Neutral Citation Number: [2020] EWHC 134 (QB)

Case No: QB-2019-004280

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/01/2020

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

- -

Between :

DXB (by his Litigation Friend CDG)	**Claimant**
- and -	
(1) Persons Unknown	
(2) Associated Newspapers Limited	
(3) Times Newspapers Limited	
(4) Telegraph Media Group Plc	
(5) The Press Association	**Defendants**

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Adam Wolanski QC (instructed by **Withers LLP**) for the **Claimant**
Sarah Palin (instructed by **ANL Legal**) for the **Second, Third, Fourth and Fifth Defendants**

Hearing date: 14 January 2020

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Approved Judgment

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

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THE HONOURABLE MRS JUSTICE STEYN DBE

Mrs Justice Steyn :

A Introduction

1. This is a claim brought pursuant to "the *Venables* jurisdiction" for an order extending the anonymity of a child defendant beyond his 18th birthday. In this case, unlike the earlier cases in which this jurisdiction has been exercised, the claimant seeks a time-limited order (extending just over 22 months), rather than life-long anonymity.

2. The claim was brought pursuant to Part 8 for an order *contra mundum* (i.e. against the world). It is for that reason that the sole defendants, initially, were identified as "*persons unknown*". However, the claimant duly served the claim on the media and on the family of the late Yousef Makki (hereafter "Yousef" and "the Makki family"). The claim has been opposed by four large media organisations, namely, Associated Newspapers Ltd, Times Newspapers Ltd, Telegraph Media Group plc and the Press Association ("the Media"). No member of the Makki family has joined as a party. Nevertheless, both parties have drawn my attention to a witness statement submitted by Mrs Jade Akoum, Yousef's sister, as well as an acknowledgment of service, in which Mrs Akoum makes clear that she supports the Media's position and that, in doing so, she speaks "*on behalf of the family, including my mother Deborah Makki*".

B Preliminary matters

3. The claim was issued on 2 December 2019. On the same day, shortly before the claim was issued, Master McCloud gave permission for the intended claimant to issue a claim identifying himself as "DXB" and his litigation friend (and sister), as "CDG". It would have defeated the purpose of bringing these proceedings if the claimant did not have the benefit of anonymity in bringing them. In any event, when the claim was issued, and during the hearing, the claimant's identity remained protected by an order made during the criminal proceedings to which I refer below, pursuant to s.45 of the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act").

4. The order of 2 December 2019 also provides for future hearings to be in private unless otherwise directed by the court. The claimant acknowledged that there was no necessity for any part of the hearing before me to be held in private, and I made a direction at the outset of the hearing that it would be held in public.

5. On 14 January 2020, I made a limited reporting restriction order ("RRO") pursuant to s.11 of the Contempt of Court Act 1981, to protect the claimant's identity and certain sensitive health-related matters concerning the claimant and third parties, pending my judgment. On 23 January 2020, as the order made pursuant to s.45 of the 1999 Act was due to expire the following day, shortly before I intended to hand down this judgment, I made a further order to protect the claimant's anonymity ("the bridging order").

6. The Media did not object to the RRO or the bridging order, the existence and terms of which will be revisited when this judgment is handed down.

C Background

7. Mrs Akoum describes Yousef as "*loving, kind and generous*". He was, she says, "*as exceptional in academic terms as he was as a person*". It is an immense sadness that Yousef died at the age of only 17.

8. On 2 March 2019, Yousef died from a stab wound inflicted by a flick knife that Joshua Molnar ("Josh") was holding at the time. The claimant was with Yousef and Josh on Gorse Bank Road when the fatal incident occurred. All three boys were 17 years old. The claimant and Yousef were close friends who attended school together. Josh was also a friend, although he did not attend school with them.

9. Josh was charged with the murder. He was tried at Manchester Crown Court between 18 June 2019 and 12 July 2019. On 12 July 2019, Josh was acquitted by a jury of the murder or manslaughter of Yousef. Josh admitted that he was holding the knife and caused the fatal injury to Yousef, but his plea of lawful self-defence was accepted by the jury. Josh was the sole defendant in the trial who faced charges of murder or manslaughter.

10. The claimant was the second defendant in the trial. His involvement in the trial arose because:

    i) The claimant and Josh were both charged with conspiracy to rob Ali Ezzedine (a drug dealer). This was a separate incident alleged to have happened earlier on the day Yousef died. Both were acquitted by the jury.

    ii) The claimant was charged with perverting the course of justice. It was alleged that, with intent to pervert the course of justice, he gave an account of the circumstances surrounding the fatal stabbing of Yousef which had a tendency to pervert the course of justice in that it suggested responsibility for the stabbing lay with someone other than Josh. The claimant was acquitted by the jury.

11. Yousef stayed overnight at the claimant's house on the night of 1/2 March 2019. At some point in the early afternoon on Saturday 2 March 2019, the claimant and Yousef met up with Josh. During that afternoon the three 17 year old boys smoked cannabis. In the early afternoon, they cycled into the Booths supermarket cark park in Hale. They went there to meet a drug dealer to purchase some more cannabis. The claimant arranged the drugs meet.

12. Before departing for that drugs meet, the three boys took out and compared the knives they were carrying. Two of these three knives were flick knives which the claimant had ordered on the internet from China earlier in the year, using a false name, and having them delivered to the home of an unsuspecting (and rightly horrified) friend. Yousef showed Josh how the flick knives operated. The claimant admitted he was in possession of one of these flick knives and he pleaded guilty at the earliest opportunity to possession of a bladed article. Either at this point or at the drugs meet, the claimant passed his flick knife to Josh.

13. The drugs meet was not a success. The prosecution's case against Josh and the claimant that the boys conspired together to steal the cannabis was rejected by the

jury. Josh became involved in an altercation with the drug dealers in which he was assaulted, and his bicycle was thrown over a hedge. The claimant and Yousef were not involved in this fight. Josh was angry with them for leaving him. Josh searched for his bicycle for about an hour. Yousef helped and the claimant subsequently rejoined them.

14. Bryan J observed in his sentencing remarks that the "*precise events that followed will never be known*". What is known is that at about 6.30pm the same day, an altercation occurred between Josh and Yousef, on Gorse Bank Road, during the course of which Yousef suffered a fatal injury from a flick knife held by Josh. The claimant was standing on the same street, but he was not engaged in the altercation. He has said that he was some distance away, looking at his phone and did not see the stabbing.

15. The claimant attended to Yousef shortly after he had been stabbed and called emergency services. The claimant disposed of a knife, but it was not the one which inflicted the fatal wound, or which had earlier been in the claimant's possession. The claimant remained with Yousef until the emergency services arrived. Tragically, Yousef was pronounced dead shortly after arriving at the hospital.

16. After the police arrived at the scene, in an attempt to mislead attention away from himself, Josh falsely suggested that those responsible for the stabbing had made good their escape in a grey VW Polo. This was, for a short period, taken seriously as a potential lead. In relation to this statement, Josh pleaded guilty to perverting the course of justice.

17. The claimant was escorted home by a police officer. He was asked questions by a police officer wearing a body worn camera. His answers at this point formed the basis of the charge of perverting the course of justice of which, as I have said, he was acquitted.

18. Both Josh and the claimant were arrested later that night. The claimant was detained in custody from 2 to 5 March 2019. He was interviewed by the police 9 times during this period, for a total of five hours.

19. On 5 March 2019 Josh was charged with murder and possession of a bladed article; the claimant was charged with possession of a bladed article and assisting an offender by disposal of a knife. The latter charge was later dropped. The charges against both Josh and the claimant were subsequently amended to add charges of perverting the course of justice and conspiracy to rob Ali Ezzedine.

20. On 30 May 2019, the case was sent from the Youth Court to Manchester Crown Court. The Honorary Recorder of Manchester, HHJ Stockdale QC, made a direction under s.45 of the 1999 Act in the following terms:

> "No matter relating to [DXB], shall while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings, and in particular:
>
> (a) his name,

(b) his address,

(c) the identity of any school or other educational establishment attended by him,

(d) the identity of any place of work, and

(e) any still or moving picture of him".

21. An order in the same terms was made in respect of Josh.

22. On the first day of trial, 18 June 2019, an application was made by the media organisation Reach Plc to the trial judge, Bryan J, to lift the order made pursuant to s.45 of the 1999 Act in respect of both Josh and the claimant. The application was unsuccessful. The order was maintained in the form set out above, subject to an amendment which allowed for reference to be made to Josh, Yousef and the claimant being friends. I have not seen any note of the judgment which Bryan J gave when maintaining the s.45 order on 18 June 2019.

23. The trial took place over four weeks before Bryan J and a jury. At the trial, both Josh and the claimant were named in court but the s.45 order prevented them being identified by the media. The media referred to Josh as "Boy A" and the claimant as "Boy B". The jury unanimously acquitted Josh of the murder or manslaughter of Yousef, the claimant of perverting the course of justice, and both defendants of conspiracy to rob Ali Ezzedine.

24. The sentencing hearing in respect of the offences to which they had pleaded guilty took place on 25 July 2019. At the outset of the sentencing hearing, the Press Association made an application to lift the reporting restrictions in respect of Josh. No such application was made in respect of the claimant. Bryan J rejected the application. A note of his decision indicates that, in determining that the balance fell in favour of maintaining anonymity, he observed that the pre-sentence report for Josh identified a high risk of potential harm to Josh, which had been exacerbated by a breach of the s.45 order. It was not difficult to see an escalation if anonymity was lifted. Bryan J had regard to the media reporting of the trial which demonstrated that it had been possible to report the trial while complying with the order. He noted that the period for which anonymity would remain in effect was limited but observed that community feeling may then have died down.

25. On 6 October 2019, Bryan J acceded to an application to lift the anonymity order in respect of Josh (at his request), two days before it would have expired.

26. On 25 July 2019, at the sentencing hearing:

    i) Josh was sentenced to a 12 month detention and training order for perverting the course of justice and a 4 month detention and training order, to be served consecutively, for the offence of possessing a bladed article.

    ii) The claimant was sentenced to a 4 month detention and training order for the offence of possessing a bladed article.

27. Following Yousef's death an inquest was opened and adjourned pending HM Senior Coroner Alison Mutch's decision as to whether to resume and hold a formal inquest. A pre-inquest review hearing is due to take place on 3 February 2020. It appears from the evidence of Mrs Akoum and Mrs Sanders that a decision whether to resume and hold a formal inquest has not yet been made.

28. Mrs Akoum has also explained that the Makki family "*are considering bringing civil proceedings against Joshua Molnar for the unlawful killing of Yousef*". As they are not in a position to self-fund such litigation, they have established a crowdfunding page and Mrs Akoum has set up a Twitter profile called "*Justice for Yousef*" through which she seeks to publicise the family's campaign.

D Brief outline of the parties' submissions

29. Adam Wolanski QC, Counsel for the claimant, submits that identifying the claimant at this juncture as "Boy B" would cause serious harm. The claim is founded on article 8 and, in particular, on the impact that identifying the claimant would have on his education, health, welfare and rehabilitation, as well as on the health and welfare of members of his family. A key factor on which he relies to demonstrate that the balance weighs in favour of anonymity is the extent to which the claimant's role has been misreported and "Boy B" has incorrectly been labelled as, and has wrongly come to be perceived as, a "killer".

30. Counsel for the Media, Sarah Palin, relies on the truly exceptional nature of the jurisdiction to grant the order sought. In *R v Legal Aid Board, Ex p Kaim Todner* [1999] QB 966, 977, Lord Woolf MR, delivering the judgment of the Court of Appeal, warned against "*the natural tendency for the general principle* [of open justice] *to be eroded and for exceptions to grow by accretion as exceptions are applied by analogy to existing cases*". Lord Woolf MR's warning was endorsed by the House of Lords in *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, at [29] (Lord Steyn) and by the Supreme Court in *Khuja v Times Newspapers Ltd* [2019] AC 161, at [14] (Lord Sumption JSC). Ms Palin submits that the circumstances of this case are not truly exceptional. Granting the order sought would extend the *Venables* jurisdiction, erode open justice, and amount to a failure to heed Lord Woolf's cautionary words.

E The *Venables* jurisdiction

31. The jurisdiction to make an order of the kind sought by the claimant has not been questioned in this case, but the circumstances in which such a restraint on reporting will be both necessary and proportionate are likely to be rare.

32. The jurisdiction has been exercised on five occasions in two decades, namely:

    i) *Venables v News Group Newspapers Ltd* [2001] Fam 430 ("*Venables*").

    ii) *X, formerly known as Mary Bell v O'Brien [2003] EWHC 1101 (Fam)*, [2003] EMLR 37 ("*Mary Bell*");

    iii) *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB) ("*Maxine Carr*");

iv) *A (A Protected Person) v Persons Unknown* [2016] EWHC 3295 (Ch), [2017] EMLR 11 ("*Edlington*"); and

v) *RXG v Ministry of Justice* [2019] EWHC 2026 (QB), [2019] EMLR 25 ("*RXG*").

33. Three of these cases concerned offenders who were very young when they committed their offences. Jon Venables and Robert Thompson were both aged 10 when they murdered a two year old boy. Mary Bell killed two children (aged 3 and 4), on separate occasions, when she was 10 and then shortly after she had turned 11. The Edlington case concerned brothers who were aged 10 and 12 when they committed very serious offences including grievous bodily harm with intent against three children aged 11, 9 and 11.

34. RXG was 14 when he committed two offences of inciting terrorism overseas. Although he was not as young when he offended as the children in respect of whom orders had previously been made, he was the youngest person ever to have been convicted of terrorism and he was described as emotionally and socially immature in comparison to others of his own age.

35. *Maxine Carr* is the sole case in which this jurisdiction has been exercised in favour of a person who was an adult when she committed her offence. Maxine Carr pleaded guilty to perverting the course of justice by providing a false alibi to Ian Huntley, who was convicted of murdering two 10 year old girls. There was no restraint on publication of Maxine Carr's name during the criminal proceedings. However, she is one of a tiny number of offenders who was provided with a new identity for her protection, others being Mary Bell, Jon Venables and Robert Thompson. The order was granted to protect her new identity on the grounds that it was necessary "to protect life and limb and psychological health".

36. In *Venables, Carr* and *Edlington* it was established that there was a real and immediate risk of serious physical harm or death if the claimants' identities were revealed. The anonymity orders were granted in those cases in fulfilment of the state's positive obligation to provide protection from such a real and immediate risk, pursuant to articles 2 and 3 of the European Convention on Human Rights ("ECHR"). Reliance was also placed on article 8, but this qualified right was of lesser importance where the unqualified rights in articles 2 and 3 were engaged.

37. In *Mary Bell* and *RXG* the claimants were unable to demonstrate that the hostility towards them reached the level required to establish that the order was necessary to avoid a breach of articles 2 and 3 but succeeded in their applications relying on article 8. These are the two most relevant precedents for consideration in this case, in which no reliance is placed on article 2 or 3.

38. In *Venables, Mary Bell* and *Maxine Carr*, the criminal defendants were named during the criminal proceedings, or upon conviction. Consequently, there was a considerable amount of information in the public domain about each of them. Anonymity was granted to protect their new identities. Whereas in *Edlington* and *RXG* anonymity was granted to protect the defendants' original identities.

39. Where, as in this case, there is a conflict between two qualified rights, namely articles 8 and 10, a balance must be struck. The correct approach to striking this balance in the context of reporting legal proceedings was described by Lord Steyn in *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593 at [17] (see *A v BBC* [2015] AC 588, Lord Reed JSC at [48]):

> "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."

And by Lord Rodger JSC in *In re Guardian News and Media Ltd* [2010] 2 AC 697: see *RXG* at [25]. At [50]-[52] Lord Rodger said:

> "50. The European court's exposition in Von Hannover really echoed what Lord Hoffmann had said, a few weeks earlier, in *Campbell v MGN Ltd* [2004] 2 AC 457, 473–474, paras 55 and 56:
>
> > "55. I shall first consider the relationship between the freedom of the press and the common law right of the individual to protect personal information. Both reflect important civilised values, but, as often happens, neither can be given effect in full measure without restricting the other. How are they to be reconciled in a particular case? There is in my view no question of automatic priority. Nor is there a presumption in favour of one rather than the other. The question is rather the extent to which it is *necessary* to qualify the one right in order to protect the underlying value which is protected by the other. And the extent of the qualification must be proportionate to the need: see Sedley LJ in *Douglas v Hello! Ltd* [2001] QB 967, 1005, para 137.
> >
> > 56. If one takes this approach, there is often no real conflict. Take the example I have just given of the ordinary citizen whose attendance at NA is publicised in his local newspaper. The violation of the citizen's autonomy, dignity and self-esteem is plain and obvious. Do the civil and political values which underlie press freedom make it necessary to deny the citizen the right to protect such personal information? Not at all. While there is no contrary public interest recognised and

> protected by the law, the press is free to publish anything it likes. Subject to the law of defamation, it does not matter how trivial, spiteful or offensive the publication may be. But when press freedom comes into conflict with another interest protected by the law, the question is whether there is a sufficient public interest in that particular publication to justify curtailment of the conflicting right. In the example I have given, there is no public interest whatever in publishing to the world the fact that the citizen has a drug dependency. The freedom to make such a statement weighs little in the balance against the privacy of personal information."

> 51. Lord Hoffmann's formulation was adopted by Lord Hope of Craighead in *In re British Broadcasting Corpn [2010] 1 AC 145*, para 17. Since "neither article has *as such* precedence over the other" (*In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, 603, para 17, per Lord Steyn), the weight to be attached to the rival interests under articles 8 and 10 - and so the interest which is to prevail in any competition - will depend on the facts of the particular case. In this connexion it should be borne in mind that - picking up the terminology used in the Von Hannover case 40 EHRR 1 - the European court has suggested that, where the publication concerns a question "of general interest", article 10(2) scarcely leaves any room for restrictions on freedom of expression: *Petrina v Romania* (Application No 78060/01) given 14 October 2008, para 40 …).

> 52. In the present case M's private and family life are interests which must be respected. On the other side, publication of a report of the proceedings, including a report identifying M, is a matter of general, public interest. Applying Lord Hoffmann's formulation, the question for the court accordingly is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies M to justify any resulting curtailment of his right and his family's right to respect for their private and family life."

40. On behalf of the claimant, Mr Wolanski emphasised that "*the proper application of the parallel analysis required by In re S meant that there would be exceptional cases which justified an incursion into the open justice principle*" (*RXG* at [30]), citing *A Local Authority v W* [2005] EWHC 1564 (Fam); [2006] 1 F.L.R. 1, per Sir Mark Potter P at [53]:

> "Paragraphs 17 and 23 of the judgment [in *In re S*] are clear as to the approach to be followed in a case of this kind. There is express approval of the methodology in [*Campbell v MGN Ltd*] in which it was made clear that each Article propounds a fundamental right which there is a pressing social need to protect. Equally, each Article qualifies the right it propounds so far as it may be lawful, necessary and proportionate to do so in

> order to accommodate the other. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither Article has precedence over or 'trumps' the other. The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out. Having so stated, Lord Steyn strongly emphasised the interest in open justice as a factor to be accorded great weight in both the parallel analysis and the ultimate balancing test and stated that, at first instance, the judge had rightly so treated it, However, nowhere did he indicate that the weight to be accorded to the right freely to report criminal proceedings would invariably be determinative of the outcome. Indeed, he acknowledged that although it was the 'ordinary' rule that the press, as public watchdog, may report everything that takes place in a criminal court, that rule might nonetheless be displaced in unusual or exceptional circumstances."

41. In *RXG*, at [35], the Divisional Court (the President of the Queen's Bench Division and Nicklin J) summarised the principles applicable when determining an application for an order pursuant to the court's *Venables* jurisdiction in these terms:

> "i) Restrictions upon freedom of expression must be (a) in accordance with the law; (b) justifiable as necessary to satisfy a strong and pressing social need, convincingly demonstrated, to protect the rights of others; and (c) proportionate to the legitimate aim pursued: *Venables* [44].
>
> ii) The strong and pressing social needs which may justify a restriction upon freedom of expression, in principle, include:
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> a) the right to life and prohibition of torture under arts 2 and 3: *Venables* [45]–[47]; *Mary Bell* [16]; *Maxine Carr* [2]; and *Edlington* [9], [35]; and
>
> b) the right to a private and family life under art.8: *Venables* [48]–[51]; *Mary Bell* [19]–[31]; and *Maxine Carr* [3].
>
> iii) The threshold at which arts 2 and/or 3 is engaged has been described variously as: *"the real possibility of serious physical harm and possible death"*: *Venables* [94]; *"a continuing danger of serious physical and psychological harm to the applicant* ": *Maxine Carr* [4]; an *"extremely serious risk of physical harm"*: *Edlington* [36].

iv) In *Venables* ([87]–[89]), Dame Elizabeth Butler-Sloss P considered that the authorities of *Davies v Taylor* [1974] A.C. 207 and *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] Q.B. 563 provided helpful guidance as to the assessment of future risks to physical safety. She held that the test is not a balance of probabilities but rather that the evidence must *"demonstrate convincingly the seriousness of the risk"* and raise a real possibility of significant harm: a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm.

v) Where an applicant demonstrates, by cogent evidence, that there is a real and immediate risk of serious physical harm or death, then there is no question of that risk being balanced against the art.10 interests: *Maxine Carr* [2].

vi) In cases where arts 2 and 3 are not engaged and the conflict is between the art.8 and art.10 rights, neither right has precedence over the other. What is necessary is an intense focus on the comparative importance of the rights being claimed in the individual case. The justifications for interfering with or restricting each right must be taken into account and a proportionality test must be applied: *Edlington* [28].

vii) The rights guaranteed by arts 2 and 3 are unqualified. Where the evidence demonstrates that there is a real and immediate risk of serious harm or death this cannot be balanced against any art.10 right, no matter how weighty. In that context, it should be noted that we would respectfully depart from the proposition articulated by the Chancellor, Sir Geoffrey Vos in *Edlington* [35] that arts 2 and 3 rights could be balanced against art.10 (a proposition later adopted by Sir Andrew MacFarlane P in *Venables v News Group Newspapers Ltd [2019] E.M.L.R. 17* [43]): see further [26](vi) above.

viii) However, where evidence of a threat to a person's physical safety does not reach the standard that engages arts 2 and/or 3 , then the evidence as to risk of harm will usually fall to be considered in the assessment of the person's art.8 rights and balanced against the engaged Article 10 rights. Whilst the level of threat may not be sufficient to engage arts 2 or 3, living in fear of such an attack may very well engage the art.8 rights of the person concerned.

ix) Article 8 rights may, depending on the facts of a particular case, justify a *contra mundum* injunction. In *Venables*, Dame Elizabeth Butler-Sloss P, expressed uncertainty to whether the engaged art.8 rights, on their own, would have justified the order: [86]. In *Mary Bell*, the evidence did not reach the level at which art.2 was engaged ([16]), but the art.8 rights (balanced against art.10) did justify a *contra mundum* injunction ([61]). In

> *Mary Bell*, factors under art.8 that favoured the granting of a *contra mundum* injunction included:
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> a) the youth of an offender at the time of the offending: [45];
>
> b) the length of time which has elapsed since the offences were committed: [45];
>
> c) the likely impact upon the mental or physical health of the person if identified: [45], [60(4)], [61]; and
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> d) the fact that there was significant information (beyond the new identity of Mary Bell) already in the public domain about the applicant and his or her crimes which enabled the media to comment freely on the case: [60(1)–(2)].
>
> x) The making of a *contra mundum* injunction was regarded as exceptional in *Venables* [76], [97]; *Mary Bell* [33], [64]; and *Edlington* [34]. In *Mary Bell*, Dame Elizabeth Butler-Sloss P held that the notoriety which may be a consequence of the commission of serious offences would not, of itself, entitle the offender, upon release, to an anonymity order based upon the likelihood of press intrusion: to do so would unjustifiably open the floodgates: [59]. The cases in which *contra mundum* orders have been granted have been exceptional. In three of them, the Court found that art.2 was engaged and, in *Mary Bell*, the combination of the art.8 rights engaged outweighed those engaged by art.10."

E The evidence

42. In determining this claim I have had particular regard to the sentencing remarks of Bryan J and to the following evidence:

    i) A witness statement submitted on behalf of the claimant by his sister, and litigation friend, CDG;

    ii) Two witness statements submitted on behalf of the claimant by his solicitor, Joanne Sanders;

    iii) A witness statement submitted on behalf of the Makki family by Jade Akoum;

    iv) A letter dated 27 November 2019 from the headteacher of the claimant's current school;

    v) The pre-sentence report dated 23 July 2019 in respect of the claimant, prepared by Bonita Jordan, Youth Justice Case Manager, Trafford Youth Offending Service;

    vi) A letter dated 17 October 2019 from Bonita Jordan;

    vii) The report of Dr Sohom Das, Forensic Psychiatrist, dated 13 November 2019;

viii) A letter dated 9 October 2019 from David Knight, Cognitive Behavioural Psychotherapist; and

ix) The report of Dr Saima Latif, Chartered Psychologist, dated 15 June 2019.

43. The claimant has served his sentence. Ms Jordan has described the way in which he worked "*proactively and willingly*" with Trafford Youth Engagement Service. His behaviour and compliance throughout his sentence are described as "*excellent*". While in custody, he "*often helped the other trainees with their maths*". The claimant also "*expressed a desire to use his experience to help and educate other young people about the dangers of carrying knives*" and, to his credit, this is work he has engaged in since his release from detention.

44. Mrs Akoum disputes that the claimant is remorseful about his actions. Although this is entirely understandable from a sister, and a family, who have suffered a terrible loss, I am satisfied on the evidence that ever since 2 March 2019, the claimant has consistently, repeatedly and convincingly expressed deep remorse for his actions, and profound grief for the loss of Yousef who he regarded as his best friend.

45. I shall address the evidence under three heads: (i) education; (ii) health and welfare; and (iii) reporting and misreporting. However, these are not discrete issues. Any detrimental impact on the claimant's education feeds into the health and welfare issues and vice versa. The degree of misunderstanding of the claimant's role has an impact on the level and nature of media/social media intrusion, which in turn may have an impact on the claimant's health, education and welfare.

Education

46. The claimant was in year 12, studying for A levels, at the time of the trial. A letter from the headteacher of his former secondary school ("the claimant's former headteacher") makes clear that the claimant is a "*bright young man with a strong academic record*" and an "*unblemished*" disciplinary record throughout his years of attendance there. The claimant's parents took the decision to withdraw him from his former secondary school, which Yousef had also attended, at the start of the academic year 2019/2020, in order to give him a new start. This was a course of action with which the claimant's former headteacher was in full agreement.

47. The criminal proceedings and the claimant's sentence for possession of a bladed article inevitably disrupted the claimant's education. Although he only left his old school at the start of the current academic year, he did not receive education in school after 2 March 2019, instead continuing his studies away from school with the school's support.

48. The evidence of the claimant's sister is that, despite the active assistance of his old school, "*there was significant difficulty in finding* [the claimant] *a place in a Sixth Form or College*". CDG states:

> "My mother sent applications to at least twelve schools and went to see at least six in person. These schools refused to take DXB because of concerns over his safeguarding and due to the high profile and notorious nature of the case. Given DXB's

> academic success and his sporting ability, it was clear that he was turned down only because of their concerns that DXB's inclusion might have on the other pupils and parents and on their reputations."

49. The schools' reasons for refusing to offer a place to the claimant appear to be an inference that CDG has drawn. In the absence of evidence regarding each of these schools, and the terms of any communications with them, I am not prepared to make an assumption that the only reasons they could have had for not offering the claimant a place stemmed from concerns regarding safeguarding and their own reputations. That said, I accept that the claimant and his parents had significant difficulty in finding him a new school place.

50. Ultimately, the claimant was successful in obtaining a place in a large comprehensive school. The claimant is currently in year 13. However, in view of the degree to which his A level studies have been disrupted, his school considers that the most sensible approach would be for him to repeat a year, with a view to taking his A level examinations in summer 2021, rather than this summer. At present, it seems likely that the claimant will follow this advice and the order sought is intended to extend a little time beyond his A level examinations.

51. The headteacher of the claimant's current school ("the headteacher") has explained:

> "After carefully considering his circumstances, we decided that we had a moral responsibility to help rehabilitate him into the community. It was very evident to us that the successful completion of his A-Levels would assist greatly in getting his life back on track and that this would significantly reduce the risk of future anti-social behaviour or criminal behaviour."

52. The headteacher states that the claimant's "*teachers and classmates know nothing about his criminal record or his association with the tragic death of Yousef Makki*". According to the headteacher, this knowledge has been restricted to four members of staff. This is supported by CDG's evidence that "*DXB has told me that none of his fellow pupils, and only a handful of senior staff, are aware that he was a defendant in the Criminal Proceedings*". The headteacher has explained that knowledge has been restricted in this way because the school did not believe the claimant presented a risk to the school community, an assessment which is clearly supported by Ms Jordan's evidence, as well as by the claimant's unblemished disciplinary record at his old school, to which the headteacher refers. In addition, the headteacher states that they believed that if the information became known more broadly "*this would have seriously increased the risk of [DXB's] placement here failing*".

53. Ms Palin questions whether knowledge of the claimant's identity as "Boy B" is as limited as the headteacher believes. I accept that the headteacher can only say with certainty how restrictively the knowledge has been *held* by the school. I also note that in the pre-sentence report Ms Jordan stated at paragraph 4.3.5 that although the claimant's "*identity is protected in the press, he is well known in his area and his identity has been exposed on social media*". Nevertheless, it is clear that the headteacher and DXB believe other members of staff and pupils do not know, and I consider it likely that if the claimant's identity as "Boy B" was known by others in the

school (and certainly if it were widely known) the headteacher and DXB would be aware of this.

54. The headteacher states that since joining the school the claimant has "*worked hard and behaved impeccably in lessons*". He has been able to focus on his studies in this critical period and he has started to make social connections with his peers. The headteacher expresses the view that the passage of time is likely to further strengthen DXB's connections within the school community and that "*this will greatly assist his general rehabilitation*".

55. The headteacher's letter continues:

> "On the other hand, we believe that the publication of his name at this point would critically undermine this fragile process, for the following reasons:
>
> (i) Instead of being accepted at face value, [DXB] would become an object of suspicion and fear. This would greatly harm his ability to integrate socially with our community and this is likely to leave him feeling very isolated in our school.
>
> (ii) [DXB] would be repeatedly questioned by his peer group about the details of his case. This public reliving of these horrific events could only exacerbate the trauma that he is currently experiencing. We are very aware that [DXB] continues to find it very difficult to come to terms with recent events, but we are supporting him to deal with these private struggles and we believe that the relative normality of his school life is really helping him in this respect.
>
> "(iii) Other students across the school would quickly identify [DXB] and this would almost certainly lead to inappropriate and/or hostile comments from younger students on the school corridors etc. during the school day. There is a real risk that this would lead to heightening tensions and emotions that would be very difficult for us to manage or control."
>
> (iv) [DXB's] circumstances would become a major topic of commentary on social media. This would inevitably lead to distorted and inaccurate accounts of his involvement in this case and this would greatly exacerbate the problems described under (i), (ii) and (iii).
>
> In summary, if [DXB's] name were released into the public domain at this point, it would seriously undermine the positive progress we have made with him in recent weeks and months. It is inevitable that the publication of his name will lead to tensions with other students and suspicion and commentary from a number of families in our community. It seems very likely to us that this hostility would seriously harm the fragile rehabilitation process and this would almost certainly cause

> [DXB's] placement here to fail entirely. We do not believe this to be in [DXB's] interest or that of broader society."

56. In addition, the headteacher has expressed concern about the anxiety that other current students, particular younger pupils, may feel if the claimant's identity is disclosed, and for the reputation of the school as a result of alarmist headlines that may follow. The headteacher states that DXB's place at the school would have to be kept "*under close review*" and it may transpire that the school would be unable to continue to extend a place to DXB.

57. CDG states the claimant is "*the first to recognise his wrongdoing*" and his family "*do not seek to disassociate DXB from his actions*" but they "*hope he can have an opportunity to rehabilitate and reintegrate into society to lead a positive life*". CDG refers to the school's "*grave concerns that they could not ensure the ongoing safeguarding at the school*" and expresses the view that there is "*a very good chance he would have to leave and would not be able to find another school. We believe it highly likely he would not complete his A-Levels*".

58. I consider the weight to be given to these concerns below when undertaking the parallel analysis of articles 8 and 10.

Health and welfare

59. In his sentencing remarks, Bryan J acknowledged, having regard to the report of Dr Latif, that the repercussions for the claimant included that he was suffering health wise and had been diagnosed with Post Traumatic Stress Disorder ("PTSD") accompanied by a generalised anxiety disorder. The most recent medical report is that of Dr Das.

60. It is not necessary, or appropriate given its sensitive nature, to provide a detailed account of the medical evidence. In short, Dr Das's opinion is that the claimant's "*overall mental state has gradually improved since the incident in March 2019*". He is currently able to function relatively well, and he has been focussing successfully on his studies. Nevertheless, Dr Das concludes, on balance, that "*DXB is currently suffering from Post-Traumatic Stress Disorder and mixed anxiety and depression*". Dr Das explains that this "*mixed category should be used when symptoms of both anxiety and depression are present, but neither set of symptoms, considered separately, is sufficiently severe to justify diagnosis*".

61. Dr Das considers that if revealing the claimant's anonymity results in him being ostracised and receiving insults and threats, including threats of violence, "*this is likely to further exacerbate DXB's social isolation and withdrawal and restrictions in his life (including staying out of the public eye). This would be associated with a risk of significantly exacerbating his mental health difficulties (in particular his anxiety and depression)*". Such a "*deterioration of his mental health, along with general embarrassment from the judgment of his peers*" is "*likely to detrimentally affect DXB's current motivation and focus on his education*" and his "*rehabilitation and reintegration into society*".

62. If revealing the claimant's identity results in his family being judged and ostracised by the wider community and possibly also receiving insults and threats, Dr Das considers this "*in turn, could contribute to DXB's feelings of guilt and low mood*".

63. Mr Knight's view is that revealing the claimant's identity could cause him "*significant harm*". He considers that there is a risk that he will become so anxious about being judged and rejected that he may not be able to continue his education and may isolate himself further. Mr Knight's opinion is that revealing the claimant's identity will trigger his PTSD and depression.

64. Ms Jordan has explained that due to the claimant's mental health conditions his "*Safety and Wellbeing risk levels are assessed as High*". She states that this would increase to "*Very High if his identity was made public, partly due to there being serious concerns regarding his physical wellbeing, should he be the victim of assaults. It is likely that remaining in school would be unworkable in this instance.*" Ms Jordan notes that "*[e]ducation is widely accepted as key in ensuring a young person's rehabilitation and is a significant factor against reoffending*". She observes that "*the primary aim of Youth Justice is to rehabilitate, and it is for this reason that [Trafford Youth Justice] strongly oppose [DXB's] identity being made public, as the rehabilitative process will be significantly disrupted should the restrictions be removed*".

65. CDG's evidence also addresses the impact of identifying him on his family, particularly a sibling. I shall refrain from setting out the details of the matters relied on, given the sensitive nature of the information, but I have borne this evidence fully in mind.

66. Again, I shall consider these concerns below when undertaking the parallel analysis of articles 8 and 10.

Reporting, misreporting and misperceptions

67. In short, Ms Sanders' evidence is that:

    i) There has been huge media interest that has made the claimant notorious;

    ii) Press interest is likely to continue beyond the date on which DXB turns 18;

    iii) Some of the reporting has been inaccurate, in particular regarding the claimant's role; and

    iv) Identifying the claimant as "Boy B" has to be considered against the backdrop of the widespread and embedded misperception that the claimant was one of Yousef's killers or murderers.

68. As regards the extent of media interest, and the likely continuation of such interest, Ms Sanders states in her second statement, dated 29 November 2019 (bundle references omitted):

> "29. The result of the Criminal Proceedings has been that DXB has found himself at the centre of huge media interest that has made him notorious. It is unsurprising that the case attracted

> very widespread publicity. There have been over 2,000 newspaper reports published about the case in hard copy. This figure does not include online reports. There are, in my view, a number of reasons for the particular interest in this crime. The case relates to what many deem to be a national epidemic in knife violence, particularly amongst juveniles. The media have also alighted on various other themes including race, disparity of wealth and access to justice, all of which have added to the media's interest in this case. Most of all, the case is one of profound tragedy.
>
> …
>
> 35. Given the press interest that this case has already garnered, it is likely that it will continue up to and beyond DXB's 18th birthday in January 2020. I am already aware of a BBC documentary called 'Justice on Trial' and/or 'Tough on Crime' which social media reports indicate will be aired in January 2020. This is likely to reinvigorate debate on this case and lead to questions as to whether justice was served, despite a full criminal trial and acquittal verdicts having been handed down. Although I do not know what the documentary will contain, given the nature of publicity to date, it is likely it will raise questions on wealth inequality and draw particular attention to DXB who resides in a fairly wealthy part of the Manchester area."

69. In her second statement, Ms Sanders anticipated that the resumption of the inquest on 20 December 2019 would generate more reporting of the criminal proceedings. In her third statement, dated 8 January 2020, Ms Sanders states that the hearing that was due to take place on 20 December was a pre-inquest review hearing which has adjourned to 3 February 2020. She continues: "*I understand that it is currently possible that the Coroner may decide not to resume and hold a full inquest*".

70. Following the revelation of Josh's identity in an article in *The Sunday Times Magazine* published on 6 October 2019, Ms Sanders states:

> "51 …there was, as expected, subsequent widespread reporting of Mr Molnar's identity and renewed interest in the Criminal Proceedings, with at least 37 online articles appearing in the 24 hours following The Sunday Times' exclusive."

71. Ms Sanders states that the continued interest in the case is demonstrated by a number of recent articles, specifically, articles in (i) the *Femail* section of *The Mail* and the *Mail Online* on 6 November 2019 (an article which "*was not preceded by any newsworthy event*"), (ii) articles in *The Mirror*, *The Sun* and the *Mail Online* on 28 November 2019 "*relating to Josh's standard application for a 'day release' over the Christmas period*"; (iii) *Vice* magazine on 21 November 2019; (iv) the *Manchester Evening News* on 24 November 2019; and (v) *The Sun* on 29 November 2019.

72. The claimant's submissions as regards the extent of press reporting find some support in the sentencing remarks of Bryan J. When addressing Josh, Bryan J observed that "*your conduct has been the subject of intense media comment both before and after the verdicts, not all of which has been focussed upon the evidence that was heard by the jury*". Bryan J also commented on the extensive reporting of proceedings that had occurred when ruling against the application to lift the s.45 order in respect of Josh.

73. As regards misreporting and the public perception of the claimant's role, Ms Sanders states that the

> "joint trial appears to have plainly contributed to a public perception that the two boys, and their involvement in the incident, and the crimes they committed, are indistinguishable".

74. She further states:

> "Some of the articles and broadcasts have inaccurately reported the evidence at trial. Most seriously, several publications have referred to DXB as having been charged with murder and manslaughter. These distorted reports have had the most impact on DXB and the public's view of him in relation to the Criminal Proceedings.
>
> DXB's involvement in the incident was entirely different to that of Josh, not least because the charges against him were much less serious, but that distinction appears to have been lost in media coverage. Despite having never been charged with, or ever accused of, murder or manslaughter, and despite the fact that Josh administered the fatal stab to Yousef but DXB did not, the media regularly report the Criminal Proceedings by reference to the 'two killers' and 'both boys' being cleared of murder and manslaughter."

75. Ms Sanders states that the lifting of the claimant's anonymity should be seen in the light of the publicity and misreporting to which she refers. She suggests:

> "If DXB is identified there will be a widespread and embedded perception that he was one of Yousef's killers or murderers."

76. In support of the contention that there has been misreporting, Ms Sanders identifies 18 examples at paragraph 32(a)-(r) of her second statement:

    i) An article in Arab News, published on 6 March 2019, wrongly stated in a bullet-point summary at the start of the article and repeated in the third paragraph of the article "*Two unnamed 17-year old have been arrested and charged with his murder*". This was clearly an error because only one person, Josh, had been charged with Yousef's murder. Ms Palin draws attention to the lack of any further complaint by the claimant regarding any reporting of the trial by *Arab News* and the lack of evidence as to the readership within this jurisdiction of this newspaper.

ii) Three articles in the Manchester Evening News, two published on 12 July 2019 and one published on 16 October 2019. The first of these articles is very brief and includes a statement in the first paragraph that "*two teenage boys were found not guilty over his death*". I have not seen the second article, but it is said to contain the sentence "*Two boys found NOT GUILTY over fatal stabbing*". The third article is very short and includes the words "*the boys accused of causing her son's death were cleared of murder and manslaughter*". The Media accept that the part of the third article I have quoted is inaccurate, but dispute the inaccuracy of the other two articles. Although the forms of words used in the first two articles provide more scope for debate as to their inaccuracy, it seems to me that it is sufficient in this context to note that such words are capable of misleading readers as to the claimant's role and contributing to the perception to which Ms Sanders has referred. Ms Palin submits that in considering such inaccuracies I should bear in mind that Manchester Evening News has published extensive accurate coverage of the trial about which no complaint is made.

iii) An article in *The Evening Standard* published on 12 July 2019 which contained this sentence: "*Neither of the defendants accused of killing the schoolboy can be named as they are aged under 18*". This sentence is clearly inaccurate, although it is fair to say that the remainder of the article, including the headline conveys the point that only Boy A was charged with murder.

iv) Four articles in The Sun, published on 15 July 2019, 16 July 2019, 29 July 2019 and 9 August 2019. The first of these bears the headline "*Teens wouldn't have been cleared of murdering private schoolboy Yousef Makki if they were black, MP says*" and the article begins with a reference to the "*teens accused of stabbing*" Yousef. Ms Palin submits that the headline accurately reflects what Lucy Powell MP said in Parliament. I consider it unnecessary to consider the accuracy of what the MP said, and I would be reluctant to do so without having heard submissions on the potential effect of article 9 of the Bill of Rights 1689. What is clear is that the article inaccurately conveys the impression that "*teens*" (plural) have been accused of stabbing/murdering Yousef and they have been acquitted of murder. The second article bears a similar headline erroneously suggesting that "teens" have been cleared of murder. The third article states in the first paragraph that Yousef's mother had "*slammed the judge who locked up one of her son's killers for just 16 months*". This is inaccurate, but the headline and the remainder of the article properly convey the respective charges and offences. The fourth article opens with a reference to "*two 'middle class' teens*" having been "c*leared of stabbing Yousef*", which is again inaccurate, albeit the following paragraphs properly state the charges of which each defendant was acquitted.

v) Reliance is placed on the following matters published by the BBC: a tweet by Emma Barnett on 8 August 2019 which states "*We speak to his mother about what happened to her & her family as two boys went on trial for her son's death*"; a statement by Emma Barnett the same day in a broadcast on BBC 5Live that "*In a surprise verdict, both boys were cleared of murder and manslaughter*"; tweets by Victoria Derbyshire on 21 August 2019 stating "*She is calling for a review of the sentences given to two boys in the case. They*

were cleared of murder and manslaughter" and "*She says neither defendant – who were cleared of murder and manslaughter – showed any remorse*". And a tweet by BBC North West dated 8 October 2019 which referred to "*two teenagers who stabbed a Manchester schoolboy to death*". These are all inaccurate statements, a point the Media do not dispute save in respect of the first tweet. Ms Palin submits that no evidence has been given as to whether the tweets have been corrected and there has been extensive accurate coverage of the trial by the BBC of which no complaint is made.

vi) Ms Sanders states that *The Daily Mail* published an article on 9 August 2019 which referred to the "*youths*" (plural) "*accused of killing Yousef Makki*". There is no copy of this article in evidence. It appears that in fact the article referred to was published in the *Mail Online* on 8 August 2019 and not in *The Daily Mail*. This includes reference in the first paragraph to "*the youths on trial for killing*" which is inaccurate. Ms Palin has provided a copy of the article which shows that a few paragraphs on it becomes apparent that only Boy A was on trial for, and cleared of, murder and manslaughter.

vii) An article published online and in hard copy in *The Guardian* on 14 August 2019 is said to have contained inaccuracies. Ms Sanders states that the online version included the words, "*Boys were found not guilty of murder and manslaughter*". It appears that this inaccuracy was corrected as these words do not appear in the exhibited version. In my judgment, the printed article is not rendered inaccurate by the reference to two teenagers being detained "*over the fatal stabbing*", having regard to the context which gives an accurate account.

viii) *Heart North West* published an inaccurate tweet on 14 August 2019 referring to "*the boys who were acquitted of his killing*". There is no evidence before me as to whether it has been corrected.

ix) Ms Sanders states that *Hits Radio* published an article on 15 October 2019 which said, "*the jury returned a verdict of 'not guilty' in relation to murder and manslaughter charges against 'Boy A' and 'Boy B'*". This is factually incorrect.

x) Finally, Ms Sanders draws attention to a *Mail Online* article published on 6 November 2019. A caption under a photograph of the boy who has given an interview states that he "knew the teenagers who stabbed and killed his best friend Yousef Makki earlier this year". This photo caption is inaccurate. However, there is no complaint about the remainder of this lengthy article and the headline refers to Yousef having been "stabbed by a wealthy pal" (singular).

77. In a letter dated 19 December 2019, the Media wrote:

> "We do not accept the implicit criticism of the prosecution that your client should not have been tried alongside Josh Molnar or that as a result of inaccurate reporting there is a false public perception that their crimes are indistinguishable. Court reporting privilege only protects fair and accurate reporting of proceedings in court. If your client is subject to unfair and

> inaccurate reporting of his criminal trial he has a remedy in defamation. Moreover, the inaccurate reporting on which you rely (if it was inaccurate) represented only a tiny fraction of the media coverage of the trial".

78. Ms Sanders has responded to this in her third witness statement. She gives details of her firm's correspondence with publishers and broadcasters to correct inaccuracies in their reporting. In particular,

    i) Ms Sanders refers to *Mail Online* articles dated 12 July 2019, 15 July 2019, 17 July 2019 and 25 July 2019 which included inaccurate statements to the effect that both boys were on trial murder. Corrected versions of three of these articles were put on online. Ms Sanders states that the inaccurate statements remained online for 20 days after the Defendant had been notified.

    ii) On 6 November 2019 *Mail Online* published the inaccurate photo caption to which I have referred in paragraph 76.x) above. On 5 December 2019 this inaccuracy was removed and an agreed correction was published which stated: "*An earlier version of this article referred to Yaseen Moriarty as knowing the 'teenagers' who stabbed and killed his best friend. In fact, only one defendant was accused of, and charged with, murder*."

    iii) Ms Sanders refers to inaccuracies in articles published in *The Sun* on 15 July 2019, 16 July 2019, 26 July 2019, 29 July 2019 and 9 August 2019. Four of these five articles have been referred to in paragraph 76.iv) above. The remaining article referred to "*two rich teens*" being jailed "*over the killing of a pal*". Ms Sanders states that on 30 August 2019, The Sun published amendments to each of these articles to remove the inaccurate references to "*teens*".

    iv) Ms Sanders states that her firm "*wrote to a number of other media outlets including PA Media, the Mirror, Manchester Evening News, Evening Standard, The Independent, The Guardian and the BBC concerning inaccurate articles*", some of which are those I have referred to in paragraph 76 above. However, there is no evidence before me as to what, if any, corrections were made as a result of this correspondence.

79. Ms Sanders further states at paragraph 25 of her third statement:

> "The Defendant also states in its Letter that the inaccurate reports represented a 'tiny fraction' of the media coverage of the trial but has provided no evidence to support this. I do not think that the assessment of the likely impact that this has had on public understand is an exclusively quantitative exercise. We set out at paragraphs 32(a) to (r) of my second statement specific examples of national media organisations with huge readership numbers. We can see from both reader comments beneath and redistribution of these articles that these have been widely read and shared on social media. This in turn leads to a percolating effect throughout platforms such as Twitter and Facebook. In the time allowed since receipt of the Letter, it I

> has not been possible to conduct a forensic analysis of the likely reach of the articles at paragraphs 32, but from the factors referred to above I regard this as an attempt by the Defendant to downplay the significance the reporting has had on public understanding. How widespread the inaccuracy is qualitative not just statistical but I do not accept that the inaccuracy represents only a tiny fraction."

80. In addition to the press reporting, Ms Sanders relies on the question raised by Lucy Powell MP in Parliament, to which I have referred in paragraph 76.iv) above, as showing "*the momentum and notoriety the case has gathered*". Ms Powell's question also, Ms Sanders states, "*highlights issues relating to race and access to justice that … have formed part of the theme of the reporting on this case, and are likely to continue to do so*". She suggests that the MP's involvement "*further shows that the interest in this case and the distortion, or at least misunderstanding, of DXB's role, is deeply embedded nationally and extends even to Parliament*".

81. Ms Sanders' evidence also addresses social media coverage. She states:

> "45 The social media coverage also reflects an apparent misunderstanding that DXB was one of the killers of Yousef Makki. Unsurprisingly, given the emotions raised by the terrible death of Yousef, there has been intensive social media activity since the death of Yousef and this continues to date. This has created a huge volume of content online. CDG has endeavoured to maintain a record of social media activity and has collated approximately 2500 posts or tweets over a 4 month period (this is not all of the social media activity, but provides some indication of its volume and intensity). Many of those tweeting have included high-profile Twitter users with a very substantial or active following … A substantial part of this social media activity has been explicitly directed towards DXB and his family.
>
> 46. There are some specific trends including:
>
> (a) Conflation of DXB and Josh Molnar as 'murderers' or 'killers' …
>
> (b) Menacing or threatening content directed towards DXB and/or his family and which reveal that DXB's home has been watched …
>
> (c) General social media to illustrate the voluminous and high profile nature of the (often inaccurate) coverage …
>
> 47. The crime against Yousef has gathered notoriety and it is clear that, in no small part as a result of the misinformation promulgated by the press and online, DXB will be the subject of heavy and sustained, and in all probability misleading, comment if his anonymity is allowed to lapse in January."

82. Ms Sanders also draws attention to evidence that the media are said to be "*very keen to name and shame*" the claimant when he turns 18.

F Article 8 of the ECHR

83. It is clear that there has been a very significant level of press coverage regarding the criminal proceedings. The evidence does not demonstrate that the claimant's level of notoriety comes close to that of Jon Venables and Robert Thompson, whom the court described as "*uniquely notorious*", even compared to other notorious murderers (*Venables* at [58] and [76]), or Mary Bell who was described by the court as having "*a semi-iconic status, a special degree of notoriety*" (*Mary Bell* at [40]). But it does not seem to me that there is any basis, in the absence of evidence from the Media, on which I could determine (as a matter of impression, as Ms Palin submitted), that the claimant is *currently* less notorious than, say, RXG or the brothers in the Edlington case. Given the nature of his offence, it is likely that his notoriety will be more short-lived than that of RXG or the Edlington brothers.

84. Although the criminal proceedings came to an end 6 months ago, it is likely that there will be a significant level of further press coverage in the future. In particular:

i) It is probable that if the claimant is identified that will itself prompt a significant number of press articles, as it did when Josh was identified;

ii) It appears that a full inquest may well not be held, but if one were to be held, that would be likely to lead to a significant level of further press coverage while it is ongoing;

iii) The Makki family are considering bringing civil proceedings against Josh. If they bring such proceedings, it is likely that there will be a significant level of press coverage. Such press coverage would be likely to focus more heavily on Josh than the claimant, as Josh is the sole proposed defendant to those proposed civil proceedings. Nonetheless, it is very likely that there would be press coverage regarding the claimant, too. Before any such proceedings are brought, the Makki family's funding campaign is likely to prompt some further press coverage.

iv) It is also likely that there will be some other future press coverage prompted by specific events. For example, just as there was press coverage when Josh sought day release at Christmas, there may well be further coverage when he is released. Such coverage is again likely to focus more heavily on Josh than on the claimant.

v) In addition, there may be some further coverage unprompted by new events, such as the anticipated BBC programme, which is likely to lead to further press articles.

85. It is also likely that further press coverage will, in turn, lead to further social media interest in the claimant and the criminal proceedings.

86. The extent to which press reports have stated or conveyed the impression that both "Boy A" and "Boy B" killed Yousef and were charged with (and acquitted of) his

murder or manslaughter, is not insignificant. Public reporting about the claimant is a form of interference with his private and family life. It is readily understandable that misreporting of this kind, particularly in national newspapers with large numbers of readers, will have made the interference all the more unwelcome, albeit the claimant has not been named in such reports.

87. However, in the context of this case, the relevance of any past misreporting essentially goes to the question whether there is an embedded public perception that "Boy B" killed Yousef or was charged with his murder or manslaughter. Ms Sanders' evidence that there have been over 2,000 newspaper reports in hard copy about the criminal proceedings supports Mr Wolanksi's submission that the claimant is currently, a relatively short period after the trial, notorious. The examples of inaccuracies that I have been shown represent a very small proportion of this high volume of reports. The evidence of inaccuracies may not be exhaustive, but it is a fair inference that the claimant's representatives will have drawn attention to the worst examples and those with high circulation levels. In my judgment, this evidence does not demonstrate that there is "*a widespread and embedded perception that [the claimant] was one of Yousef's killers or murderers*".

88. Moreover, in *In re Guardian News and Media Ltd* [2010] 2 AC 697, Lord Rodger JSC (delivering the judgment of the court) observed at [66]:

> "The identities of persons charged with offences are published, even though their trial may be many months off. In allowing this, the law proceeds on the basis that most members of the public understand that, even when charged with an offence, you are innocent unless and until proved guilty in a court of law. That understanding can be expected to apply, a fortiori, if you are someone whom the prosecuting authorities are not even in a position to charge with an offence and bring to court."

89. Although this observation "*cannot be treated as a legal presumption, let alone a conclusive one*" (see *Khuja v Times Newspapers Ltd* [2019] 2 AC 161 at [8]), having regard to the nature and facts of this case, I consider it does apply. Most members of the public will readily understand that the claimant, who is not alleged to have been involved in the altercation in which Yousef was killed, and who was never charged with murder or manslaughter, did not kill (let alone murder) Yousef.

90. It is also important to bear in mind, insofar as the claimant relies on the likelihood of further misreporting, that the claimant would have a remedy in defamation and, as Lord Sumption observed in *Khuja* at [23]:

> "… in deciding what weight to give to the right of the press to publish proceedings in open court, the courts cannot, simply because the issues arise under the heading "private and family life", part company with principles governing the pre-emptive restraint of media publication which have been accepted by the common law for many years in the cognate areas of contempt of court and defamation, and are reflected in a substantial and consistent body of statute law as well as in the jurisprudence on article 10 of the Human Rights Convention."

91. If the effect of the claimant ceasing to have anonymity, and the media reporting which follows, were to prevent the claimant being able to continue his schooling and complete his A levels, that would be a substantial interference with his private life. It is obviously important, and in the wider public interest as well as the claimant's own interest, that he should complete his education.

92. Although the headteacher expresses understandable concerns about the risks that flow from identifying the claimant, I consider it unlikely that a decision not to extend his anonymity would lead to him losing his place at his school:

    i) The claimant's school was aware of the criminal proceedings and his conviction and sentence for possession of a bladed article when the decision was taken to admit him.

    ii) There is no evidence before me as to whether the school was aware that, unless the court makes the exceptional order sought in these proceedings, the anonymity order would expire on the claimant's 18th birthday. Nevertheless, given the degree of publicity, the timing of the identification of Josh, and the fact that steps were being taken to gather evidence in support of this application at least by early October 2019, it would be surprising if the school were unaware of the possibility that the claimant would cease to have the benefit of anonymity once he reached the age of 18.

    iii) The evidence shows that the claimant has been working hard and concentrating on his studies since he was admitted to his current school.

    iv) The school's decision to give him a further chance and to assist his rehabilitation is very much to the school's credit. It seems highly unlikely that, in circumstances where the reports of the claimant's conduct since entering the school are entirely positive, the school would withdraw the opportunity that it has given him because of press reporting over which he has no control – even leaving aside the question (which was not explored) how an exclusion in such circumstances could be lawful.

93. That said, I accept the headteacher's view that publication of the claimant's name is likely to give rise to some fear, suspicion, tension and hostile comments from some pupils and families of pupils. These will be difficult issues for the school to deal with and there is a risk that during the remainder of his schooling the claimant will become more isolated.

94. I note that the Editors' Code of Practice published by the Independent Press Standards Organisation states that:

> "i) All pupils should be free to complete their time at school without unnecessary intrusion.
>
> ii) They must not be approached or photographed at school without permission of the school authorities."

95. Although the subparagraphs appear under the heading "*Children*", the Media did not take issue with Mr Wolanski's submission that the reference to "*all pupils*" (which

contrasts with references to "*Children under 16*" in the following subparagraphs) must include all pupils attending school, irrespective of whether they happen to have passed their 18th birthday (as will frequently be the case for those in their final year at school). In my view, this must be right. Although compliance with this Code will not remove the concerns that the headteacher has raised, it does provide a degree of assurance and it has not been suggested that there is any basis for me to assume it will be breached.

96. The evidence to which I have referred demonstrates that the claimant is currently suffering from PTSD and mixed anxiety and depression. His mental health has, however, improved over recent months and he is reported to be functioning relatively well. He has been sufficiently well to focus and concentrate on his studies. The impression conveyed by Dr Das's report is that the claimant's anxiety and depression is currently mild.

97. The most pronounced risk is that, if the claimant is faced with hostile and suspicious peers at school, he may isolate himself further and his anxiety and depression may worsen. In addition, bearing in mind that he is suffering from PTSD, the claimant is likely to find the kind of questioning to which he may be subjected if his identity is made known, very difficult to bear. On the other hand, the claimant has the protective factors of a supportive and loving family, the support of medical and educational professionals, as well as his own evident determination to complete his A levels to the best of his ability.

98. In *RXG*, the court observed that a level of threat to a person's physical safety which does not reach the article 2 or 3 threshold, may engage article 8 if it leaves the individual living in fear of such an attack. In this case, although Ms Jordan referred to the risk of assault, Mr Wolanksi did not submit that identification would give rise to any risk to the claimant's physical safety such as to engage article 8.

99. Drawing on *RXG*, Mr Wolanski placed considerable reliance on the risk to the claimant's rehabilitation, particularly if he is unable to complete his education. *RXG* had been groomed by experienced recruiters who had turned a vulnerable and impressionable boy into a deeply committed radical extremist. There was a real risk that identifying him would give such recruiters the opportunity to target him and re-radicalise him and that labelling him as a "terrorist" would halt his psychological development of a pro-social, non-criminal identity. In contrast, the claimant is a bright young man with an excellent academic record, an unblemished school disciplinary record and a supportive family. He has a single conviction for possession of a bladed article, and he has served his sentence. As I have said, the evidence clearly shows he deeply regrets his actions. On the evidence before me, the risk that identifying the claimant would have the consequence of undermining his rehabilitation seems remote.

100. I also bear in mind the impact of identifying the claimant on family members. I do not underestimate this impact, but it is in no way exceptional to this claimant's family. Ordinarily, "*the collateral impact that this process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings in held in public*": *Khuja* at [34(2)] (Lord Sumption). As Lord Judge LCJ put it in *In re Trinity Mirror plc* at [33],

> "It is sad, but true, that the criminal activities of a parent can bring misery, shame, and disadvantage to their innocent children. Innocent parents suffer from the criminal activities of their sons and daughters. Husbands and wives and partners all suffer in the same way. All this represents the further consequences of crime, adding to the list of its victims. … However we accept the validity of the simple but telling proposition put by the court reporter to Judge McKinnon on 2 April 2007, that there is nothing in this case to distinguish the plight of the defendant's children from that of a massive group of children of persons convicted of offences relating to child pornography. If the court were to uphold this ruling so as to protect the rights of the defendant's children under article 8, it would be countenancing a substantial erosion of the principle of open justice, to the overwhelming disadvantage of public confidence in the criminal justice system, the free reporting of criminal trials and the proper identification of those convicted and sentenced in them. Such an order cannot begin to be contemplated unless the circumstances are indeed properly to be described as exceptional."

G Article 10 of the ECHR

101. As the Divisional Court observed in *RXG* at [26], there is "*a consistent line of authority emphasising the importance of open justice, most recently reviewed by Lord Sumption in the Supreme Court in Khuja v Times Newspapers Ltd [2019] AC 161 [12-[30]*".

102. In *Khuja* Lord Sumption said at [16]:

> "As Lord Diplock pointed out in *Attorney General v Leveller Magazine Ltd* [1979] AC 440, 450, the principle of open justice has two aspects:
>
> > "as respects proceedings in the court itself it requires that they should be held in open court to which the press and public are admitted and that, in criminal cases at any rate, all evidence communicated to the court is communicated publicly. As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court the principle requires that nothing should be done to discourage this."
>
> The distinction between these two aspects is not always recognised in the case law, but it is of some importance in the present case. There is no issue on this appeal about the way in which the criminal trial and the applications under section 4(2) of the Contempt of Court Act 1981 were conducted. Judge Rook QC sat in public throughout. All of the relevant matters were disclosed in open court. No measures were taken to prevent parties or witnesses or those referred to at trial from

> being identifiable to those members of the public who exercised their right to be present in court. This appeal is concerned with the question whether matters exposed at a public criminal trial may be reported in the media. It has been recognised for many years that press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it. In reporting what has been said and done at a public trial, the media serve as the eyes and ears of a wider public which would be absolutely entitled to attend but for purely practical reasons cannot do so." (emphasis added)

103. This case, like *Khuja*, is concerned with the second aspect of open justice: media reporting of legal proceedings. The criminal trial before Bryan J was in open court. The claimant's identity was exposed to those present at the trial. This aspect of the trial – the identity of the second defendant – has not been reported because the s.45 order prevented him being identified until he reached adulthood.

104. In *re Trinity Mirror plc (A intervening)* [2008] QB 770 the Court of Appeal held that the Crown Court had no power to grant a reporting restriction preventing publication in the media of material identifying a defendant charged with possession of child pornography, or his children and, although the High Court would have had the power to make such an order, it would have been wrong to do so. Lord Judge LCJ said at [32]:

> "…it is impossible to over emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is that the identity of those convicted and sentenced for criminal offices should not be concealed. Uncomfortable though it may frequently be for the defendant that is a normal consequence of his crime." (emphasis added)

105. Mr Wolanski has emphasised the limited nature of the restriction on the ability of the media to report the criminal proceedings in this case, as demonstrated by the extensive reporting that occurred. However, in *Guardian News and Media* Lord Rodger addressed the importance of the identity of a criminal defendant:

> "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… More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd* [2004] 2 AC 457, 474, para 59, "judges are not newspaper editors". … 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.""

106. The claimant has been convicted of possession of a bladed article. The most significant aggravating feature was that he bought the knife with which Yousef was killed, a flick knife which was described by Bryan J as an offensive weapon with no legitimate purpose. Although his offence plainly does not match the gravity of the offences committed by the criminal defendants in the earlier cases in which the *Venables* jurisdiction has been exercised, it is a serious offence and there is a strong public interest in knowing the identity of those who commit serious offences.

107. The prospect of being named in court, with the accompanying disgrace, is a powerful deterrent and the naming of a defendant in the context of his punishment serves as a deterrent to others. These deterrents are proper objectives for the court to seek.

108. In addition, there is an important public interest in understanding the prevalence of knife crime. Such understanding depends, at least in part, on knowing who is committing such crimes.

109. There is also a strong public interest in enabling informed debate about criminal justice. In *In re S* Lord Steyn observed at [30] that "*the public interest may be as much involved in the circumstances of a remarkable acquittal as in a surprising conviction. Informed public debate is necessary about all such matters*". The Media suggest that public interest in the criminal proceedings was accentuated by what they describe as a surprise verdict in respect of Josh. The jury, of course, heard evidence over the course of four weeks and reached unanimous verdicts on all counts.

110. In this case, it is of some significance that the order may interfere with open justice not only in respect of the criminal trial but also in the inquest and the proposed civil proceedings. In the inquest the claimant may be a witness. If civil proceedings are brought against Josh, it is to be expected that the pleadings would name the claimant

and it is possible that he may be called as a witness. The order sought would have the effect that the claimant's identity would not be able to be revealed in those proceedings (save to the extent that they continue after 30 November 2021, at which point the order sought would have expired).

H Conclusion

111. This is an exceptional jurisdiction. The only two cases in which such an order has been granted to prevent a breach of article 8 rights were *Mary Bell* and *RXG*. In the *Mary Bell* case, the order was granted in circumstances where:

i) Mary Bell had been 10/11 years old at the time of her offending.

ii) The offences had been committed 35 years earlier.

iii) She had been identified publicly, as Mary Bell, at the time of her criminal trial and a great deal of information was in the public domain about her. What she was seeking to protect was her new identity.

iv) Mary Bell's notoriety was such that she and her daughter had relocated under compulsion, prompted by press intrusion and harassment, on five separate occasions.

v) Mary Bell had been damaged by appalling early childhood experiences, and then further damaged by intense guilt, stigma and public opprobrium, and by further abuse. The medical evidence was that a further period of press intrusion and harassment "*would amount to further psychological abuse*".

vi) The Attorney General and the Official Solicitor supported, and the media did not oppose, the grant of injunctions to X (formerly Mary Bell) and her daughter, Y.

112. The order was granted in *RXG* in circumstances where:

i) RXG committed his offences when he was 14;

ii) RXG had an autistic spectrum disorder and associated social difficulties. These made him vulnerable and he had been groomed by experienced recruiters to become a radical extremist.

iii) There was a consensus in the expert evidence that identifying him would fundamentally undermine his rehabilitation by labelling him as a "terrorist" which had the potential to halt his development of a pro-social non-criminal identity and by enabling extremist recruiters to identify him and seek to re-radicalise him and make him their "poster boy".

iv) Both immediate and long-term impacts on RXG's mental health were clearly established in the evidence.

v) Although only four years had passed since his offending, he had developed significantly during that time.

vi) RXG's notoriety was such that his family (including his younger siblings) had already had to resettle from their family home. The evidence demonstrated a strong likelihood that naming RXG would lead to the girls (who were still children) having to move school again to avoid negative attention for the family and the school.

vii) No media organisation sought to oppose the grant of the order sought.

113. In contrast, the claimant was 17 years old when he offended. He is bright, well-educated and at least as mature as his years. Bryan J observed in his sentencing remarks that it would be an insult to his obvious intelligence to suggest that he was unaware of the seriousness of the offence of carrying a knife in public or the risk of serious harm that could result from the use of such a knife. There is a risk that the claimant's mixed anxiety and depression may worsen as a result of his identification, but the evidence does not suggest that any impact is likely to be severe or other than short-term. Nor is it an exceptional consequence of offending. Identification of the claimant may have a disruptive effect on his education, although I consider it unlikely that he will be unable to complete his A levels.

114. It is important in a case such as this to pay heed to the cautionary words of Lord Woolf MR in *Kaim Todner*, which I have cited above. The claimant has demonstrated that if his anonymity is not extended this will give rise to an interference with his right to private and family life under article 8. However, the curtailment of the claimant's and his family's right to respect for their private and family life is, in my judgment, clearly justified by the compelling public interest in open justice.

115. The s.45 order has ensured, properly, that the claimant did not have to cope with the glare of publicity during the course of a stressful criminal trial, while he was not yet an adult. Parliament has determined that such an order should expire when the young person reaches the age of 18. For the reasons I have given, the circumstances of this case do not justify granting an extended period of anonymity pursuant to the *Venables* jurisdiction.