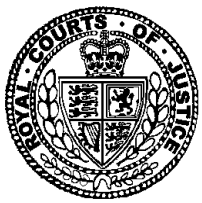

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Neutral Citation Number: [2021] EWHC 3365 (Fam)

Case No: DE19P00318

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 30/07/2021

Before :

MRS JUSTICE LIEVEN

- -

Between :

LOUISE TICKLE

First Applicant

and

BRIAN FARMER, PA MEDIA

Second Applicant

and

ANDREW JAMES GRIFFITHS

First Respondent

and

KATE ELIZABETH GRIFFITHS

Second Respondent

and

X

(a Child, acting through their Child's Guardian)

Third Respondent

and

RIGHTS OF WOMEN

Intervenor

- -

- -

Ms Lucy Reed (instructed by **Lewis Silkin LLP**) for the **First Applicant**

The Second Applicant represented himself

Mr Richard Clayton QC and Ms Victoria Edmonds (instructed by **Geldards LLP**) for the **First Respondent**

Dr Charlotte Proudman (instructed by **Nelsons Law**) for the **Second Respondent**

Mr Timothy Bowe (instructed by **Moseleys Solicitors**) for the **Third Respondent**

Ms Caoilfhionn Gallagher QC, Mr Chris Barnes and Ms Charlotte Baker (instructed by **Rights of Women**) for the **Intervenor**

Hearing dates: **15 and 16 July 2021**

- -

Approved Judgment

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MRS JUSTICE LIEVEN

This judgment is being handed down in private on 30 July 2021. It consists of [59] paragraphs.

The judge hereby gives permission for it to be reported. **This permission is stayed in accordance with the Order dated 30 July 2021.**

Mrs Justice Lieven DBE :

1.
This is an application made by two journalists, Louise Tickle and Brian Farmer, for the publication of a fact finding judgment ('the Judgment') given by HHJ Williscroft ('the Judge') at Derby Family Court on 27 November 2020 in what, they argue, is a case of considerable public interest. The Judgment contains very serious findings of domestic abuse against the Father. The dispute before me was as to which parts of the Judgment should be redacted, in particular whether the identity of the parents should be disclosed. The application raises fairly stark issues of the balance between Article 8 and Article 10 European Convention Human Rights ('ECHR') rights. As will become clear from what I set out below, I have found in favour of the Applicants and therefore will refer to the identity of the parents, as relevant, in this judgment. I will refer to the Child as X throughout and use the masculine as a neutral gender for grammatical convenience.

2.
Ms Tickle was represented before me by Ms Reed; Mr Farmer represented himself; Mr Griffiths ('the Father') by Mr Clayton QC and Ms Edmonds; Mrs Griffiths ('the Mother') by Dr Proudman; the Child's Guardian by Mr Bowe; and Rights of Women ('RoW') by Ms Gallagher QC, Mr Barnes and Ms Baker.

3.
The position before me was that the Applicants argued for publication of the Judgment including the names of the Mother and Father but without the name of X, other wider family members and some of the most intimate details. That application and form of redaction was supported by the Mother and the Children's Guardian. The Father did not oppose publication in principle, but argued for the

redaction of the names of the parties and any parts of the Judgment which could lead to the identification of X. The Father, by the time of the hearing, did not oppose the inclusion of the intimate details the other parties wished to redact, but he did not positively argue for those to be published. The Father had however, in his third skeleton argument, argued that the Judgment should be published “warts and all” in relation to the intimate details, but keeping the parties and X anonymous.

4.
The parents were married in 2007. X was born in 2018. The Father was elected an MP in May 2010 and was a Government Minister for a period between January 2018 and July 2018. The Mother was elected an MP in 2019 for the same constituency and remains an MP. A large part of the asserted public interest in the publication of the Judgment, and certainly in the naming of the parents, lies in the fact that the Father was an MP and a Minister. It is apparent from these facts that if the Judgment is redacted in such a way as to effectively protect the anonymity of X, a significant part of the public interest in the Judgment will be removed. The facts of the case are unusual in the sense that the parties are identifiable even without their names by the shortest of internet searches.

5.
Section 12 of the Administration of Justice Act 1960 (‘AJA’) places considerable restrictions on the publication of information relating to proceedings in the Family Court. The Court may itself publish information in the form of a judgment, which will commonly be anonymised so as to protect the identity of the child. The President of the Family Division produced Guidance in 2014 and 2018 relating to the publication of judgments. The 2014 Guidance at paragraph 16 and Schedule 1 indicates that judgments in cases such as this, fact finding at which serious allegations have been determined, should ordinarily be published on the grounds of public interest, subject to anonymisation. It is a matter of public record, and some public concern, that, despite this Guidance, relatively few judgments are published, and that number has been falling. It is therefore uncontentious that the Judgment should be published; the issue is the form of any redactions.

6.
Section 97 of the Children Act 1989 (‘CA’) prohibits identification of the child as the subject of proceedings during the duration of proceedings. This prohibition can be relaxed where the interests of the child “requires it”, see s.97(4).

The Judgment

7.
The Judgment followed a fact finding hearing where the Judge heard evidence from the Mother and Father, and this evidence was cross examined. She made very significant findings against the Father.

8.
It is not my intention to summarise the Judgment as the purpose of this application is to allow the Judgment itself to be published. There is a schedule of allegations annexed to the Judgment which sets out the Judge’s findings. The Judge found that the Father had been physically abusive to the Mother on more than one occasion. He was also physically abusive to a female family member on more than one occasion. The Judge found that the Father had used coercive and controlling behaviour, including to pressurise the Mother to engage in sexual activity. The Judge found that the Father raped the Mother by inserting his penis into her when she was asleep on more than one occasion. The Judge at J6.45 refers to the issue of submission and consent being a complex one, and I am fully aware of the complicated relationship between rape as a criminal offence and the more generalised use of the word. In the context of the Judgment, it is perfectly appropriate for the Judge to have used the

language she did, see Re H-N and others (children) (domestic abuse: findings of fact hearings) [2021] EWCA Civ 448 at [72].

The law on the Article 8 and Article 10 balancing exercise

9.
In Re S (A Child) [2004] UKHL 47, the House of Lords was considering whether an injunction should be granted to prevent the publication of the identity of a defendant in a murder trial for the purpose of protecting the identity of a 9 year old child. At [17] Lord Steyn said:

“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 WLR 1232 . For present purposes the decision of the House on the facts of Campbell and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case.”

10.
In Norfolk County Council v Webster [2007] 1 FLR 1146 Munby J considered the construction of s.97 CA where the media were asserting Article 10 rights:

“58. … because section 97 constitutes a specific restriction on the media's rights under Article 10. In the same way, section 97(4) must likewise be construed in a Convention-compliant way, not limiting the occasions on which section 97(2) is dispensed with to those where the welfare of the child requires it but extending it to every occasion when proper compliance with the Convention would so require. In other words, the statutory phrase "if × the welfare of the child requires it" should be read as a non-exhaustive expression of the terms on which the discretion can be exercised, so that the power is exercisable not merely if the welfare of the child requires it but wherever it is required to give effect, as required by the Convention, to the rights of others. This is a process of construction which in my judgment comfortably satisfies the criteria identified in Ghaidan v Godin-Mendoza [2004] UKHL 30, [2004] 2 AC 557, and which is therefore required by section 3.”

11.
In Re J (A Child) [2013] EWHC 2694 (Fam) Sir James Munby P (as he had by then become) addressed the balancing process between the child’s interests and other considerations at [22]:

“22. The court has power both to relax and to add to the ‘automatic restraints.’ In exercising this jurisdiction the court must conduct the ‘balancing exercise’ described in In re S (Identification: Restrictions on Publication) [2004] UKHL 47, [2005] 1 AC 593, [2005] 1 FLR 591 , and in A Local Authority v W, L, W, T and R (by the Children's Guardian) [2005] EWHC 1564 (Fam), [2006] 1 FLR 1 . This necessitates what Lord Steyn in Re S , para [17], called “an intense focus on the comparative importance of the specific rights being claimed in the individual case”. There are, typically, a number of competing interests engaged, protected by Articles 6, 8 and 10 of the Convention. I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in Re B (A Child) (Disclosure) [2004] EWHC 411 (Fam), [2004] 2 FLR 142 , at para [93], and in Re Webster; Norfolk County Council v Webster and Others [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146 , at para [80]. As Lord Steyn pointed out in Re S , para [25], it is “necessary to measure the nature of the impact … on

the child" of what is in prospect. Indeed, the interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, [2011] 2 AC 166 , para [33]."

12.
Mr Clayton made reference to Newman v Southampton City Council [2021] 1 WLR 2900 which concerned a journalist seeking the disclosure of documents held by the local authority pertaining to care proceedings which had concluded. At [67] King LJ said:

"67. In my judgment the court must, therefore, take into account not only the mother's view that access to the court files is in the best interests of M but also, in taking an objective view of the matter, the following matters in relation to the child in question:

i) Children have independent privacy rights of their own: PJS para.[72];

ii) Whilst M's interests are a primary consideration, they are not paramount;

iii) Rights of privacy are not confined to preventing the publication or reporting of information. To give a third party access to information by allowing them to see it, is in itself an incursion into the right of privacy for which there must be a proper justification: see Imerman v Tchenguiz [2011] Fam 116 CA at paras.[69], [72] & [149];

iv) Even "the repetition of known facts about an individual may amount to unjustified interference with the private lives not only of that person, but also of those who are involved with him": JIH v News Group Newspapers Ltd [2011] EMLR 9, para. [59] , per Tugendhat J;

v) Repetition of disclosure or publication on further occasions is capable of constituting a further invasion of privacy, even in relation to persons to whom disclosure or publication was previously made —especially if it occurs in a different medium. It follows that the court must give due weight to the qualitative difference in intrusiveness and distress likely to be involved in what is now proposed: PJS : para. [32.(iii)] and para.[35]."

13.
It is important to note that Newman concerned an application for papers that were outside the care proceedings, many of which were highly confidential psychological and medical reports. In my view, the factual differences between the present case and Newman mean that the final balancing exercise in that case is of little assistance in the present case.

14.
In Campbell v Mirror Group Newspapers [2004] 2 AC 457 the House of Lords was considering whether Ms Campbell's Article 8 rights were outweighed by the media's Article 10 rights to publish an article about her drug taking. Ms Campbell had publicly denied taking drugs. The Court addressed the media's right to "set the record straight" at [37-38, 54-58, 82 and 151]. At [151] Lady Hale said: "The press must be free to expose the truth and set the record straight".

15.
At [148] Lady Hale explained the hierarchy of interests under Article 10:

"148. What was the nature of the freedom of expression which was being asserted on the other side? There are undoubtedly different types of speech, just as there are different types of private information, some of which are more deserving of protection in a democratic society than others. Top

of the list is political speech. The free exchange of information and ideas on matters relevant to the organisation of the economic, social and political life of the country is crucial to any democracy. Without this, it can scarcely be called a democracy at all. This includes revealing information about public figures, especially those in elective office, which would otherwise be private but is relevant to their participation in public life. Intellectual and educational speech and expression are also important in a democracy, not least because they enable the development of individuals' potential to play a full part in society and in our democratic life. Artistic speech and expression is important for similar reasons, in fostering both individual originality and creativity and the free-thinking and dynamic society we so much value. No doubt there are other kinds of speech and expression for which similar claims can be made."

16.
In Clayton v Clayton [2006] 3 WLR 599 the Court of Appeal was considering the correct approach to the impacts of publication on the child. Sir Mark Potter P said at [51]:

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

17.
In Weller v Associated Newspapers Ltd [2015] EWCA Civ 1176 the Court of Appeal was considering the children's expectation of privacy. Lord Dyson said at [20]:

"In the case of a child too young to have a sufficient idea of privacy, the question whether a child in any particular circumstances has a reasonable expectation of privacy must be determined by the court taking an objective view of the matter including the reasonable expectation of the parents as to whether the child's life in a public place should remain private."

18.
It follows from these two citations that the Court should not simply assume harm from the identification. This may particularly be the position in cases where there is already some publicity around the case in any event. Further, the Court must take an objective view about the reasonable expectations of privacy.

The parties' submissions

19.
The Applicants, the Mother and, to some degree, the Guardian all make closely related arguments, which I will set out below together, save where there is a separate point. They argue that there is a strong public interest in the publication of the Judgment in a manner which allows the identification of the parents. The Father was an MP at the time when the relevant facts occurred. He was also a Government Minister for much of that time. There is an important public interest in knowing that a man in such a position of power was conducting himself in private to his female partner in the ways found.

20.
The Father has an accepted history of sexual misconduct towards women. His sexting to two young women in 2018 is already in the public domain and this conduct was serious enough to end his role in

public life. There was significant media coverage of the “sexting scandal” and there is therefore already considerable public interest in the sexual misconduct of the Father, quite apart from the in-principle fact that he was an elected representative.

21.
The Father has represented in media articles that the sexting in 2018 was an isolated incident caused by a mental health crisis. However, the Judge found that his sexting went back to 2011 (J2.1); and that he had committed very serious sexual misconduct against his wife, including findings of rape. Ms Reed therefore argues that this case falls within the principles set out in Campbell above where it was found that the media has the right to “set the record straight” where someone in the public eye has chosen to portray themselves in a particular way, which is in fact untrue.

22.
The Mother is now herself an MP and therefore in a powerful position to campaign on issues relating to domestic abuse. She has said that she wishes to use her position to speak about this issue, including speaking publicly about her own personal experience. The Mother has said that if the Judgment is not published naming the parties, she will rely on Parliamentary Privilege to raise in Parliament the findings that the Judge has made. I return to this matter below.

23.
Ms Reed refers to the strong public interest in understanding and being aware of predatory and sexually abusive conduct by men in power and referred to the MeToo movement’s focus on this particular gender dynamic. She also refers to the high level of public interest and concern in the protections afforded (or not) to victims of rape and domestic abuse by the justice system. In particular, she (and Dr Proudman) relied upon the current concern in the appellate courts about the handling of claims of domestic abuse by the Family Courts, as shown in Re H-N and others (children) (domestic abuse: findings of fact hearings) [2021] EWCA Civ 448.

24.
It is argued that this case, given the nature of the findings and the high profile of the parties, is a perfect opportunity to expose these issues in a public judgment. They point to the fact that this is a case where the Judge has made very significant findings of domestic abuse, including coercive and controlling behaviour, against a high-profile man. As such, it is a relatively unusual example of a case which would engender public attention where there is no criticism of the Judge but rather contains a careful consideration of these issues. Most cases involving private family law litigation and allegations of domestic abuse, where the judgments are eventually published, are ones which are appealed (to the High Court or the Court of Appeal) and it is therefore being argued that the Judge has erred. In this case the Mother, the Applicants and Rights of Women all say that the Judge approached the determination of allegations of domestic abuse in an appropriate and sensitive manner.

25.
Mr Farmer refers to the fact that in the criminal courts the victim of rape is given anonymity to protect her privacy. It would appear to the public to be highly inconsistent, and difficult to justify, to allow the perpetrator, namely the Father, anonymity in the Family Courts. This is particularly the case where the perpetrator was at the time an elected representative, so there is an even greater public interest in knowing the full facts.

26.
The Mother, as a survivor of serious abuse, wishes to be able to tell her story and to campaign on these issues based on her own experiences. She argues that the Father’s stance in this case is a

continued effort to silence and control her through who she can speak to about the case and the narrative that she can give. As such, Dr Proudman argues that the Mother's Article 10 and Article 8 rights are being interfered with by preventing the Judgment being published and her being able to speak about her experiences. She argues that the very fact of the Father's resistance to publication of the Judgment is yet another example of his coercive and controlling behaviour.

27.
In relation to impact on X, these parties refer to his young age; the fact that the sexting scandal is already in the public domain; and the fact that the restrictions on his contact with his father will mean that he will have to be given some explanations, in an age appropriate way, over the years in any event. The Mother is clear that she can manage any media interest in a way which protects X, both now and in the future. Ms Reed accepted that there are likely to be problems for X in the future in relation to his relationship with the Father, given what is already in the public domain, and the issues in the Judgment. But those problems are not primarily a consequence of publication of the Judgment, but rather of the Father's behaviour and the fact that some of that is already publicly known. There may be some impact on X in the longer term from publication, but that will be but one part of wider impacts that will have to be managed or "mitigated" by the Mother in any event.

28.
The Guardian was initially opposed to any publication which could lead to the identification of X and the impact that could have on X. However, the Mother's decision to support the application has changed the Guardian's understanding of the risks to X. She reconsidered her position and decided to support the application. Her reasoning was primarily based on X's young age and the Mother's ability to manage the information that was given to X and to protect him from any media interest. The Guardian notes that the Mother's ability to care for X was not undermined when there was considerable media interest during the sexting scandal. She accepted that at X's young age, X will be largely screened from any media or social media comment or coverage in the immediate future.

29.
The Guardian considered the impact on X's relationship with his father and the degree to which publication of the Judgment would negatively impact upon this. She referred to the fact that there will have to be conversations with X, at the appropriate time and in the appropriate form, about his parents' relationship and why they separated, as well as matters that are already in the public domain about the Father. The Guardian agreed with the Applicants that the impact on X's relationship with his Father was a consequence of his behaviour, not publication.

30.
The Guardian was concerned about whether X would be exposed to any bullying or comment at nursery. She noted that it will be some time before X gets to primary school, let alone secondary school. She also noted that by the time X is likely to have any awareness of the issue, media interest in the Judgment is likely to be well past.

31.
Mr Bowe, on behalf of the Guardian, submits that there is a firm argument in favour of publishing the findings in order to promote transparency within the Family Court and shine a light on how the Court approaches coercive and controlling behaviour and sexual abuse. He submits that any redactions must maintain the integrity of the Judgment. If the parts relating to the parents being MPs, and what happened in 2018, are removed then that integrity is undermined because a core part of the facts

would be missed out. Importantly, this would remove the Judge's reasoning on credibility and the context of some of the Father's behaviour, which is key to the overall conclusions.

32.
Therefore all these parties say that when carrying out the Re S balancing exercise, the balance is firmly in favour of vindicating the media's Article 10 rights, and the Mother's Article 8 rights, and on the particular facts of the case the interference with X's Article 8 rights, is justified and proportionate.

33.
Rights of Women, which I allowed to intervene on 10 June 2021, is an NGO which specialises in providing legal advice to women who are experiencing or are at risk of experiencing violence against women and girls ('VAWG'). Their submissions focus on the rights of women who have been the victims of domestic abuse to freedom of expression (Article 10) and "informational self-determination", which I would call the right to tell their own stories. Ms Gallagher refers to Munby J in Re Roddy [2003] EWHC 2927 (Fam) at [35-36]:

"35. Article 8 thus protects two very different kinds of private life both the private life lived privately and kept hidden from the outside world and also the private life lived in company with other human beings and shared with the outside world. For, as the Strasbourg jurisprudence recognises, the ability to lead one's own personal life as one chooses, the ability to develop one's personality, indeed one's very psychological and moral integrity, are dependent upon being able to interact and develop relationships with other human beings and with the world at large. And central to one's psychological and moral integrity, to one's feelings of self-worth, is the knowledge of one's childhood, development and history. So amongst the rights protected by Article 8 , as it seems to me, is the right, as a human being, to share with others — and, if one so chooses, with the world at large — one's own story, the story of one's childhood, development and history. Man is a sociable being. Long ago Aristotle said that "He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god". More recently, Blackstone observed that, "Man was formed for society". And, somewhat earlier, John Donne had memorably written that, "No man is an Island … any man's death diminishes me, because I am involved in Mankind". That is what distinguishes mankind from the brute creation. We are able to think and to communicate with each other. We have self-awareness. It is natural for us to want to talk to others about ourselves and about our lives. It is fundamental to our human condition, to our dignity as human beings, that we should be able to do so. This, after all, is why totalitarian regimes seek to silence those who will not conform not merely by taking away their right to speak in public but also by depriving them of human companionship.

36. The personal autonomy protected by Article 8 embraces the right to decide who is to be within the "inner circle", the right to decide whether that which is private should remain private or whether it should be shared with others. Article 8 thus embraces both the right to maintain one's privacy and, if this is what one prefers, not merely the right to waive that privacy but also the right to share what would otherwise be private with others or, indeed, with the world at large. So the right to communicate one's story to one's fellow beings is protected not merely by Article 10 but also by Article 8 ."

34.
Ms Gallagher points to the fact that the ability of victims of domestic abuse to recount their experiences is highly constrained in the Family Court and this has a detrimental effect on women's ability to campaign on, or speak about, domestic abuse. Rights of Women entirely supports the right of women to anonymity, if they so desire. However, those women who are prepared to campaign openly

on the subject, and to be identified, may have a disproportionate impact on improving and enhancing the public debate.

35.
She referred to [60] of TM and CM v Moldova [2014] ECHR 81 where the European Court of Human Rights referred to "the particular vulnerability of victims of domestic violence, who often fail to report incidents". The applicability of this concern in the UK context is made clear in the Ministry of Justice's June 2020 report "Assessing Risk of Harm to children and Parents in Private Law Children Cases" ('the Harm Report'), which referred to one of the significant barriers to victims raising allegations of domestic abuse being a limited understanding within the legal system of coercive control; a fear that they would not be believed; and a fear of negative consequences if they reported abuse. RoW raises a concern that the Family Court must ensure that adult and child victims of domestic abuse are prepared to seek out and engage its services, and that women who go to RoW often are apprehensive about their treatment by the Court.

36.
She refers to the fact that women who do not seek the support of the Family Court are relatively free to speak out about their experiences, see Stocker v Stocker [2020] AC 593, subject to the laws of defamation. However, those who are engaged in Family Court disputes concerning their children are likely to be much more restricted about the degree to which they can share information, including within their support networks.

37.
She supported the argument of the Applicants and the Mother as to the pressing need in the Family Court to publish more judgments in order to support the public interest in open justice. Ms Gallagher pointed out that this was an almost unique opportunity to further these principles given that all parties (save Mr Farmer) were represented, and both the Mother and the Guardian were supporting publication of the findings.

38.
The Father supports publication of the Judgment but with all names and anything that could lead to the identification of X redacted. The inevitable consequence of this is that any part of the Judgment that could lead to his identification, including his position as an MP and Minister, the fact that the Mother is now an MP, and any reference to the sexting scandal, would be redacted.

39.
The Father bases his case on the need to protect X's Article 8 rights and ensure his identification is protected at all costs. Although the Father has had significant mental health issues, he does not rely on any impact of publication on his mental health, or his direct Article 8 rights.

40.
Although accepting, by the end of the hearing, that the balancing exercise in Re S did apply, Mr Clayton argued that X's Article 8 interests should be the most important factor, given that X is a child. He submitted that less weight should be attached to Re S because it was a criminal case where the public interest in knowing the facts of the case was necessarily particularly strong.

41.
Mr Clayton relied on ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 AC 166 and FZ (Congo) v Secretary of State for the Home Department [2013] 1 WLR 3690 as to the best interests of the child in an Article 8 analysis. He referred to the United Nations Convention on the

Rights of the Child, on the critical need to protect the best interests of the child. In FZ at [10] Lord Hodge said:

“10. In their written case counsel for Mr Zoumbas set out legal principles which were relevant in this case and which they derived from three decisions of this court, namely ZH (Tanzania) (above), H v Lord Advocate 2012 SC (UKSC) 308 and H(H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338. Those principles are not in doubt and Ms Drummond on behalf of the Secretary of State did not challenge them. We paraphrase them as follows:

(1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;

(2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

(3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;

(4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;

(5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

(6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

(7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.”

42.
In relation to the need to protect X’s relationship with the Father, Mr Clayton places reliance on Strand Lobben v Norway (2020) 70 EHRR 14 at [217] and Jansen v Norway (2822/16) at [93-94] in which the Grand Chamber emphasised the importance of children maintaining family ties except where the family was particularly unfit. Mr Clayton submitted, on the basis of these cases, that there was a positive duty on the State to promote contact with parents.

43.
Mr Clayton argued that there was only limited public interest in the identification of the parents. Most of the legitimate public interest lay in the facts about domestic abuse, and those parts of the Judgment could be published without allowing identification of the parents, which would inexorably lead to an ability to identify X.

44.
In relation to the Sunday Times article, Mr Clayton told the court that the Father had only agreed to that interview because the newspaper had indicated it would publish an article in any event and, therefore, he felt he had little choice. He had not given the Sunday Times the photograph of X.

45.
The Father argues that the impact of disclosing the parents' identities may well be highly disruptive, or even devastating, to X maintaining a continuing relationship with the Father. Mr Clayton emphasised that once the Judgment is published it will remain available forever on the internet. There is a great difference between X finding out over time what his Father has done, and the Judgment being in the public domain available for all to read. He suggests that the "mitigation measures" which are said to be in place are in practice non-existent, and there is little to protect X from the impact of publication. X is likely to be identified and known by the information that will be published, and that will be severely harmful to him in the longer-term. This is particularly the case given that the town he lives in is a small one, and the parents are very well known.

Conclusions

46.
It follows from Re S that neither the asserted Article 8 nor Article 10 rights take precedence. By the end of the hearing Mr Clayton accepted that Re S did set out the relevant approach in this case, and in my view that is plainly correct. The Court must undertake an intensive analysis of the specific rights being claimed and then carry out the balancing exercise. In my view there is no inconsistency between undertaking the Re S balancing exercise and applying the principles in FZ at [10]. The child's best interests are plainly a primary consideration, which I have to carefully consider on the specific facts, but not the primary consideration.

47.
I start with Article 10. It is a trite but none the less central principle that open justice is of vital importance to a democratic society and a properly functioning judicial system. Any infringement of that principle needs to be carefully justified. The Applicants' rights under Article 10 are in effect held to protect the public interest in knowledge of what happens in the Court system. I accept that, on the specific facts of this case, there is considerable and legitimate public interest in the publication of the Judgment including the parties being identified.

48.
The Father was in a prominent and powerful position in the UK. Importantly, his role as an MP and a Minister meant that he had a role in law-making, including in respect of issues concerning domestic abuse. The mere fact that he was an MP, let alone a Minister, means that there is a strong public interest in the public knowing about a finding by a Judge of conduct of the nature of that set out in the Judgment. The democratic system relies upon the media being able to publish information about elected representatives, particularly where the information comes from findings in a court judgment. Of course, the public's right to such information is not without limit and politicians retain Article 8 rights. However, I note that the Father does not rely on his own Article 8 rights, and if it were not for the interests of X there could be no doubt that the Judge's findings would be published.

49.
Further, the information that the Father put into the public domain after the sexting scandal is materially inconsistent with the findings in the Judgment. The Judge accepted that he had been sexting back in 2011. The Father had put himself forward in the Sunday Times article as having been the victim of a mental health crisis which led to him sending inappropriate texts in 2018. However, the Judge's findings of rape and serious sexual misconduct pre-date any mental health crisis, as does the much earlier sexting.

50.

In those circumstances there is a strong Article 10 right in the media being able to set the public record straight. There are considerable similarities in this regard to the reasoning in Campbell. However, in my view, the facts here are much more strongly in favour of publication than in Campbell, given the role of the Father as an MP, the fact that his earlier inconsistent and untrue statements were made to protect his political career, and the gravity of the facts that the Judge found.

51.
I also consider that there is a broader public interest in the publication of the Judgment, including the identification of the parties. There is a well recorded concern that victims of domestic violence, and particularly women and girls, are often unwilling to come forward to the courts. The fact that Family Court proceedings almost always take place in private; that very few judgments are published; and that many of the judgments that are published are ones where something has gone wrong, all give rise to a public concern about the workings of the family justice system. There is very considerable publicity around judgments such as Re H-N, but it is exceedingly rare for judgments to be published where there have been findings, not challenged on appeal, of domestic abuse, including coercive and controlling behaviour. As the parties other than the Father point out, this is a judgment where the Judge dealt with great care and sensitivity with issues of domestic abuse, and highly contested evidence. There is, in my view, a real benefit in a judgment such as this being brought to the public's attention to show the workings of the Family Court in a transparent fashion. The Judgment could be published with names redacted but still containing the findings on domestic abuse. However, the truth is that it would in those circumstances receive little publicity. There is, in my view, an important Article 10 consideration in the public seeing a judgment such as this, where a powerful man is held to account in respect of abuse of his female partner.

52.
The Mother's Article 10 and 8 rights are somewhat different. She has a right under Article 10 to her own freedom of expression, and this includes the right to speak to whomsoever she pleases about her experiences. That Article 10 right would normally be very significantly interfered with by the privacy requirements of the Family Courts, but this would generally be justified under Article 10(2) by reason of the interests of the child. I also accept that her Article 8 rights to tell her own story and thus have autonomy, as explained by Munby J in Re Roddy, would be interfered with. The level of the interference in the Mother's rights should not be underestimated. The Mother says that she feels that, having been subject to coercive control by the Father, she is now being silenced by his resistance to the Judgment being published. For women who have been the subject of domestic abuse to be unable to speak about their experiences, including their experiences through litigation, must often be extremely distressing. And may in some cases be re-traumatising.

53.
The Mother suggested that, if the court refused to allow publication, she would refer to, or even read out, the Judgment in Parliament relying on Article 9 of the Bill of Rights. In my view this issue is irrelevant. Firstly, the Court cannot prevent or supervise what the Mother as an MP does in Parliament. That is a matter for the Speaker of the House and the Parliamentary authorities. The Father disputes that the Speaker would allow her to use Parliamentary Privilege in this way, but it would be wrong for me to speculate upon that. Secondly, the Mother has acted at all times as a responsible parent who prioritises X's interests. I am confident that if I found it would be contrary to X's interests for the Judgment to be published, she would think very carefully before saying anything in Parliament. Thirdly, I have to strike a balance under the ECHR; what the Mother does in Parliament is outside that balance.

54.
In most cases the interference in parents' Article 10 rights is likely to be justified by the need to protect the anonymity of the child. It will usually be the case that the need to protect the child will be an overwhelming (although not paramount) factor. But the Court should be slow in all cases to be used as a means by which one parent seeks further control over the other. Particularly where there have already been findings of coercive control.

55.
Further, there is a significant public interest in issues concerning domestic abuse and how it is dealt within the Family Courts being openly discussed and debated in as fully informed way as possible. This case is a very unusual one by the very fact that the survivor of the abuse, the Mother, and the Child's Guardian, support publication. It is also unusual in that those who seek to achieve publication wish to use it as an example of good handling by the Family Court. The nature of the way judgments in private law cases in the Family Court are published means that usually only those cases where something is alleged to have gone wrong are published. This leads to an inevitable erosion of public confidence in the family justice system, both in private and public law (care) cases. This lack of confidence is ultimately hugely detrimental to the public interest, both in the upholding of justice and the protection of children. This case offers an opportunity to slightly redress that issue.

56.
All these factors have to be weighed against the Child's Article 8 rights. These are not paramount, see Re S, but they are of very great importance. If X was older and was likely to be on social media and watching any media/social media interest which follows from publication, I would be very concerned about publication. I fully accept that both children and other parents can be both intrusive and at times unpleasant, and a somewhat older child could be placed in a very vulnerable situation. However, X is only 3 and has no access to social media and will not have for some little time. To the degree that parents or children at nursery make any comment to X it is likely to totally pass him by, given his young age.

57.
It may be that there will continue to be some media interest in years to come, and things said on the internet do frequently remain in perpetuity. However, firstly the likelihood is that the media storm, if there is one, will pass fairly quickly. Secondly, explanations are going to have to be given to X in any event, at an age appropriate time, given the sexting scandal and constraints over his contact with his Father. I am therefore as confident as I can be that X will be protected from the ramifications of the publication of the Judgment.

58.
Finally, there is the issue of the impact of publication on X's relationship with the Father. Again, in my view, this can be appropriately controlled. Contact with the Father is currently significantly circumscribed given the nature of the findings, and the Judge will consider contact further later in the proceedings. The findings will have a very material impact on X's contact with the Father, and doubtless with their on-going relationship. However, that is not a product of publication, but rather of the Father's behaviour as found by the Judge. Given X's young age, and likely obliviousness to the fact of the Judgment itself, I find it difficult to see how the publication of the Judgment will make any greater impact on the relationship. There may be a short-term media storm, but as I have said above, in my view X can be protected from that.

59.

Therefore having carried out the intensive and fact specific investigation of the different ECHR Articles in play, I have concluded that the Judgment should be published with the Mother and Father's names and in accordance with the redactions proposed by the Applicants and supported by the Mother and Guardian.