family or who learn about them through word of mouth. That is unavoidable and sadly it is unavoidable that the children will be caused distress by any reporting of the criminal proceedings.

33. There is a public interest in allowing the reporting of the identity of a person convicted of murder, the reporting of the identity of the deceased victims, and in this case that one of the victims was a mother. There is a public interest in reporting the circumstances of the murder, including the children's mother's contact with public services and the police prior to the murder.
34. The Local Authority does not now seek in its proposed reporting restrictions order, that the identity of the children's parents or photographs of the children's parents, should be restricted. Rightly so. Nevertheless, the proposed suppression of reporting of the matters that are set out in the revised proposed reporting restrictions order requires careful consideration of the balance of the principle of open justice and the engaged Article 8 and Article 10 rights. The parties' Article 6 rights are not so obviously engaged in that balancing exercise in the circumstances of this case.
35. In *Re S*, the House of Lords gave guidance as to the balancing exercise, stating that neither Article 8 nor Article 10 has precedence over the other. The Court also recognised at paragraph 18 of the judgment of Lord Steyn that:

“The ordinary rule is that the press, as the watchdog of the public, may report everything that takes place in a criminal court. This is a strong rule. It can only be displaced by unusual or exceptional circumstances. It is not, however, a mechanical rule. The duty of the Court is to examine with care each application for a departure from the rule by reason of rights under Article 8.”

At paragraphs 32 to 36 of his judgment, Lord Steyn said:

“[32] There are a number of specific consequences of the grant of an injunction as asked for in this case to be considered. First, while counsel for the child wanted to confine a ruling to the grant of an injunction restraining publication to protect a child, that will not do. The jurisdiction under the ECHR could equally be invoked by an adult non-party faced with possible damaging publicity as a result of a trial of a parent, child or spouse. Adult non-parties to a criminal trial must therefore be added to the prospective pool of applicants who could apply for such injunctions. This would confront newspapers with an ever wider spectrum of potentially costly proceedings and would seriously inhibit the freedom of the press to report criminal trials.

[33] Secondly, if such an injunction were to be granted in this case, it cannot be assumed that relief will only be sought in future in respect of the name of a defendant and a photograph of the defendant and the victim. It is easy to visualise circumstances in which attempts will be made to enjoin publicity of, for example, the gruesome circumstances of a crime. The process of piling exception upon exception to the principle of open justice would be encouraged and would gain in momentum.

[34] Thirdly, it is important to bear 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.

[35] Fourthly, it is true that newspapers can always contest an application for an injunction. Even for national newspapers that is,

however, a costly matter which may involve proceedings at different judicial levels. Moreover, time constraints of an impending trial may not always permit such proceedings. Often it will be too late and the injunction will have had its negative effect on contemporary reporting.

[36] Fifthly, it is easy to fall into the trap of considering the position from the point of view of national newspapers only. Local newspapers play a huge role. In the United Kingdom according to the website of The Newspaper Society there are 1301 regional and local newspapers which serve villages, towns and cities. Apparently, again according to the website of The Newspaper Society, over 85% of all British adults read a regional or local newspaper compared to 70% who read a national newspaper. Very often a sensational or serious criminal trial will be of great interest in the community where it took place. A regional or local newspaper is likely to give prominence to it. That happens every day up and down the country. For local newspapers, who do not have the financial resources of national newspapers, the spectre of being involved in costly legal proceedings is bound to have a chilling effect. If local newspapers are threatened with the prospect of an injunction such as is now under consideration it is likely that they will often be silenced. Prudently, the Romford Recorder, which has some 116,000 readers a week, chose not to contest these proceedings. The impact of such a new development on the regional and local press in the United Kingdom strongly militates against its adoption. If permitted, it would seriously impoverish public discussion of criminal justice.”

36. Just before turning to the proposed reporting restriction order, I again note that in this case there is already a transparency order in force. That is a factor to weigh in the balance. Furthermore, it does seem to me that if a reporting restriction order is made, the Court has to avoid creating any inconsistency with the transparency order. All parties agree that the transparency order should remain in force.
37. Returning then to the precise wording of the proposed reporting restriction order. Firstly, it binds all persons and all companies who know the order has been made. To that extent, it has further reach than the transparency order. As Mr Tyler KC rightly told the Court, the transparency order has a different purpose than a reporting restrictions order. The former is designed to allow the reporting of private family proceedings within a pilot and reporting by those who actually attend the hearing. A reporting restriction order has a wider ambit and is designed specifically to restrict reporting rather than to promote reporting.
38. The prohibited publication section of the proposed reporting restriction order is wider than the equivalent parts of the transparency order. It includes, as prohibited information, the genders of the children. It applies to the name of any party to the proceedings, which would include the Local Authority, whereas the transparency order allows for the reporting of the Local Authority. It includes prohibitions on publishing photographs or images of the children or “any other identifying person” which would, in fact, encompass images of either parents, or indeed, of the First Respondent in the proceedings, because those would be “identifying persons” – identifying them would be liable to identify the children to the section of the public that knew of the family.

39. The provision within the proposed order that prohibits the publication of any photographs of Katie Higton or Marcus Osborne which include “any detail in the background that could lead to the identification of the children” is imprecise – it too vague and potentially too broad. The final provision under 13, as currently drafted, is too wide as it does not restrict the provision, as is the case in Section 97 (2) of the Children Act, to information that the subject child, or former child, is the subject of proceedings under the Children Act 1989 or the Adoption and Children Act 2002.
40. Importantly, the proposed reporting restrictions order extends the prohibitions to the criminal proceedings. Marcus Osborne has pleaded guilty to the murders and rape. There will be no trial and no evidence. At the sentencing hearing victim impact statements may well be referred to or read out. The sentencing remarks will be reported and may even be broadcast. I cannot know exactly what the information will be that will be before the Crown Court at any sentencing or other future hearing in the criminal proceedings.
41. The criminal courts do have the power to make an order under Section 45 of the Youth Justice and Criminal Evidence Act 1999, restricting the reporting of the identity of children and identifying information in relation to those children, but that only applies to children who are concerned in the proceedings, which is defined as being defendants, effectively, as being defendants, complainants or witnesses and would not apply, it is agreed, to the subject children in the case before me.
42. As has been repeated in several reported decisions in the High Court Family Division, all of which involve parallel criminal or related criminal cases, it is only in an exceptional case that a Family Division Judge will contemplate an order that would extend to the reporting of criminal proceedings. The fact that no reporting restriction order has yet been made in the criminal proceedings does not mean that this court should necessarily pre-empt the decision of the criminal court, to make one. It is in my view very likely that the sentencing judge will be asked to make a reporting restriction order in relation to the children who are the subject of the proceedings before me. Contact could be made now by the Local Authority or the Guardian with the Crown Prosecution Service to make enquiries about such an application being made, and that may serve to give the elder children in particular, some reassurance that an application will be made and it will be considered by the judge in the crown court. From the submissions to me and the evidence before me, it appears to be highly likely that there will be no opposition to such an application and that, if it is considered necessary, the application will be made and granted.
43. In *Re S*, the injunction sought was to restrain the publication of the identity of a defendant in a murder trial and was intended to protect the privacy of her son who was not involved in the criminal proceedings. The son's brother was the victim of the alleged murder. The consequence of the House of Lords decision to uphold the refusal of the application for extensive reporting restrictions by Hedley J was that no injunction was imposed to prevent the publication of the defendant, photographs of her, or photographs of her deceased son. At paragraphs 8 and 9 of Lord Steyn's judgment, it is recorded that the Judge, that is Hedley J:

“[8] the judge made an order based upon the standard form commonly used in the Family Division. The order prohibited publication (a) of the name or address of the child and his school; (b) of any picture of the child or either of his parents; and (c) of any other information which might lead to the child's identification. The order expressly prevented any person "publishing any particulars of or information relating to any part of the proceedings before any court which may or is calculated to

lead to the identification of the said child". The order was clearly designed to prohibit publication of the name of the mother and the deceased child in any report of the impending criminal trial. It is common ground that the order also prevented publication of any photographs of the mother or deceased child.

[9] The parties and any person affected were at liberty under the order to apply to vary the order. On 13 November 2002 the local paper, the Romford Recorder, applied ex parte for a modification of the order. Hedley J changed the order to include in paragraph 8 the proviso that "Nothing in this order shall of itself prevent any person (a) publishing any particulars of or information relating to any part of the proceedings before any court other than a court sitting in private . . ." However, paragraph 8 was stayed until 13 December 2002 so that the matter could be fully argued at an inter partes hearing."

44. The current standard form for a reporting restriction order provides that:

"Nothing in the order shall prevent any person from publishing information relating to any part of the hearing in a court in England and Wales, including the Coroner's Court, in which the court was sitting in public and did not itself make an order restricting publication."

That reflects the order that Hedley J made. In this case, the Local Authority seek to include a caveat to that exclusion, which would have the effect of extending the reporting restrictions to the criminal proceedings.

45. At paragraph 10 of his judgment, Lord Steyn said this:

"The newspapers accepted that they should not refer to the child but they wish to be able to publish the names and photographs of both parents and of the dead boy."

I repeat that the Local Authority before me is not seeking to extend the reporting restriction order to the identification of the subject children's parents or photographs of them, whether that identification is in relation to the family proceedings or the criminal proceedings. Therefore, the issue that was before the Court in *Re S* is not expressly the issue that is before the Court now. Nevertheless, the same principles need to be applied. At paragraph 11, Lord Steyn recorded:

"The Judge decided that the stay should be lifted and the exception in paragraph 8A should remain in the order. In other words, on the basis of his decision, the newspapers were not prevented in the reports of the criminal trial from publishing the identity of the defendant or the deceased's son or photographs of them."

Hedley J's order was upheld.

46. This Court has to carry out a balance of the principle of open justice and the Article 8 and Article 10 rights involved in this case having regard to its particular circumstances. I have referred to the facts of this case and the terrible history that gives rise to the applications before this Court. The evidence provided to me concerns the distress caused to the children from being identified because their mother and Mr Osborne have been, and will be, identified by the media when reporting on the criminal proceedings unless prevented by a reporting restriction order. The identification of their parents will inevitably lead to the identification, or possible

identification, of the children by those who know the family or know of the family and live within the local community.

47. I do have to bear in mind the protections that are in place under the statutory provisions that I have referred to and under the transparency order. I have to bear in mind that the Judge in the criminal court will have the power under the inherent jurisdiction to restrict the reporting of the children's names, addresses, schools, and so forth. The Judge sentencing Mr Osborne will have that power and will have knowledge of the information that will be before the court on that occasion and will have the advantage of hearing, if necessary, representations from a wider range of media than are before me on this application today.
48. As I have already noted, and I find, it is likely that a reporting restriction order will be likely to be made by that court to prevent the identification of the children's names, addresses and other details if it is considered necessary, but that publication of the names and photographs of the children's mother and Mr Osborne will, of course, be permitted. Their names and photographs are already in the public domain. There is a public interest in knowing who has committed a murder and who has been the victim of a murder. The children's deceased mother should not be expunged from the record in the pursuit of protection of her children.
49. The burden is on the Local Authority to justify a reporting restrictions order, and it is a heavy burden when what is sought is an extension to proceedings other than the family proceedings which I am conducting today. Weighing all the matters, it appears to me that this court should not make a reporting restriction order as sought, that is, one that extends to the criminal proceedings. That is primarily because:
 - (1) The extension of reporting restrictions beyond the statutory restrictions should only be made when fully justified and in exceptional cases. There is a danger of creeping prohibition as was identified by the House of Lords in *Re S*.
 - (2) Previous publication of the names and photographs of the children's mother and Mr Osborne, mean that the children's identities are already known to those who know the family, who know of it, or who are in the local community.
 - (3) The court should be slow to seek to bind the hands of another court which, in my judgement, would be better placed to consider whether reporting restriction orders of the kind now sought are necessary in relation to the criminal proceedings.
 - (4) It has been suggested that since the media will not report, as a matter of fact, the matters set out in the proposed reporting restriction order, there is no harm in making the reporting restrictions order. That is not the proper approach. For me to make an injunction, I must be satisfied that it is justified as necessary and proportionate after conducting a balancing exercise of the competing Convention rights and the principle of open justice. The onus is on the Local Authority and not on the media in any application of this kind.
 - (5) The approach advocated by the Local Authority that since the Crown Court will be likely to make such orders, this court may as well do so is also wrong in principle. Any reporting restriction order needs to be justified to court that makes the order. As I have already said in my judgment, the criminal court is better placed to consider the relevant matters.
 - (6) There has, in fact, been no reporting of the specific matters that the Local Authority now seeks to restrict even though the criminal proceedings began three months ago.

(7) The harm that the Local Authority seeks to prevent being caused to the children by the making a reporting restriction order which extended to the criminal court, will not in fact be prevented. That is because their parents have already been and will in the future be identified and their images and names published.

(8) There are many cases in which there are parallel and related criminal and family proceedings where orders of the kind sought could be made but are not. Very sadly, many of those cases involve horrifying events which have resulted in the death of the child or a parent or significant harm to a child or a parent. It would be unacceptable, bearing in mind the competing Article 8 and Article 10 rights, for it to become routine for this court to make reporting restriction orders that sought to bind the criminal courts in those cases.

50. The facts of this case are exceptionally disturbing and involved brutal criminal acts with the children present or in the vicinity. The impact on the children is extreme. But in my view the exceptionality of the events in this case does not justify making a reporting restrictions order that extends to the criminal proceedings.
51. This application does raise an important point of principle, in particular, of course, the extension sought to the criminal proceedings. It is an extremely troubling case, but that does not justify taking the exceptional step sought and therefore I refuse the application to make a reporting restriction order in the terms sought that extends to the criminal proceedings. However, I am persuaded, balancing the Article 8 and Article 10 rights, to make a reporting restriction order that is in more conventional terms and that would apply purely to the proceedings within the Family Division or the Family Court.
52. Therefore, the order that I am satisfied is necessary and proportionate, having carried out the balancing exercise described, will be in the terms sought save that at paragraph 13 the prohibitions will be on publishing

“(a) the names and dates of birth of the children (whose details are set above);
(b) The name of any person, other than Marcus Osborne or the Local Authority, who is a party to, or intervening in, the proceedings;
(c) The address of any of the subject children or family member;
(d) The name or address of any carer for any of the children, including any foster carer;
(e) The school/hospital/placement name or address, or any identifying features of a school of the child;
(f) Photographs or images of the children, carer or any party to these proceedings other than Mr Osborne or any of the locations specified above in conjunction with other information which may lead to identification of the children.
(g) Any other information likely to identify the children as subject of proceedings brought under the Children Act 1989 or the Adoption and Children Act 2002;
if, but only if,
such publication is likely, whether directly or indirectly, to lead to the identification of any one of the children as being a child subject of proceedings under the Children Act 1989 or the Adoption and Children Act 2002.”

Hence the genders of the children may be published. The names of the Local Authority and Mr Osborne, parties within the family proceedings, may be published. Revisions are made to the proposed order to narrow the proceedings to which the provisions apply and to remove the extension to the criminal proceedings altogether. Consequential changes to the rest of the draft order will need to be made.

53. That is the reporting restriction order that will be made. It has a different purpose from the transparency order, which will remain in force, but I am satisfied that the two orders are consistent and that both are required, having different purposes. The reporting restrictions order is, I am satisfied, necessary and is proportionate having regard to the balancing exercise I have conducted, in order to prevent any reporting of the prohibited information that would lead to the identification of the children as being subject to proceedings before the family courts, that is, proceedings under the Children Act 1989 or the Adoption and Children Act 2002. Thus far, but no further. It will not extend to the criminal proceedings and there can be no prohibition on publishing the names or photographs of Mr Osborne and of the late Ms Higton.
54. That is my judgment. I will direct that a transcript of the judgment be prepared, which will be sent to me for approval and then consideration will be given to the publication of the judgment given the important principles that have had to be considered.