Neutral Citation Number: [2018] EWHC 3442 (Fam)

Case No: NZ12C00057

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 December 2018

**Before** :

**SIR JAMES MUNBY (SITTING AS A JUDGE OF THE HIGH COURT)**

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**In the Matter of X (A Child) (No 5)**

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**Ms Sarah Morgan QC and Ms Sharon Segal** (instructed by the local authority's legal services) for the local authority
**Ms Martha Cover and Ms Katy Rensten** (instructed by Goodman Ray) for the birth mother
**Ms Deirdre Fottrell QC** (instructed by Russell Cooke) for the adoptive parents
**Mr Andrew Norton QC** (instructed by Creighton & Partners) for the child X
The birth father was neither represented nor present

Hearing date: 30 November 2018

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# Judgment Approved

**This judgment was handed down in open court**

**There are no restrictions on publishing this judgment but <u>there is a reporting restrictions order in force preventing the identification of X and of X's adoptive parents</u>**

**Sir James Munby (sitting as a judge of the High Court) :**

1. This judgment supplements and needs to be read together with the final judgment I have just handed down in this matter: *Re X (A Child) (No 4)* [2018] EWHC 1815 (Fam). It needs also to be read together with my three previous judgments: *Re X (A Child) (Review of Fact Finding in Care Proceedings)* [2016] EWHC 1342 (Fam), [2017] 2 FLR 61, *Re X (A Child) (Publicity) (No 2)* [2016] EWHC 1668 (Fam), [2017] 2 FLR 70, and *Re X (A Child) (Care Proceedings: Rehearing)* [2016] EWHC 2755 (Fam), [2017] 2 FLR 80.

2. This judgment relates to the question whether, and if so to what extent, the reporting restriction order (RRO) which I put in place (*Re X (A Child) (Publicity) (No 2)* [2016] EWHC 1668 (Fam), [2017] 2 FLR 70, paras 14-23), should now be continued, given that the proceedings are at an end.

3. So far as material, I can summarise the history (set out in great detail in my previous judgments) quite shortly. Following a hearing in the Guildford County Court, His Honour Judge Nathan found that a little child, X, had suffered a number of serious injuries at the hands of one or other or both – he could not determine which – of the birth parents. Subsequently, Judge Nathan made care and placement orders and then in due course an adoption order. None of this was challenged at the time by X's birth parents in the Court of Appeal. They were then tried in the Guildford Crown Court on counts of child cruelty contrary to s 1(1) of the Children and Young Persons Act 1933. After the close of the expert evidence, the Crown abandoned the prosecution. The birth parents were, on the direction of His Honour Judge Critchlow, acquitted, on the basis that there was no case to answer.

4. The birth parents then applied to the Court of Appeal for permission to appeal Judge Nathan's finding of fact judgment. Permission was given and the case remitted for re-hearing, in the event by me, in the Family Division. I decided that there should be a complete re-hearing at which it would be for the local authority to prove its case: *Re X (A Child) (Review of Fact Finding in Care Proceedings)* [2016] EWHC 1342 (Fam), [2017] 2 FLR 61. In the course of that judgment, I explained the birth parents' position as follows (para 16):

> "The case put forward by the birth parents is simple and compelling. They have been, they say … the victims of a miscarriage of justice. They seek to clear their names, both so that they may be vindicated and also so that there is no risk of the judge's findings being held against them in future, whether in a forensic or in any other context."

I went on (para 22):

> "… the claims of the birth parents, the best interests of X, and the public interest all point in the same direction: there must be a re-opening of the finding of fact hearing, so that the facts (whatever they may turn out to be) – the truth – can be

> ascertained in the light of *all* the evidence which is now available."

5. Following the publication of that judgement, an application was made by the local authority for a RRO. "I had little difficulty," I said, in concluding that there should be a RRO restraining the identification of X and the identification of the adoptive parents. I continued (*Re X (A Child) (Publicity) (No 2)* [2016] EWHC 1668 (Fam), [2017] 2 FLR 70, paras 16-17):

> "16 [Counsel] drew attention to the stress for the adoptive parents brought about by these proceedings and to the need to ensure that this did not cause disruption or detriment to X … [Counsel] submits that, whatever the outcome of any proceedings, X must be protected from exposure and intrusion, whether direct or indirect. X is entitled, she says, to respect for X's right to private life. Both on a micro level – in the day-to-day world in which X lives – and on the macro level of the public at large, X should not be identified or identifiable. [She] recognises the public interest in the court being transparent and open about what is going on in this case. But, she submits, this objective has been properly achieved by the publication of my earlier judgment which, she says, provides sufficient detail to allow for public discussion and debate. Despite the extensive reporting of the criminal proceedings and the amount of material which is, in consequence, in the public domain, there is, she submits, no need for either X or the adoptive parents to be identified and every reason why they should not be.
>
> 17 I agree … So too does X's guardian. So too, as it happens, do Mr Dodd and Mr Farmer [of the Press Association], who recognise – I quote the language used by Mr Dodd in his written submission – that the protection of the anonymity both of X and of the adoptive parents is 'completely acceptable'."

6. The "much more difficult question," I said, related to the birth parents. I went on (paras 18-20):

> "18 … Their names, after all, are in the public domain. They were tried in the Crown Court … they have talked to the media about their 'fight'. They were instrumental in the launch of the proceedings which are currently before me. In these circumstances, Mr Dodd and Mr Farmer submit, it is contrary to principle to make any order requiring that they now remain anonymous.
>
> 19 I can well see the force of the points made by Mr Dodd and Mr Farmer. And I have to say that, whereas the arguments in favour of perpetual (or at least indefinite) anonymity for both X and the adoptive parents are extremely compelling, I am very

> sceptical as to whether anonymity for the birth parents can last beyond (at the very latest) the conclusion of the rehearing, if indeed that long. But there is, in my judgment, a principled and well-founded reason for maintaining their anonymity at least for the time being.
>
> 20 If the media are permitted to identify the birth parents and to publish photographs of them, the resulting publicity will, in the nature of things, have an impact very considerably greater than if the story is reported without those details: see the well-known words of Lord Roger of Earlsferry in *In re Guardian News and Media Ltd and others* [2010] UKSC 1, [2010] 2 AC 697, paras 63-64. In the unusual circumstances of this case that impact will fall, albeit indirectly, on the adoptive parents, and therefore X, as well as on the birth parents. There is, as it seems to me, and for the reasons articulated by Mr Dodd and Mr Farmer, no principled basis for protecting the anonymity of the birth parents in their interests or for their sake; the only justification for preserving their anonymity in the short term, and I accept that there is such justification, is the pressing need to protect X, and also the adoptive parents, from the enhanced glare of publicity in the interim."

7. I therefore decided that there should be such an RRO until the conclusion of the next directions hearing. Following various further directions hearings, the RRO was extended from time to time and finally until judgment: see *Re X (A Child) (Publicity) (No 2)* [2016] EWHC 1668 (Fam), [2017] 2 FLR 70, paras 33-35.

8. Six days before the final hearing was fixed to commence, each of the birth parents notified the court and the other parties that they "wish […] to withdraw from the rehearing and no longer seek […] to challenge the findings of fact made by" Judge Nathan: see *Re X (A Child) (Care Proceedings: Rehearing)* [2016] EWHC 2755 (Fam), [2017] 2 FLR 80, para 7. They set out their reasons in witness statements from which I quoted at some length (paras 8-9). I rejected their submissions that the hearing should not proceed, for reasons which I set out at length (paras 10-30). I made clear (para 29) that I was *not*

> "making any assumptions, let alone coming to any conclusions, as to *why* the birth parents have decided as they have. I have set out – deliberately without any comment – what they say about their reasons and motives, and what the other parties say in response. These are matters for another day, after I have heard all the evidence."

I made clear, as I had previously, that the local authority had to prove its case.

9. The outcome of the final hearing was the judgment I have just handed down: *Re X (A Child) (No 4)* [2018] EWHC 1815 (Fam).

10. I now have to consider whether and, if so, to what extent the RRO should remain in place. That matter came on for hearing before me on 30 November 2018. Ms Sarah

Morgan QC and Ms Sharon Segal appeared on behalf of the local authority, Ms Martha Cover and Ms Katy Rensten for the birth mother, Ms Deirdre Fottrell QC for the adoptive parents and Mr Andrew Norton QC for X. The birth father was neither represented nor present. Mr Brian Farmer of the Press Association was present and addressed the court, deploying for this purpose a most helpful written submission which had been prepared by Mr Mike Dodd, the legal editor of the Press Association.

11. Following their acquittal on 7 October 2015, the birth parents had immediately protested that they and X had been the victims of a miscarriage of justice in the family proceedings. They took their case to the media.

12. For example, they were interviewed by the *Daily Mirror,* which published various photographs they had given them, in an article headlined "Couple cleared of child cruelty reveal heartbreak after being told baby has been adopted." I quote from the edition published online on 8 October 2015. The mother was quoted as saying:

> "We know it is going to be tough but we are going to try. We have to. We want our child to see when they are grown up that if we don't win, we did everything that we could to get [our child] back.
>
> People need to know this goes on and be told the truth – you can take your baby into hospital scared they might be ill and the hospital can steal your baby away from you."

Their Leading Counsel in the criminal proceedings was quoted in the article:

> "Every step of the way when people had the opportunity to stand back, look at things again and say 'we have made a mistake', they ploughed on instead.
>
> These innocent parents have been spared a criminal conviction and a prison sentence for a crime they never committed.
>
> But they have had their child stolen from them. Their life sentence is that they are likely never to see their baby again."

13. They were interviewed by the *Good Morning Britain* programme on ITV on 9 October 2015. A well-known family law solicitor told the programme, "This is a catastrophic miscarriage of justice."

14. The website of Leading Counsel's Chambers published a blog on 7 October 2015 under the heading "Parents found innocent of child abuse after their baby was removed and adopted." It included, by way of quotations, some of the material I have referred to above as appearing in the Daily Mirror article. Without attribution to any particular individual, the blog asked:

> "How many other families have had their children removed from them wrongly and been imprisoned on the basis of flawed science?

> … How many other deaths and miscarriages of justice must take place before action is taken; and what of the savage legal aid cuts, rushed adoptions and restrictions on expert funding in the family courts leading to such skewed evidence being the only evidence presented to the family courts."

The parents' junior counsel was quoted as saying:

> "This tragic case highlights the real dangers of the Government's drive to increase adoption and speed up family proceedings at all costs."

15. The birth mother in her witness statement which I have referred to above, said (see *Re X (A Child) (Care Proceedings: Rehearing)* [2016] EWHC 2755 (Fam), [2017] 2 FLR 80, para 8):

> "We were accused of causing harm to our own child, something that we did not do."

Later in the same statement she said:

> "We made the decision to tell our story to the public so that there could be a public awareness of the fact that there are innocent parents who have been accused of wrongdoing which has ripped families apart.
>
> … The whole family court process left us feeling that we were presumed guilty until proven innocent and that is just so very wrong."

16. Ever since her acquittal in the Crown Court, the birth mother's stance has been that she, the birth father and X were the victims of a miscarriage of justice in the family court. She has never resiled from that, nor has she ever sought to disavow what has been said by others on her behalf. That remains her position.

17. Ms Cover and Ms Rensten, on her behalf, draw attention to what the birth mother went on to say in her witness statement:

> "When we made this decision [to tell our story to the public], we did not for one minute think it would have as much press interest as it did. What had been a genuine act to raise awareness slowly become too much to handle. We had reporters turning up at our home address, as well as at my parents' house. It started to feel like harassment. We were constantly bombarded with messages from magazines and TV shows wanting us to talk about our experience … It became too much to cope with."

In their written submissions on her behalf, they describe the birth mother as:

> "a vulnerable woman, lacking in formal education and certainly lacking in sufficient sophistication to negotiate dealing with the press. In the aftermath of the criminal hearing, [she] quickly came to regret having been forthcoming to the media. She experienced a level of interest and unwelcome attention that she had not anticipated and with which she could not easily cope. She withdrew from any further such involvement. She learned her lesson after the damage was done, but this socially disadvantaged young woman could never have been expected to have understood the ramifications of 'going public' and should not now be held responsible for the actions of others, who could have been expected to have such understanding."

18. Now that may be so but, as Ms Morgan and Ms Segal observe on behalf of the local authority, it is largely beside the point. The birth mother may quite quickly have come to regret her engagement with the media, but the central, indeed magnetic factor, in my judgment, is not so much the detail of her dealings with the media but the facts (a) that her stance has been throughout, and remains, that she, the birth father and X were the victims of a miscarriage of justice in the family court and (b) that she was prepared to use the media to propagate that message.

19. In their written submissions, Ms Morgan and Ms Segal submit that:

> "throughout the time [the birth parents] have been peddling the false narrative they have of course known it to be false … It was not a miscarriage [of justice] it was a lie."

Ms Cover and Ms Rensten submit that this goes too far insofar as it alleges *knowledge* of falsity on the part of the non-perpetrator (if, indeed, either of the birth parents was a non-perpetrator) *throughout* the entire time they were asserting that there had been a miscarriage of justice. They add to this by pointing out, correctly, that the local authority never sought (see *Re X (A Child) (No 4)* [2018] EWHC 1815 (Fam), paras 4-9) any finding of failure to protect by either of the birth parents and that there has been no finding that the birth mother was the, or a, perpetrator. They submit that the birth mother may well have believed that her narrative was true at the time she spoke to the media immediately following her acquittal in the Crown Court.

20. I see no reason to revisit, let alone modify, elaborate or clarify my findings on this matter, which are to be found in the judgment I have just handed down: see, in particular, *Re X (A Child) (No 4)* [2018] EWHC 1815 (Fam), paras 121, 123, 125. The judgment stands as it is written: it says what I mean and means what it says. I merely draw attention to two short extracts. First (para 121) I said this:

> "Even if someone was neither the perpetrator nor present at the time when injuries were inflicted, that person must have realised, even if only as time went by, that something was seriously wrong and that X required medical attention. Yet, until the final episode of oral bleeding, neither of the birth parents made any real attempt to obtain medical assistance for X, let alone to protect X from what was going on. Whoever

> was, or were, the perpetrator or perpetrators, both of the birth parents carry a high measure of responsibility for what on any view were serious parental failures."

Secondly (para 123) I said this of the hearing before me:

> "Neither of the birth parents was genuinely trying to assist the court on this or on any other issue. Much of their evidence was evasive; some was simply lies, designed to obscure and cover up the truth."

21. Given the birth parents' assertion that there has been a miscarriage of justice, it is necessary for me to repeat some of the key findings in the judgment I have just handed down: *Re X (A Child) (No 4)* [2018] EWHC 1815 (Fam), para 52:

> "Given what I have just said there are three implications which need to be spelt out very clearly:
>
> i) It follows, and I find as a fact, that in all significant respects Judge Nathan's findings of fact have withstood scrutiny and stand firm. The additional expert evidence which has become available since Judge Nathan gave his judgment on 1 March 2013 far from undermining his findings is, I find, entirely supportive of them.
>
> ii) It follows, and I find as a fact, that the process before Judge Nathan has been vindicated.
>
> iii) It also follows, and I find as a fact, that the birth parents have *not* been the victims of any miscarriage of justice, nor has X."

22. I went on (para 125) to say this about the birth parents:

> "The truth, as it seems to me, is that, faced with the overwhelming weight of all the expert evidence which by then had been marshalled, they realised that 'the game was up' and cynically sought to withdraw, hoping that this would stymie any attempt to re-visit Judge Nathan's original findings and thus prevent those findings being vindicated. I agree with Ms Morgan and Ms Segal's evaluation: given the totality of the evidence now available, it is little wonder that the birth parents did not wish the court to examine it and that they sought by their actions immediately before the final hearing to ensure that it did not."

23. At the end of the day, the opposing submissions about the continuation of the RRO fall within a comparatively narrow compass. No-one suggests that the RRO should not continue in relation to X and the adoptive parents. I agree that it should, for the reasons I originally set out: see paragraph 5 above. In relation to the birth parents, the local authority, the adoptive parents and the Press Association join in submitting that

the RRO should now be discharged. The birth mother (and, I will assume, though he has taken no part, the birth father) say it should continue. X's guardian, having considered the opposing arguments very carefully, is neutral.

24. Ms Cover and Ms Rensten submit that the RRO should continue to protect the identity of the birth mother. Their key submissions can be summarised as follow (I take them in no particular order of possible importance):

i) There is no need to identify the birth parents in order to maintain the reputation of the family justice system. That important objective has, they say, been properly achieved by the publication of my previous four judgments. Nothing additional, from this perspective, is achieved by the identification of the birth parents. As they put it, "The alleged 'miscarriage' having been a 'miscarriage that never was' can be fully and robustly corrected" – as, indeed, it has. This, is a very powerful point to which, in my judgment, there is no effective answer.

ii) Similarly, they submit, there is no need to identify the birth parents in order to maintain the reputation of the local authority and to allay what it says is its "real concern", that it might struggle to recruit adopters if tainted by a slur of 'baby stealing'. Quite apart from the fact that, as they point out, the local authority has adduced no evidence of this difficulty having actually materialised since the outcome in the Crown Court, the reality, in my judgment, is that any reputational damage the local authority may have suffered is remedied by the publication of my previous judgments. Nothing additional, from this perspective, is achieved by the identification of the birth parents.

iii) They submit that publication of the birth parents' names may be prejudicial to the interests or lead to the identification of X and X's (adoptive) parents, either now or when X is older. I reject this as having any significant weight at all.

a) In the first place, and as Ms Fottrell, on behalf of the adoptive parents correctly submits, the reasons why this was a plausible argument when the RRO was originally imposed (see paragraph 6 above) were tied to circumstances at the time which no longer exist: the fact that at that time the allegation of a miscarriage of justice was still unresolved and the fact that a hearing was imminent which might expose everyone to the glare of publicity and where, as it seemed to me, that was likely to be all the greater if at that stage the birth parents had been identified.

b) Secondly, it is for X's adoptive parents to determine to what extent either their or his interests still require this form of protection, and the simple fact is that their view is that they do not (in fact, as we shall see, they wish to see the birth parents identified) and X's guardian does not take a different view: cf, *A v Ward* [2010] EWHC 16 (Fam), [2010] 1 FLR 1497, paras 136-137, and *In re G (A Child) (Wider Family: Disclosure of Court File)* [2018] EWHC 1301 (Fam), [2018] 4 WLR 120, paras 17-19.

c) The submission that, if the birth parents are named – and inevitably shamed – then X when older will have to deal with that shame and, it is said, "perhaps with the suspicion of others that, being biologically related, X may be cut from the same cloth," assumes that the identification of the birth parents will lead others to link them with the anonymous X, but given X's subsequent adoption, and the continuation of the RRO in relation to both X and the adoptive parents why should that be so?

iv) They submit that there is no need for the birth parents to be identified to enable X in due course to learn the truth, both about X and about the birth parents, (the published judgments being the crucial source for this purpose), including, in all probability, knowledge of their identity. There is, I accept, considerable force in this point.

v) They submit that the local authority's stance is that the birth parents deserve to be "punished" for having traduced the good reputation of the local authority and the family justice system. I do not think that this is, in fact, any part of the local authority's stance, but in any event I entirely agree that punishment and retribution (another word used by Ms Cover and Ms Rensten) have absolutely no part to play in the evaluative task upon which I am embarked.

vi) Because of her vulnerability, the birth mother will be particularly exposed to and potentially harmed by the renewed media attention which is bound to follow her identification. That is likely only to be exacerbated by the fact that the birth parents have now separated in circumstances where the media searchlight is more likely to fall on her rather than on him, so that, as they put it, the entire weight of any opprobrium that is generated will fall on her. It cannot, they say, be equitable or right that only one of them should have to face the glare of public scrutiny – "If [the RRO] cannot be lifted in a way that enables both … to share equally in their respective fates, it should not be lifted at all." They elaborate, that to do so would be a disproportionate interference with the Article 8 rights of one whilst, albeit by circumstance rather than design, protecting those of the other. That I accept is a powerful factor that has to be evaluated as part of the overall balancing exercise which I have to undertake.

25. On behalf of the local authority, Ms Morgan and Ms Segal begin by pointing out that, as a consequence of the media coverage following the criminal proceedings, much of it, they say, invited by and on behalf of the birth parents, the footprint on the internet – and for X to discover (if and when) – is a narrative (accompanied by the names and photographs of the birth parents) of a great miscarriage of justice; of forced adoption and of loving parents who had done nothing wrong and who had been failed and grievously wronged by the family justice system. That narrative has now been exposed as false: there was no miscarriage of justice. Although much of the material demonstrating the falsity of the birth parents' narrative is now, of course, in the public domain, as they accept, Ms Morgan and Ms Segal submit that the final piece in that particular jigsaw – the names of the birth parents, the persons responsible for peddling the false narrative – should likewise now be put in the public domain.

26. The point is also made that the birth parents would presumably have had no objection to being identified if my judgment had in fact exonerated them. Surely, it is said, the public interest in relation to transparency, the functioning of the family court system, and the question of whether or not there has been a miscarriage of justice is essentially the same whether, in a case such as this, the ultimate outcome is that there was or that there was not a miscarriage of justice.

27. Ms Fottrell, on behalf of X's adoptive parents takes that submission one stage further. The position now arrived at, she submits, is that there are in the public domain two competing narratives: one, the false narrative, in which *identified* birth parents portray themselves as the victims of a miscarriage of justice; the other, the correct narrative, in which *unidentified* birth parents are shown to have wrongly portrayed themselves as the victims of a miscarriage of justice. If the RRO continues in relation to the birth parents, it will not be possible to 'link up' the two competing narratives and therefore not possible to demonstrate that the false narrative is indeed false. It will remain indefinitely on the internet without anyone being able to counter it and demonstrate its falsity. More specifically, the allegation (now, as we know, false) of the identified birth parents that they – two named individuals – were the victims of a miscarriage of justice will remain indefinitely on the internet without the possibility of challenge and refutation. Ms Cover and Ms Rensten seek to meet this argument by submitting that the dragon is sleeping and will not be revived unless the birth parents are now identified. Even assuming that their premise is correct, this does not meet Ms Fottrell's point, which is that the false narrative is out there – readily accessible by anyone with access to the internet.

28. The Press Association makes much the same points. Its fundamental submission is that at this stage it would be both unnecessary and contrary to principle to make any order banning reporting or requiring that the birth parents remain anonymous: they have already been widely identified in the media, have occupied much court time and cost, and at one stage actively sought publicity for their claim that their child had been unjustly taken from them. It points out that had the birth parents proved to be correct in their allegations, they would have deserved to be exonerated, and exonerated publicly. The reverse, however is the case. Why, in these circumstances, should the findings, for example, in *Re X (A Child) (No 4)* [2018] EWHC 1815 (Fam), paras 121, 123, 125, not likewise be pinned on them? Why should they be permitted to hide behind the cloak of anonymity just because the case has ultimately gone against them?

29. The Press Association relies upon what I said in *Norfolk County Council v Webster and Others* [2006] EWHC 2898 (Fam), [2007] 2 FLR 415, paras 68-70, repeating what I had previously said in *Re Webster; Norfolk County Council v Webster And Others* [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, and in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142. In particular they rely upon my observation that parents who assert that they are the victims of a miscarriage of justice are not entitled to set the media agenda and may have to be prepared to take the rough with the smooth. And they point to the following (para 70):

> "It may be that they are indeed the victims of a miscarriage of justice. If they are, then they have a powerful argument for saying that they should not be gagged. But it may be, for all I

> know, that the parents are not the victims of any miscarriage of justice and that they are indeed everything that Judge Barham found them to be. In that event there may be a powerful public interest in exposing them for what they are found to be: parents who falsely cast themselves in the role of victim and sought, by use of the media, to persuade the public that they were something which, in truth, they turn out not to have been."

In short, as the Press Association puts it, publicity sought by parents is a two-edged sword.

30. Unsurprisingly, the Press Association prays in aid the words of Lord Roger of Earlsferry in *In re Guardian News and Media Ltd and others* [2010] UKSC 1, [2010] 2 AC 697, para 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 … 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."

31. Building on all this, the Press Association submits that publishing the latest judgment without permitting the naming of the birth parents would also have the effect:

    i) of shielding the birth parents from condemnation which they have called upon themselves through their own actions, lies and evasions; and

    ii) of inhibiting the media's ability to report what were public criminal court proceedings; an RRO would prevent the media reproducing, as part of a wider story about people who have been found to have hurt a child in a family court but have been cleared by a criminal court, what had been said, and reported, in criminal proceedings which took place in open court and were widely reported at that time, if linked in with the previous and subsequent family court proceedings.

32. There is no dispute as to the principles I have to apply; they are by now so well established as to require neither great elaboration nor the citation of authority. I have to have regard to *all* the interests in play, whether public or private, and whether protected by Article 6, Article 8 or Article 10. None of these interests is intrinsically of any greater weight than any other; in particular, *public* interests do not take precedence as such over *private* interests. All these interests have to be evaluated and balanced before the final balance is struck. What weight is to be attached to any particular interest will depend upon an intense scrutiny of the circumstances of the particular case, as will the final determination as to how, at the end of the day, the balance is to be struck.

33. It is for those reasons that I have deliberately set out, in some detail, both the circumstances of this unusual case and the competing submissions. As will be

appreciated, to a very considerable extent, though not exclusively, the contest comes down at the end of the day to a balancing of the birth parents' private interests, protected by Article 8, against various public interests, protected by Article 6 and Article 10.

34. As I have indicated (paragraph 24 above), the birth parents, the birth mother in particular, have succeeded in rebutting a number of the public interest arguments that were being deployed against them, in particular by the local authority, while at the same time establishing that they have powerful arguments, the birth mother in particular, bottomed in Article 8.

35. As against that, the other parties have demonstrated the existence of a constellation of essentially public interest arguments which, in my judgment, point very cogently in the other direction.

36. How is the balance to be struck? In my judgment, those essentially public interest arguments heavily outweigh, in the particular circumstances of this particular case, the arguments that the birth parents are able to deploy on the other side. On a human level I have some sympathy for the birth parents, the mother in particular, vulnerable young people who probably never appreciated until it was too late the dangers of encouraging the uncontrollable media tiger. But sentiment cannot be a safe guide to the final outcome. The fact is, as I have said, that the birth mother's stance has been throughout that she, the birth father and X were the victims of a miscarriage of justice in the family court and that she was prepared to use the media to propagate that message. And in that situation the point which I made in *Norfolk County Council v Webster and Others* [2006] EWHC 2898 (Fam), [2007] 2 FLR 415, para 70, in the passage quoted above (paragraph 29), has a powerful resonance.

37. I conclude therefore that, so far as concerns the birth parents, the RRO should *not* be extended.