Case No: ZE15C00253

Neutral Citation Number: [2016] EWHC 1371 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 June 2016

Before:

MR JUSTICE MACDONALD

- -

Between:

	The London Borough of Sutton	**Applicant**
	- and –	
	MH	**First Respondent**
	- and -	
	RH	**Second Respondent**
	- and -	
	NH	**Third Respondent**

(No. 2)

- -
- -

Ms. Anne-Marie Lucey (instructed by **London Borough of Sutton**) for the **Applicant**
The **First Respondent** did not appear and was not represented
The **Second Respondent** did not appear and was not represented
The **Third Respondent** did not appear and was not represented
Mr Ford (instructed by **CAFCASS Legal**) for the **Children's Guardian**

Hearing dates: 5 May 2016

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Judgment**Mr Justice MacDonald:**

INTRODUCTION

1. In this matter I am concerned with NH. NH is now 16 years old. NH is the second of two children of MH (hereafter "the mother"). NH's older half-sister (now aged 27) resides in Canada. NH's father is RH (hereafter "the father"). He has played no part in his life and has played no part in these proceedings. NH is related to BD, a public figure.

2. The application brought by the London Borough of Sutton is for a care order under Part IV of the Children Act 1989. NH is also, as at the date of this hearing, under section pursuant to section 3 of the Mental Health Act 1983. The care proceedings are currently listed for an adjourned final hearing before me on 11 July 2016 with a time estimate of five days.

3. On 5 April 2016 NH absconded from the Royal Courts of Justice immediately prior to a directions hearing listed on that date. In consequence, on 5 April 2016 I granted a free standing port alert order in respect of NH. In light of the suspicion that NH would head for the Zimbabwean Embassy, the local authority contacted the Embassy and the Deputy Consul confirmed to the social worker that the Embassy would notify the local authority if NH or his mother attended there. In circumstances where NH's passport was held to the order of this court, in addition to making a port alert order in respect of NH I respectfully requested the Zimbabwean Embassy not to issue replacement travel documents for NH. Responsibility for serving the freestanding port alert order on the Police and the National Ports Office lay with the local authority. That order was duly served by the local authority.

4. On 8 April 2016 the court was informed by the local authority that NH had indeed made his way to the Zimbabwean Embassy where he was joined by his mother. Upon being so informed I made a collection order in respect of NH out of hours, making clear to the local authority that it would not be possible to execute that order within the environs of the Embassy. Responsibility for serving the collection order lay with the Tipstaff and the collection order was duly served by the Tipstaff on the Police and the Ports Office.

5. On 8 or 9 April 2016 Police Officers visited an alternate address also set out in the collection order, being the address of a member of the maternal extended family. The Police Officers received further confirmation that the mother and NH were at the Zimbabwean Embassy.

6. In light of these developments the matter returned to court for directions on 12 April

2016 before Keehan J who listed the matter before me on 22 April 2016. On 22 April 2016 I heard submissions on the following applications:

i) An application by NH's solicitors to come off the court record.

ii) An application by the NH to have the services of a McKenzie friend in the person of Mr John Hemming, the well-known campaigner and chair of the Justice for Families campaign group.

iii) An application by the local authority to disclose certain documents to the Zimbabwean Embassy.

7. The order of Keehan J of 12 April 2016 directed that NH attend the hearing on 22 April 2016 by way of video link from within the Zimbabwean Embassy. Arrangements were made for a secure video link, including the delivery of a secure laptop to the Embassy. Upon the link being made it was clear that the mother was present with NH and I permitted her to participate in the hearing via the same video link. Subject to technical difficulties the link worked tolerably well and allowed me to ascertain from NH his position, and that of the mother on the matters then in issue before the court.

8. Regrettably, towards the very end of the hearing the mother became increasingly upset and abusive. During a protracted verbal tirade, which took place in front of NH and which the court was unable to halt, the mother accused those in the court room (including me) of wanting to sleep with her son and made various other derogatory comments. When it became clear that, despite repeated requests that she desist, the mother was intent on continuing to disrupt the progress of the hearing I terminated the video link.

9. The application by NH's solicitors to come off the court record was essentially unopposed. Whilst Ms Lucey on behalf of the local authority sought to caution the court on the issue of potential delay being introduced to the proceedings, the local authority did not seek to oppose that application in circumstances where NH did not wish his solicitor to act for him and refused to speak or to and give instructions to his solicitor. Within that context, I considered it inevitable that the application must succeed and granted permission to Mr Reed to come off the court record as acting for NH. I reserved judgment on the questions of whether NH should be permitted to act in person in the care proceedings and to have the services of a McKenzie friend and whether the local authority should have permission disclose certain documents to the Zimbabwean Embassy, the mother opposing that course of action. Whilst I was considering my judgment on those issues however, events moved on significantly.

10. On 27 April 2016 the local authority informed the court that the mother and NH had left the Zimbabwean Embassy. Notwithstanding the existence of the port alert order of 5

April 2016, the collection order of 8 April 2016 and the request that the Embassy refrain from issuing replacement travel documents to NH, the court thereafter became aware on 3 May 2016 that NH and his mother may have manged to leave the jurisdiction of England and Wales. On 4 May 2016 the mother sent three photographs to the court depicting herself and NH, one outside an airport that appeared to be the international airport in Harare and two outside what appears to be the mother's property in Harare.

11. In light of these developments, on 3 May 2016 I listed the matter before me on 5 May 2016 to consider the current position in this case and the appropriate way forward in respect of the same in light of the fact that the mother had apparently managed to abduct NH from the jurisdiction of England and Wales.

12. On 4 May 2016 the court office received and issued an application purporting to be from NH seeking to discharge a reporting restriction order made by Cobb J on 27 December 2015. In light of certain matters which I set out below when dealing with the background to this matter, there is an issue as to whether the application to discharge the reporting restriction order is an application made by NH of his own volition or an application made by, or under the influence of the mother.

13. In the circumstances, at this hearing the following issues have fallen for determination by the Court:

    i) Whether NH has left the jurisdiction of England and Wales?

    ii) Whether the local authority should be given permission to withdraw its care proceedings in respect of NH in all the circumstances of the case?

    iii) Whether the reporting restriction order made by Cobb J on 17 December 2015 should continue in its present form, should be varied or should be discharged?

    iv) Whether this judgment and my previous substantive judgment in this matter should be now published having regard to the President's Guidance on the publication of judgments?

14. In circumstances where I am satisfied on the evidence available to the court that NH has left the jurisdiction and where, in consequence, I am satisfied for the reasons set out below that the local authority should be given permission to withdraw its application, the issues I was considering at the point it became apparent that NH was no longer present in England and Wales, namely whether NH should be permitted to act in person in the care proceedings and to have the services of a McKenzie friend and whether the local authority should have permission disclose certain documents to the Zimbabwean Embassy, no longer require determination and I say not more about them.

15. In circumstances where further clarification was required regarding the circumstances in which the mother and NH had managed to leave the jurisdiction, and in circumstances where the then pending decision of the Supreme Court in *PJS (Appellant) v News Group Newspapers Ltd (Respondent)* [2016] UKSC 26 was potentially relevant to the question of the ambit of the reporting restriction order in this case I reserved judgment, which I now deliver.

ESSENTIAL BACKGROUND

16. The detailed background to the applications before the court is set out in the published judgment of Cobb J given in July 2015 and reported as *Re NH (1996) Child Protection Convention Habitual Residence)* [2015] EWHC 229 (Fam) and in my currently unpublished judgment of 22 March 2016 adjourning the final hearing of the care proceedings. For the purposes of this judgment it is sufficient to set out the following the matters.

17. NH was born in South Africa in 1999. He lived in that country for the first five years of his life. In 2004 NH, together with his half-sister and mother, moved to Canada, where they resided for eight years. In 2012, NH and his mother moved to Switzerland, where the mother married a Swiss national. That marriage did not last and the mother is now divorced.

18. During this period in Switzerland NH presented challenging behaviours, with which behaviours the mother states she struggled to cope. In February 2015, at his mother's instigation, NH moved to reside temporarily at a "*Schlupfhuuse*" residential care facility with the services of a "*Beratungsstelle*" (advice centre) and a "*Krisenwohngruppe*" (crisis residential centre). A child protection file was opened in relation to NH by the Swiss authorities.

19. In February 2015, the Swiss authorities informed the mother that, given her divorce from her Swiss husband, they would not be willing to extend the B-Permits which enabled the mother and NH to reside in Switzerland. As the mother's plan at this time was that NH should be sent to South Africa for treatment before transferring to boarding school in Zimbabwe, the mother appealed against that decision in relation to herself only. Her appeal was rejected by the Swiss authorities.

20. At a meeting at the Schlupfhuuse in March 2015 NH made it abundantly clear that he "*refused to migrate to Zimbabwe to enroll in boarding school*". On 22 April 2015 NH instigated proceedings in Switzerland with a view to divesting his mother of parental responsibility for him, principally in order that his mother could not determine where he lived, he being at that point adamantly opposed to his mother's plan to move NH to South Africa to attend a therapeutic clinic and then to Zimbabwe to attend a residential boarding school. NH was then persuaded by a cousin in the United Kingdom to come to

England for a holiday.

21. On 25 April 2015 NH arrived in England. On arrival here, he was met by relatives with whom he stayed briefly in the Midlands before heading to other relatives who resided in the London Borough of Sutton.

22. On 26 April 2015, the mother formally de-registered NH in Switzerland, this de-registration finally extinguishing NH's right of residence in Switzerland. Following this step, the proceedings between NH and his mother concerning the mother's parental responsibility for NH in Switzerland were discontinued.

23. The mother arrived in England on 26 April 2015. As set out above, the mother had intended that NH would, within a few days or weeks of his arrival in this jurisdiction, travel onwards from England to South Africa and then to Zimbabwe, to attend a therapeutic clinic and thereafter a residential boarding school. NH remained at that time adamantly opposed to that outcome and indicated that he had no intention of complying with his mother's wishes.

24. On 8 May 2015 the police were called to the home at which NH and his mother were staying in the London Borough of Sutton. NH alleged that he had been assaulted by his mother. During this incident NH alleged that his Canadian passport was "*wrestled*" (his mother's word) from him by his mother and then destroyed by her, thereby preventing him from travelling to Canada. The mother was arrested by Police. NH was taken into police protection and thereafter placed in foster care. The mother told the police when interviewed that NH was "*beyond parental control*". With respect to the alleged assault, on 22 April 2016 NH told me that he was not telling the truth about this and the assault did not, in fact, take place.

25. On 12 May 2015, the mother was asked for but declined to give her consent to NH's continued accommodation. In the circumstances, the local authority sought to initiate proceedings under the inherent jurisdiction of the High Court. On 13 May 2015, Roderic Wood J declined the relief sought under the inherent jurisdiction but made an interim care order under the Children Act 1989 in respect of NH.

26. On 30 July 2015 Cobb J determined that this court had jurisdiction in respect of NH for the reasons set out in *Re NH (1996 Child Protection Convention Habitual Residence)* [2015] EWHC 229 (Fam).

27. NH has remained under the auspices of an interim care order since 13 May 2015. As I noted in my judgment of 22 March 2016, NH's time in the care of the local authority has not been smooth and has caused his mother legitimate concern. This included incidents of drinking and drug taking and an incident in which NH sustained knife injuries to his hand and neck in August 2015 in respect of which he required hospital treatment. The

mother has also alleged that NH has been the victim of a sexual assault by way of an alleged "*gang rape*" whilst in care, although NH has consistently denied this and there is no evidence to suggest such an incident occurred.

28. On 23 September 2015 the mother went to NH's then placement. The staff at the placement were unable to prevent the mother from removing NH. The mother took NH to a private hospital and insisted on having him examined by a psychiatrist. The mother contends that during this attempt to have him assessed NH tried to jump from a car and refused to engage in any assessment. After allegedly punching a security guard, NH was arrested by Police. An evaluation by a psychiatric nurse at the Police station on 24 September 2015 raised concerns regarding NH's mental health.

29. The mother again removed NH from his placement on 29 September 2015 and took him to a private hospital. Once there the mother requested a "*blood borne virus screen*", apparently on the grounds that, as set out above, she considered NH had been sexually assaulted during a "*gang rape*". As noted, NH has denied any such assault has taken place.

30. On 10 December 2015 NH absconded from his placement and was reported missing. He was found three days later by British Transport Police at St Pancras trying to catch a Eurostar to Paris. After being returned to his placement he absconded again and was once again found at St Pancras. He was subsequently taken into Police protection but absconded again. He was then moved to a residential unit.

31. As noted in my judgment of 22 March 2016, the mother has a long history of disseminating to persons not involved in these proceedings information and documents that are confidential to the proceedings by virtue of the provisions of the Children Act 1989 s 97, the Administration Act 1960 s 12 and FPR 2010 Part 27. This conduct led to Cobb J to make an interim reporting restriction order on 27 November 2015, which interim order was confirmed on 17 December 2015. That order has not been appealed by the mother and remains in force at this time. It prohibits the publication of the names and addresses of NH, the mother, the father and any other relatives or any other person or body caring for the child if (but only if) such publication is likely, whether directly or indirectly to lead to the identification of NH as being:

i) A child subject of proceedings under the Children Act 1989 or the Adoption and Children Act 2002;

ii) A child who has been the subject of allegations of abuse; and/or

iii) A child who has been removed from the care of his or her parents; and / or

iv) A child whose contact with his or her parents has been prohibited or restricted.

32. In circumstances where the mother continued to disseminate material in breach of the reporting restriction order subsequent to December 2015, on 9 March 2016 I made an order regulating the manner in which the mother was given access to certain documents concerning NH's medical treatment. I renewed that order on 22 March 2016. On 5 April 2016 the Court of Appeal dismissed the mother's application for permission to appeal my orders of 9 March and 22 March 2016 as being completely without merit.

33. On 2 February 2016 the residential unit became concerned about NH's behaviour and presentation. On 4 February 2016 NH was sectioned under the provisions of the Mental Health Act 1983 s 2. A month later, on 3 March 2016 NH was detained pursuant to the provisions of the Mental Health Act 1983 s 3. Notwithstanding his being sectioned, on 8 March 2016 his treating psychiatrist felt able to certify him as having capacity to conduct proceedings, and signed a certificate of capacity accordingly.

34. On 15 March 2016 I dismissed an application by the mother to adjourn the final hearing of the care proceedings, which had commenced on that day, for reasons set out in an *ex tempore* judgment of that date. Having failed to secure an adjournment of the hearing, later on 15 March 2016 the mother went to the hospital at which NH was then detained under the Mental Health Act, accompanied by NH's cousin. The mother and the cousin were permitted to see NH and were observed to produce documents for him to sign, which documents had not been apparent when the mother passed through the security measures at the hospital. On 16 March 2016 the court received an email from the mother attaching a statement purportedly from NH and signed by him in which he indicated that he wished the interim care order discharged, that he had not provided his legal team with instructions and did not wish them to continue to represent him.

35. Following the mother's visit to NH on 15 March 2016 NH's treating psychiatrist considered that the impact of that visit on NH's mental health had been such that NH had lost capacity to conduct proceedings. The psychiatrist produced an amended certificate of capacity accordingly. For the reasons set out in my judgment of 22 March 2016 I at that point I did accede to an adjournment of the final hearing to allow the necessary procedural steps consequent upon NH's loss of capacity to conduct proceedings to be taken and re-listed the final hearing on 11 July 2016.

36. On 29 March 2016 an application purporting to be from NH was received and issued by the Court Office. Whilst at this time NH had solicitors acting for him, the C2 application purporting to be from NH was issued by the mother. It is clear from written communications the court has received from the mother that she had drafted the C2 application, had taken it to the unit in which NH was then detained and obtained his signature. The mother then attended court office with the completed application. The C2 application applied for a number of orders as follows:

i) An order permitting NH to "*de-instruct*" his solicitor in circumstances where he had regained capacity to conduct litigation;

ii) An order discharging the interim care order in order that he could be re-united with his mother and go and live with her in Zimbabwe;

iii) A order facilitating his "*transfer*" from the mental health unit in which he was detained pursuant to the Mental Health Act 1983;

iv) An order giving his mother "*full access to all court documents*" on the grounds that he did not believe that his mother would publish any personal information that would harm him;

v) An order permitting his mother to have full access to his medical, police and social services records.

37. Accompanying the C2 application form was a statement also purporting to be from NH in which he claimed that several statements bearing his name had been submitted to the court without his consent, that he had lied about being abused by his mother and having no home in Zimbabwe and that the social worker and his solicitor had convinced him to lie. I pause to note that each of the matters covered by the C2 application and the statement purporting to be from NH represent the key themes with which the mother has been concerned throughout these proceedings, namely the truth of the abuse allegations, access to court documents and the question of jurisdiction.

38. Following the adjournment of the final hearing NH's treating psychiatrist continued to assess NH's capacity to conduct proceedings. On 30 March 2016 she considered that NH had regained capacity to conduct proceedings. She signed a certificate of capacity accordingly. That certificate of capacity to conduct proceedings remains the most up to date evidence of NH's capacity currently available to the court.

39. The C2 application issued by the mother on 29 March 2016 was placed before Holman J sitting as the vacation judge on 30 March 2016. Holman J listed the application before me, if available, at 2.00pm on 5 April 2016. Holman J further directed that all parties attend or be represented at the hearing on 5 April 2016. The direction for the attendance of the parties was expressed to include NH unless, in the opinion of his treating team, it would be positively harmful or dangerous for him to attend the hearing and emphasised that NH should be permitted to attend, and enabled to do so, if he so wished.

40. NH's treating team did not consider that it would be harmful or dangerous for NH to attend the hearing on 5 April 2016. Accordingly, NH attended court with two escorts. Immediately before the matter was called on NH absconded from the Royal Courts of

Justice after giving his escorts "*the slip*" whilst in the toilet. As I have already related, it has subsequently transpired that, following his absconding from court, NH made his way to the Zimbabwean Embassy where he was joined by the mother. Following his absconding from court, Ms Lucey on behalf of the local authority confirmed to the court that, notwithstanding NH's history of absconding as outlined above, and quite remarkably, *no* consideration had been given by his treating team or the local authority as to whether his attendance at the hearing would present a risk of absconding. As set out above, on 5 April 2016 I made a port alert order in respect of NH and, in circumstances where it was believed that NH would go to the Zimbabwean Embassy requested the Embassy not to issue replacement travel documents for NH.

41. The local authority contends that it served the port alert order of 5 April 2016 on the Police and the National Ports Office. Whilst the National Ports Office has informed the Secretary of State for the Home Department that no record of the Port Alert of 5 April 2016 had been entered on to the PNC, the Police have now confirmed that the relevant marker was placed on the PNC on 5 April 2016 in relation to NH and again on 8 April 2016 following the making of a collection order on that date as detailed below.

42. On the evening of Friday 8 April 2016 the local authority became aware that NH was at the Zimbabwean Embassy in the company of his mother and applied out of hours for a collection order. I was, by chance, the duty judge on that evening and I granted the without notice application for a collection order in respect of the NH. It was, of course, not possible to execute the collection order in the Embassy. The Tipstaff served the collection order on the Police and the National Ports Office.

43. The Embassy endeavoured to co-operate in seeking to ensure NH's continued welfare. In particular, the Embassy agreed to the attendance of a mental health professional and a social worker on 19 April 2016 with a view to assessing NH's welfare. The mother however refused to permit those professionals to see NH.

44. At this point the matter reached something of a stalemate. In broad terms, on one side of the stalemate the mother sought to ensure that NH did not go back to the hospital in which he was receiving treatment for his mental health but instead travelled to Zimbabwe as she had always intended he should. On the other side the local authority sought to ensure NH continued to receive treatment and to ascertain NH's wishes and feelings independent of what it considered to be his mother's malign influence with a view to determining whether its care plan providing for NH to be placed in Canada remained appropriate.

45. For his part, having previously expressed emphatic opposition to returning to Zimbabwe, and a clear wish to go and live in Canada, NH stated he wished to return to the jurisdiction of Zimbabwe with his mother. He however refused to consent to any assessment in relation to either his mental health or his wishes and feelings. As I have noted, both the local authority and the Children's Guardian were concerned that the

substantial change in NH's wishes and feelings was born out of pressure from his mother.

46. On 19 April 2016 the court received a video clip by email in which NH sought to explain what he said were his current wishes and feelings. Namely, that his mother had not abused him, that the English court had no jurisdiction in respect of him, that the orders controlling the manner in which his mother gained access to certain documents should be discharged, that the interim care order should be discharged and that he should be permitted to travel to Zimbabwe. During the video, NH is seen to be reading from a pre-prepared note. Whilst this is not of and in itself concerning, I note again that his list as recited in the video mirrored the themes that have pre-occupied his mother throughout the proceedings, in particular the question of the abuse allegations, the question of jurisdiction and the question of what the mother terms (and which NH likewise termed) a "*document restriction order*".

47. When informing me of his wishes and feelings via the video link at the hearing on 22 April 2016 NH once again read out the list he had used when sending the video clip to me as detailed in the foregoing paragraph. NH presented as aware and articulate. There was however no sense that NH was willing or able to articulate his wishes and feelings beyond reading out the pre-prepared list.

48. As I detailed at the outset of this judgment, on 27 April 2016 the local authority informed the court that the mother and NH had left the Zimbabwean Embassy. The court thereafter became aware on 3 May 2016 that NH and his mother may also have manged to leave the jurisdiction of England and Wales. During the course of this hearing the social worker spoke to the mother by telephone during which telephone conversation the mother confirmed that she was in Harare with NH. By a Position Statement dated 21 May 2016 the local authority informed the court that the social worker spoke to NH via Skype on 16 May 2016, from which conversation the social worker satisfied himself further that NH is likely to be in Zimbabwe.

49. Further enquiries have revealed that whilst the port alert was triggered with respect to the mother at 12.04pm on 26 April 2016, there was a delay in this occurring and the mother had in fact departed the jurisdiction at 10.50am. At 12:17pm on 26 April 2016 the Tipstaff was notified of that departure. As that information was received by the Tipstaff significantly after the time of departure he was, of course, unable to take steps to prevent the same.

50. No notification was received by the Tipstaff in respect of NH notwithstanding that it is now clear that he also departed the jurisdiction with his mother. The Police have not been able to provide any record of NH leaving the jurisdiction in his known name. However, further investigation has revealed that the relevant travel manifest indicates that NH's name had a different spelling, although his date of birth was accurate. In *London Borough of Camden v RZ and others* [2015] EWHC 3751 (Fam) I observed that

I was not aware of any reported cases in which children have been removed from the country despite a port alert being in place nor had any such cases been drawn to my attention by the advocates. This however, would appear to be such a case.

51. The Foreign and Commonwealth Office has had no response to from the Zimbabwean Embassy indicating whether or not the Embassy issued travel documents to NH prior to his departure. However, further enquiries indicate that NH travelled on a Zimbabwean travel document on 26 April 2016. Within this context, I note that a signed statement from the mother dated 5 May 2016 and received via email subsequent to her absconding from the jurisdiction with NH states "*We are in need of NH's passports, so please do send these as soon as possible*."

52. That signed statement dated 5 May 2016 and email communications received by the court from the mother indicate that she and NH arrived in Zimbabwe on 29 April 2016. The mother states that NH is undergoing psychiatric assessment in that jurisdiction during the course of which, on occasion, he has had to be admitted. The mother states that NH has needed support "*for PTSD and anxiety*" and that NH has now been admitted to a therapeutic clinic for the purposes of "*further diagnosis and treatment*". The mother contends that NH has been assessed as having capacity.

53. Finally by way of background, the upshot of the mother's conduct in breach of the reporting restriction order is that there is now some material concerning this case on the Internet. That material does not, save in one or two instances, appear to name NH but it does identify his mother and it identifies NH by reference to BD. Some of the material contains images of NH and his mother. The information on the Internet appears to have drawn limited comment and does not appear to have been shared widely at this point in time.

THE LAW

Permission to Withdraw

54. FPR 2010 r 29.4 provides as follows in respect of permission to withdraw an application:

> **29.4 Withdrawal of applications in proceedings**
>
> (1) This rule applies to applications in proceedings –
>
> (a) under Part 7;

(b)under Parts 10 to 14 or under any other Part where the application relates to the welfare or upbringing of a child or;

(c) where either of the parties is a protected party.

(2) Where this rule applies, an application may only be withdrawn with the permission of the court.

(3) Subject to paragraph (4), a person seeking permission to withdraw an application must file a written request for permission setting out the reasons for the request.

(4) The request under paragraph (3) may be made orally to the court if the parties are present.

(5) A court officer will notify the other parties of a written request.

(6) The court may deal with a written request under paragraph (3) without a hearing if the other parties, and any other persons directed by the court, have had an opportunity to make written representations to the court about the request.

55. These proceedings are public law proceedings under the Children Act 1989 in which the welfare and upbringing of the child is the main question falling for determination. Within this context the authorities make clear that in public law children proceedings where the threshold is capable of being crossed the test for whether permission should be given for care proceedings to be withdrawn is the welfare of the child (see *Re N (Leave to Withdraw Proceedings)* [2000] 1 FLR 134, *WSCC v M, F, W, X, Y and Z* [2011] 1 FLR 188 and *Redbridge LBC v B and C and A (Through his Children's Guardian)* [2011] 2 FLR 117).

56. Even where the application concerns the welfare and upbringing of a child, and the welfare of the child is the paramount consideration in determining an application for permission to withdraw, the factors relevant to the application of the overriding objective set out in FPR 2010 r 1.1(2) will also fall to be considered (*Ciccone v Ritchie (No 2)* [2016] EWHC 616 (Fam)). In the circumstances, factors such as the need to deal with the proceedings expeditiously and fairly, the need to deal with cases proportionately, the need to save expense and the need to ensure the appropriate sharing of the court's resources will also fall to be considered.

Reporting Restriction Order

57. The court retains jurisdiction to make or vary reporting restriction orders following the conclusion of proceedings under the Children Act 1989 (see *Re J (Reporting Restriction: Internet: Video)* [2014] 1 FLR 523 at [21] and [22]). The foundation of the Court's jurisdiction to control publication is derived from rights under the ECHR rather than the inherent jurisdiction of the High Court and, accordingly, applications for orders restraining publication are determined by balancing the competing human rights engaged (*Re S (Identification: Restrictions on Publication)* [2005] 1 AC 593 at [23]).

58. The law governing the making or varying of reporting restriction orders may be summarised as follows:

i) The public generally have a legitimate, indeed a compelling, interest in knowing how the family courts exercise their jurisdiction (*Re X, London Borough of Barnet v Y and X* [2006] 2 FLR 998 at [166]–[167]).

ii) In considering whether to grant or vary a reporting restriction order the judge must balance the competing rights under Art 8 (respect for private and family life) and Art 10 (freedom of expression) (*Re S (Identification: Restrictions on Publication)*). Other rights in addition to those enshrined in Arts 8 and 10 may also have to be placed in the balance when reaching a decision regarding the publication of information concerning family proceedings.

iii) When conducting a balancing exercise between Art 8 and Art 10 (and any other rights engaged), the court applies the four propositions identified by Lord Steyn in *Re S (A Child) (Identification*: *Restrictions on Publication)* at [17], namely:

(a) First, neither article has as such precedence over the other;
(b) 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;
(c) Thirdly, the justifications for interfering with or restricting each right must be taken into account;
(d) Finally, the proportionality test must be applied to each, known as 'the ultimate balancing test'.

iv) In applying what Lord Steyn described as the "ultimate balancing test" of proportionality it is important that the court consider carefully whether the order that is being sought is proportionate having regard to the end that the order seeks to achieve (*JXMX v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96);

v) In *A Local Authority v W, L, W, T and R (by the Children's Guardian)* [2006] 1 FLR 1 at [53], Sir Mark Potter P summarised the approach to the requisite balancing exercise as follows:

> '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 courts to examine the justification of 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 …'

vi) Within the balancing exercise, the child's best interests are not paramount but rather are a primary consideration. Those best interests must accordingly be considered first, although they can be outweighed by the cumulative effect of other considerations (*Re J (Reporting Restriction)* [2014] 1 FLR 531 at [22]);

vii) In undertaking the requisite balancing exercises, the impact of publication on the child must be weighed by the court (*Re S (A Child) (Identification*: *Restrictions on Publication)* at [25]). Whilst in many cases it will be demonstrated that publicity will have an adverse impact on the child, this will not be the position inevitably. In particular, in each case the impact on the child of publication must be assessed by reference to the evidence before the court rather than by reference to a presumption that publicity will be inevitably harmful to the child (see *Clayton v Clayton* [2006] Fam 83 at [51], *R v Robert Jolleys, Ex Parte Press Association* [2013] EWCA Crim 1135 at [16] and *PGS (Appellant) v News Group Newspapers Ltd (Respondent)* [2016] UKSC 26 at [73]).

viii) Within this context, when the court is considering whether to depart from the principle of open justice it will require clear and cogent evidence on which to base its decision. Some of the evidence on which the requisite balancing exercise is undertaken will necessarily involve a degree of speculation (*Re W (Children)(Identification: Restrictions on Publication)* [2006] 1 FLR 1) although there comes a point where evidence is not merely speculative but pure speculation (*Birmingham City Council v Riaz and others* [2014] EWHC 4247 (Fam)).

59. The Human Rights Act s.12(4)(a)(ii) reiterates the principle that amongst the matters to be taken into account (as opposed to being determinative) when deciding an application is the extent to which the information is already in the public domain.

60. In recent times the principles governing what may be termed the 'public domain proviso' have undergone considerable development to the point where (in cases where the complaint under Art 8 is one of intrusion) even if the relevant information is in the public

domain the *repetition* of that information will, in an appropriate case, be restrained as amounting to unjustified interference with the private lives not only of the subject but also of those who are involved with him or her (see *F v Newsquest and Others* [2004] EMLR 607, *JIH v News Group Newspapers* [2010] EWHC 2818 (QB), [2011] EMLR 177, *CTB v News Group Newspapers Ltd and Thomas* [2011] EWHC 1326 (QB), *MBX v East Sussex Hospitals NHS Trust* [2012] EWHC 3279 (QB) and *Re A (Reporting Restriction Order)* [2012] 1 FLR 239). In *Re A (Reporting Restriction Order)* at [78] Baker J held that the fact that a child has been already named or identified on the Internet is no justification in itself for permitting repetition of such publication.

61. Within this context, in *PJS (Appellant) v News Group Newspapers Ltd (Respondent)* [2016] UKSC 26 a majority of the Supreme Court held that in cases falling to be determined by reference to ECHR rights the fact there has already been significant internet and social media coverage will not be decisive in determining whether an injunction restricting reporting will be made. In an appropriate case, the court may grant a reporting restriction order to restrain further interference a person's right to respect for private life despite a significant loss of confidentiality by reason of coverage on the Internet (*PJS (Appellant) v News Group Newspapers Ltd (Respondent)* at [60]).

62. In (*PJS (Appellant) v News Group Newspapers Ltd (Respondent)* the Supreme Court also reiterated the "*well established principle*" that publication of information which does no more than satisfy public curiosity regarding the private life of persons well-known to the public does not serve any legally recognised public interest (*PJS (Appellant) v News Group Newspapers Ltd (Respondent)* at [15]). The fact that a person is well-known and is the subject of public and media attention in other contexts will likewise not, of itself, ground a public interest in the publication of information in the legal sense (*PJS (Appellant) v News Group Newspapers Ltd (Respondent)* at [21]). Within this context, the Supreme Court made clear that any public interest that may exist in the reporting of legal conduct by a person well-known to the public with a view to criticising that person (if such reporting falls within the concept of freedom of expression at all) is not capable, in the absence of any other legally recognised public interest, of outweighing the Art 8 right to respect for private life of that person (*PJS (Appellant) v News Group Newspapers Ltd (Respondent)* at [24]).

63. The law governing the publishing of judgments involves the same balancing exercise between the competing human rights of the parties although the weight those rights have in the balance may not be the same on the question of the publication of the judgment as for the granting of a reporting restriction order (Paragraph 19 of *Practice Guidance: Transparency in the Family Courts: Publication of Judgments* [2014] 1 FLR 733 states that the court "shall have regard to all the circumstances, the rights arising under any relevant provision of the European Convention on Human Rights, including Articles 6 (right to a fair hearing), 8 (respect for private and family life) and 10 (freedom of expression), and the effect of publication upon any current or potential criminal proceedings"). The exercise of discretion concerning the publication of the judgment will be a simple case management decision to be taken at the conclusion of the judgment

and following a broad consideration of the applicable principles with basic reasons.

THE SUBMISSIONS

The Local Authority

64. Notwithstanding the abduction of NH from the jurisdiction of England and Wales by his mother the local authority, very sensibly in the particular circumstances of this case, does not pursue the summary return of NH from Zimbabwe. Within this context, the local authority submits that, in circumstances where NH and the mother have left the jurisdiction, there is now no purpose to the care proceedings continuing. In the circumstances, the local authority invites the court to give it permission to withdraw its application (or, in the alternative, to dismiss its application). Within this context, the local authority further invites the court to make a series of findings regarding the justification for it issuing proceedings and the probity of its conduct during the course of those proceedings. However, I do not consider myself to be in a position to either make or reject the specific findings requested by the local authority in circumstances where I have not heard evidence or submissions on these matters and where those matters remain substantially in dispute.

65. At this hearing the local authority opposed all reporting of this matter save for a series of very tightly scripted statements of fact proffered by the local authority for approval by the court (the local authority being seemingly unaware that, as made clear in *Re Roddy (A Child) (Identification: Restriction on Publication); Torbay Borough Council v News Group Newspapers* [2004] 2 FLR 949 at [89], it is well established that it is not for the court to exert editorial control over the *manner* in which information not subject to a reporting restriction order is reported). In its Position Statement of 21 May 2016, lodged by the local authority subsequent to the handing down of judgment in *PJS (Appellant) v News Group Newspapers Ltd (Respondent)*, the local authority submits simply that the reporting restriction order should "*remain in force so as to protect NH's identity*".

66. The Local authority further invites the court to "*consider correcting the errors in the information published by the mother*" within the body of this judgment. There then follows a table setting out allegations made by the mother together with the local authority's response to the same. However, once again, whilst the position in respect of the credibility of a number of the allegations made by the mother is tolerably clear on the documentary evidence before the court, it would not be appropriate for me to make findings with respect to what remain issues of fact between the parties when I have not heard evidence or submissions in respect of the same. In my judgment the appropriate way forward in this regard is that suggested by Mr Ford on behalf of the Children's Guardian, namely to publish each of the substantive judgments I have given in this case to ensure that a balanced picture emerges.

NH

67. The application purporting to be from NH states that he wishes the reporting restriction order (and my orders of 9 March 2016 and 22 March 2016 governing the manner in which the mother was given access to certain of his medical records) set aside. The grounds of that application are expressed in the following terms:

> "Several court injunctions were put in place apparently to protect me by preventing my mother or her solicitor from sharing my case information with anyone outside the court proceedings as well as to prevent the media from reporting my case. Based on my horrendous experience while in the care of the LB of Sutton I believe it is important that the public gets to know how I suffered. I am convinced that the injunctions were put in place to protect the LB of Sutton and the courts by preventing the media from educating the public about how children are being unlawfully taken into care and abused and how their parents are silinced (*sic*) by the UK Family Court secrecy laws. I researched on all major websites and what is in the media will not do me any harm. It is fact raising the awareness of the public regarding my case. I am therefore applying to have all three injunctions removed or set aside immediately so that the media can report my case. It is my right as per Article 10, EU Convention of Human Rights (*sic*)."

The Mother

68. The mother has always sought to have these proceedings dismissed. In light of this, and her recent actions, I am entirely content to work on the basis that she would support the application by the local authority for permission to withdraw the proceedings.

69. With respect to the reporting restriction order, as outlined above, the mother has persistently flouted that order and has on a number of occasions made clear that she wishes to, and intends to publicise this case. That said, recent email communications copied to the court between the mother and a third party with whom she has been previously allied but with whom she now appears to have fallen out suggest that she does not wish to '*tell her story*' at this time, stating "*When my son has fully recovered from this ordeal and is back to leading a normal life, we will then have time to tell our story. Right now is not the time*". She also appears to deprecate any intent to focus on NH's relation to with BD, stating that "*the focus on* [BD] *would divert people's attention from the real issue of child abuse in UK care*".

The Children's Guardian

70. The Children's Guardian considers that, in light of the developments in this case which I have outlined above, permission should be given to the local authority to withdraw the proceedings in respect of NH.

71. The Children's Guardian considers that the reporting restriction order should be set aside in circumstances where there is already information on the Internet concerning this case and where NH has, purportedly, requested that the reporting restriction order be set aside. As I have already alluded to, in his position statement on behalf of the Children's Guardian Mr Ford argues that the court should now publish each of the judgments given by it in this case to ensure that a balanced picture emerges in light of what Mr Ford submits is a large amount of misleading information placed on the Internet by the mother.

The Press Association

72. Mr Brian Farmer, the Press Association reporter at the Royal Courts of Justice, has also made representations at this hearing to the effect that the terms of the reporting restriction order should be relaxed to allow some reporting of this case, including the fact that NH is related to BD. Mr Farmer argued that there is plainly a public interest in the press being able to report proceedings which concerned the taking into care of child who was visiting the country temporarily given the cost to the taxpayer of that course of action and a public interest in reporting the fact that the mother and NH were able to leave the jurisdiction notwithstanding that a port alert was in place. Mr Farmer further argues that there is a public interest in reporting the fact that NH is related to BD. Finally, Mr Farmer points to the fact that there is already information concerning the case on the Internet, from which information it is possible to identify both NH and his links to BD's family in any event.

DISCUSSION

73. On all the evidence available, I am satisfied that NH has now left the jurisdiction and is at present in Zimbabwe. I am satisfied that, in the circumstances, the local authority should be given permission to withdraw its application for a care order in respect of NH.

74. I am further satisfied that the reporting restriction order should be varied to permit the reporting of the facts of this case subject to an injunction preventing the publication of information identifying NH, including information identifying him as a relative of BD. I am likewise satisfied that anonymised versions of this judgment and my judgment of 22 March 2016 should be published subject to the terms of the reporting restriction order. My reasons for so deciding are as follows.

Permission to Withdraw

75. It is plain that the mother removed NH from the jurisdiction of England and Wales at the time an interim care order was in force in respect of him (and therefore is in breach of the provisions of the Children Act 1989 s 33(7)(b)) and notwithstanding the collection order of 8 April 2015 in respect of which the mother was on notice (and therefore is, on the face of it, in contempt of court). However, I am satisfied that whilst it is open to the court to make orders under the inherent jurisdiction with a view to seeking the return of NH to this jurisdiction such steps would be futile in circumstances where the court has no means of enforcing such orders and in circumstances where, albeit there is a strong suggestion that he has been heavily influenced by his mother, NH has, at the age 16, expressed a wish to return to Zimbabwe.

76. In these circumstances, it is plain that the care proceedings can now serve no purpose in safeguarding and promoting the welfare of NH. Within this context it would not be in NH's best interests or consistent with the Overriding Objective in FPR 2010 r 1.1 to continue the proceedings. In addition, in circumstances where this court was exercising a jurisdiction of necessity based on NH's presence in England there must be a significant question over whether this court retains jurisdiction in respect of NH following his departure from the jurisdiction of England and Wales, although it is not in my judgment necessary to determine that question for the purposes of deciding whether the local authority should be given permission to withdraw its application.

77. In the circumstances I am satisfied that it is appropriate to give permission to the London Borough of Sutton to withdraw its application pursuant to Part IV of the Children Act 1989 for a care order in respect of NH.

Reporting Restriction Order

78. I deal first with the importance of, and the justifications for interfering with the Art 10 right to freedom of expression in this case. Art 10 of the ECHR provides as follows in respect of the right to freedom of expression:

> **Article 10**
>
> **Freedom of expression**
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the

> prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

79. The provisions of Art 10 of the ECHR must read in the context of s 12(4) of the Human Rights Act 1998 which provides as follows in relation to the right to freedom of expression:

> "(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appear to the court, to be journalistic, literary or artistic material (or to conduct connected with such material) to (a) the extent to which (i) the material has, or is about to, become available to the public, or (ii) it is, or would be, in the public interest for the material to be published, [and] (b) any relevant privacy code."

80. Within this context, it is important to note that it is not only the Art 10 right of the press to freedom of expression that is engaged in this case but also the Art 10 right of NH and the mother to freedom of expression that falls to be considered when determining whether and to what extent the reporting restriction should remain in force.

81. The right to freedom of expression has been described as the "*touchstone of all human rights*" (UN General Assembly Resolution 59(1) of 14 December 1946). With respect to the importance of the Art 10 right to freedom of expression on matters of justice has been articulated consistently by the courts. In the case of *Scott v Scott* [1913] AC 417 Lord Shaw of Dunfermline observed:

> "It is needless to quote authority on this topic from legal, philosophical, or historical writers. It moves Bentham over and over again. "In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice". "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial". "The security of securities is publicity". But amongst historians the grave and enlightened verdict of Hallam, in which he ranks the publicity of judicial proceedings even higher than the rights of Parliament as a guarantee of public security, is not likely to be forgotten: "Civil liberty in this kingdom has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any State be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise." I myself should be very slow indeed (I shall speak of the exceptions hereafter) to throw any doubt upon this topic. The right of the citizen and the working of the

> Constitution in the sense which I have described have upon the whole since the fall of the Stuart dynasty received from the judiciary – and they appear to me still to demand of it – a constant and most watchful respect. There is no greater danger of usurpation than that which proceeds little by little, under cover of rules of procedure, and at the instance of judges themselves. I must say frankly that I think these encroachments have taken place by way of judicial procedure in such a way as, insensibly at first, but now culminating in this decision most sensibly, to impair the rights, safety, and freedom of the citizen and the open administration of the law."

82. The Art 10 right to freedom of expression is likewise important to the mother in circumstances where (although perhaps with less force at the present time) she has expressed the desire to speak out on what she considers to be an injustice. The courts have recognised the importance of ensuring that parents involved in care proceedings are able to voice their grievances. In *Norfolk County Council v Webster, BBC, Associated Newspapers Ltd and Archant Group; Re Webster* [2007] 1 FLR 1146 Munby J (as he then was) reiterated "the importance in a free society of parents who feel aggrieved at their experiences of the family justice system being able to express their views publicly about what they conceive to be failings on the part of individual judges or failings in the judicial system." This principle applies irrespective of the merits of the views expressed by the parent.

83. Assuming for the present purpose that NH is the author of his own application to discharge the reporting restriction order (in respect of which I entertain significant doubt for reasons I detail below), the Art 10 right to freedom of expression is likewise important for NH. The right to freedom of expression is as important for the children who are the subject of proceedings before the family court as for the adult parties and the press. Children have a vested interest as equal members of society in both the broad objectives served by the right to freedom of expression (see *R v Secretary of State for the Home Department ex parte Simms and Another* [2000] 2 AC 115 at 126) and the specific objectives of the principle of open justice (see *R v Legal Aid Board ex parte Kaim Todner (A Firm)* [1999] QB 966 at 977). In so far as NH wishes to speak out in relation to his experiences in the care system in the United Kingdom his Art 10 right to freedom expression is important in facilitating his ability to do this.

84. A decision to prohibit or restrict reporting in this case would, self-evidently, constitute an interference with the Art 10 right to freedom of expression. In this case the contended for justifications for interfering with or restricting the Art 10 rights are as follows.

85. The local authority contends that if the reporting restriction order is not maintained there is "*a risk that NH will be harmed emotionally or caused distress if he is identified*". Beyond the common sense assumption that publicity may, depending on the facts of the case, be harmful to children, the local authority provides no specific evidence to support this contention.

86. That said, it is clear from information provided by the mother subsequent to her absconding with NH that NH continues to receive treatment in Zimbabwe for his mental health, that he remains to an extent emotionally fragile and that he is suffering from anxiety. I must also bear in mind that prior to his absconding from the Royal Courts of Justice on 5 April 2016 NH was sectioned pursuant to s 3 of the Mental Health Act 1983 and was receiving in patient treatment for significant mental health difficulties. As set out above, it is clear from email communications that the mother considers that NH needs a period of calm and privacy, stating that stating "*When my son has fully recovered from this ordeal and is back to leading a normal life, we will then have time to tell our story. Right now is not the time*".

87. In the circumstances, whilst there is no specific evidence before the court of a risk to NH of emotional harm arising out of publicity, I must bear in mind that it would appear that NH remains a vulnerable young man at this time who would likely benefit from a period of calm and privacy in which to recover his emotional equilibrium. In my judgment, this tends to argue against identifying NH in any publicity concerning these proceedings even were such publicity to be otherwise justified in the circumstances of this case.

88. Whilst not in my judgment determinative, I must also bear in mind the Art 8 right to respect for private life of BD when considering the justifications in this case for interfering with the Art 10 rights of the press. It is in my judgment almost certain that any publicity identifying NH would also seek to identify him by reference to his relationship with BD. However, BD has played no part in these proceedings nor has his conduct been called into question in anyway before the court. In these circumstances, any publicity linking this case to BD would be based *solely* on the fact of the existence of a family relationship and his status as a well-known person. In these circumstances, in my judgment BD has a reasonable expectation that proceedings in which he has played no part will not result in intrusion into his private life. Within this context, I note that Art 10(2) expressly recognises that interference in the right to freedom of expression may be justified where it necessary in a democratic society for the protection of the reputation or rights of others.

89. I turn next to deal with dealing with the importance of, and the justifications for interfering with the Art 8 right to respect for private and family life. Art 8 of the ECHR provides as follows:

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

90. As I have already set out, it is important to note that it is not only the Art 8 rights to private life of the mother and NH that are engaged in this case but also those of BD.

91. It is further important in the context of applications concerning the restraint of publicity to consider the proper ambit of the Art 8 right of NH and the mother to respect for their private life. In *R (Countryside Alliance) v A-G* [2008] 1 AC 719 Lord Roger observed that the European Human Rights Commission long ago rejected any Anglo-Saxon notion that the right to respect for private life was to be equated with the right to privacy. In *Botta v Italy* (1998) 26 EHRR 241 at [32] the European Court of Human Rights made clear that:

> "Private life, in the court's view, includes a person's physical and psychological integrity; the guarantee afforded by Art 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings."

92. In *Bensaid v United Kingdom* (2001) 33 EHRR 205 at [46] and [47] the European Court of Human Rights reiterated that:

> "Art 8 protects the right to identity and personal development, and the right to develop and establish relationships with other human beings and the outside world. The preservation of mental stability is in that context an indispensable precondition to the effective enjoyment of the right to respect for private life."

93. Accordingly, when considering the balance to be struck between the Art 8 right to respect for private life and the Art 10 right to freedom of expression, it is important in the context of the risks to him contended for by the local authority in this case to recognise that the ambit of the private life of NH is a wide one, encompassing not only the narrow concept of personal freedom from intrusion but also psychological and physical integrity, personal development and the development of social relationships and physical and social identity.

94. As regards the narrow concept of personal freedom from intrusion, the private nature of family issues that come before the courts has also long been recognised. In concluding unanimously in *Scott v Scott* that so far as its powers to sit in private were concerned the Probate, Divorce and Admiralty Division (the pre-cursor to the Family Division) stood

in principle in no different position than the Queen's Bench and Chancery Divisions, Lord Shaw of Dunfermline nonetheless recognised that family matters are:

> '… truly private affairs; the transactions are transactions truly *intra familiam* and it has long been recognized that an appeal for the protection of the court in the case of such persons does not involve the consequence of placing in the light of publicity their truly domestic affairs.'

95. For the reasons I have already set out I am satisfied on the evidence before the court that NH is at present an emotionally fragile and vulnerable young man. Prior to being removed from this jurisdiction he was the subject of a section pursuant to s 3 of the Mental Health Act 1983. He is at present being assessed and receiving therapeutic input in Zimbabwe for his mental health issues. For the reasons set out above, as recognised by his mother NH needs a period of calm and stability during which he can be assessed and treated. Within this context, NH's Art 8 right to respect for private life is of particular importance to him at this time within the context of that right encompassing not only the narrow concept of personal freedom from intrusion but also psychological and physical integrity, personal development. Whilst in circumstances where NH is no longer in the jurisdiction any further publicity within the domestic press is likely to have less impact on him, online coverage will be accessible to him and those who know him in whichever jurisdiction he is in.

96. Whilst again not determinative, for the reasons I have already set out, I must also recognise the importance of BD's right to respect for private life under Art 8. In my judgment, that right is particular important in in circumstances where BD has played no part in these proceedings, where his conduct has not been called into question in these proceedings and where the court has made no findings and passed no comment on him. Again, within this context, in my judgment BD has a reasonable expectation that proceedings in which he has played no part will not result in intrusion into his private life based merely on his relation to NH and the fact that BD is a well-known public figure about whom the press pass comment in other contexts.

97. It is plain that publication of information from these proceedings would interfere with the Art 8 right to respect for private and family life of those persons I have mentioned. In addition to the importance of the right to freedom of expression generally as articulated by s 12(4) of the Human Rights Act 1998, the contended for justifications for that interference are as follows.

98. There is a very strong public interest in maintaining the principle of open justice in public law proceedings under the Children Act 1989, and the ends which the principle of open justice serves, both generally and in cases which raise particular matters that are properly the subject of public discussion and debate.

99. For the reasons set out in Cobb J's judgment in *Re NH (1996) Child Protection*

Convention Habitual Residence) and by me in my judgment of 22 March 2016, I am satisfied that this court had jurisdiction in respect of NH. I am likewise satisfied that it was in NH's best interests for him to have been the subject of an interim care order over the period of time that that order has been in force. I am satisfied that the delay in bringing these proceedings to a final conclusion was necessary in the particular circumstances of this case as set out above and in my judgment of 22 March 2016.

100. However, I also recognise that this case raises issues of legitimate public debate concerning care proceedings being instigated in respect of a temporary visitor to the United Kingdom, the length of time those care proceedings were on foot, the cost of the same to the tax payer and the fact that NH was removed from the jurisdiction by his mother despite border controls being put in place by this court. In my judgment there is, accordingly, a strong public interest in the press being able to report as freely as possible on these matters. In *R v Secretary of State for the Home Department ex parte Simms and Another* [2000] 2 AC 115 Lord Steyn said at 126:

> "Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market": *Abrams v United States* (1919) 250 US 616, at 630, per Holmes J (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country."

101. The public interest in open justice is brought into further focus in cases where parties to proceedings seek to express publically grievances regarding the same. In circumstances where the mother and NH may seek in due course to make public their views on these proceedings and their outcome I must bear in mind the public interest in them being able to do so, subject to any necessary and proportionate limitations consequent upon the Art 8 rights engaged in this case.

102. Within this context it is, of course, also in the public interest for any account of the proceedings to be balanced in order that any public debate arising out of the same is fully informed. Accordingly, in addition to facilitating the ability of NH and the mother to 'tell their story' it is equally important that as much of the court record as possible, in this case in the form of the judgments handed down by the court, is made available having regard to appropriate balance to be struck between the competing Art 8 and Art 10 rights in order to further inform reporting and public debate of the proceedings (see *Doncaster MBC v Haigh, Tune and X (by the Children's Guardian)* [2012] 1 FLR 577 at [40]).

103. *If* NH is the author of the application to discharge the reporting restriction order then this would constitute a further and strong justification for granting an order that will constitute an interference with the Art 8 right to respect for private life of those involved. However, as I have already intimated, I hold significant reservations about whether the application to discharge the reporting restriction order is, in fact, made by NH.

104. Those reservations are grounded in the history of the mother's conduct in these proceedings. As I have set out above when dealing with the history of this matter, the events of and subsequent to 15 March 2016 demonstrate the mother to be capable of exerting influence on NH with respect to his conduct of these proceedings. The applications purporting to be from NH that were issued in the period subsequent to 15 March 2016 demonstrate a pre-occupation with matters that have been of consistent concern to the mother rather than to NH. In the period subsequent to 15 March 2016 NH's previous strongly held wishes and feelings regarding his future underwent a complete reversal. However, at the hearing on 22 April 2016 NH was unable in my judgment to articulate his wishes and feelings outside the narrow list he was reading from, which list again concentrated exclusively on the mother's concerns. Whilst I am not in a position to make a definitive finding regarding the authorship of the application to discharge the reporting restriction order, in my judgment these matters mean that I must be very cautious when considering what weight to attach to the fact that it is NH's name on the application in balancing the competing rights in this case.

105. In circumstances where the proceedings relate to material which is claimed to be journalistic, pursuant to s 12(4) of the Human Rights Act 1998 I must also have regard to the extent to which that material has become available to the public.

106. On behalf of the Press Association, Mr Farmer submits that in circumstances where there is already information available to the public on the Internet that is capable of identifying NH and his relationship with BD it is simply not appropriate to prohibit the publication of that information. However, whilst it is the case that there is material on the internet concerning this matter, that material is relatively limited in its ambit, does not commonly identify NH by name and has not, it would appear, been the subject of extensive comment or wide dissemination through 'sharing'. In the circumstances, in my judgment further publication of information identifying or capable of identifying NH, would result in further and significant interference in the Art 8 right to respect for privacy of NH and his mother by way of intrusion notwithstanding that there is already some information in the public domain.

107. Finally in respect of the information that is already in the public domain, I have also born in mind the information that is present on the internet is there by virtue of the mother's repeated breaching of the reporting restriction order in this case. Within this context, it would in my judgment be wrong to allow the fact that information has been placed in the public domain in breach of a reporting restriction order to be thereafter set up as a justification for discharging the reporting restriction order that has been thereby

breached.

108. Bringing these various strands together, with respect to the reporting restriction order I have found striking the correct balance in this case to be a particularly difficult and finely balanced exercise. The balancing exercise is significantly complicated in this case by the fact that there is a possibility that the 16 year old subject of these proceedings (who has litigation capacity according to the last assessment of litigation capacity available to the court) wishes to divest himself of the protection of the reporting restriction order, and by the fact that the question of whether the reporting restriction order should be varied or discharged impacts on the Art 8 rights of a public figure who is not a party to these proceedings, has not been the subject of comment by the court and who has not made representations on the issue of reporting restrictions.

109. On balance however, having regard to the matters set out above, I am satisfied that the proper approach in this case is to vary the reporting restriction order to permit the reporting of the facts of this matter subject to the continuing anonymisation of the identity of NH, including his relation to BD.

110. I am satisfied that it is in the public interest for the press to be able to report on the matters of public interest raised by this case that I have set out above and, accordingly, that the press should be in a position to report the facts of this case as fully as possible. I am however also satisfied that NH's identity should remain anonymised within that reporting. I am satisfied that it is proper to continue to protect his identity by reason of the fact he remains a vulnerable and emotionally fragile young man who, on the information available to the court, is still receiving treatment for his mental health and by reason of my enduring concern that the application to discharge the reporting restriction order has not been instigated by NH. Whilst it is the case that there is already information in the public domain from which NH could be identified, in my judgment that is not in this case a reason to abandon the restriction on identifying him in circumstances where there is a relatively low level of material on internet, much of it not naming him, and where the risk of jigsaw identification can be guarded against using the appropriate rubric at the head of the court's judgment and the appropriate terms in the reporting restriction order.

111. I am not satisfied that there is a public interest, in the legal sense, in permitting publication of the fact that NH is related to BD. In addition to the risk that the publication of that fact will lead in short order to the repeated identification of NH in the press, the fact that BD is a well-known figure and is covered in the press in other respects does not constitute sufficient reason for interfering in the Art 8 rights of NH or BD in circumstances where he is not party to proceedings, is not involved in any way in the matters which are the subject of the proceedings and where his conduct and standing has not been called into question within the proceedings. The fact that the press may wish to comment on the fact that a relative of BD is the subject of care proceedings does not constitute a public interest justification in the legal sense capable of overriding the

Art 8 rights of BD or NH.

112. Overall, I am satisfied that the proportionate approach in this case is to permit discussion of matters of plain public interest by reference to the facts of this case whilst maintaining the anonymity of NH and I will amend the reporting restriction order accordingly.

CONCLUSION

113. For the reasons set out above I make the following orders in this case and invite the local authority to submit a draft order for my approval:

i) There is permission to the local authority to withdraw its application for a care order in respect of NH;

ii) The interim care order in respect of NH is discharged;

iii) The final hearing listed on 11 July 2016 with a time estimate of five days is vacated;

iv) The reporting restriction order of 17 December 2016 shall be varied in the terms set out in the Schedule to this judgment.

v) Anonymised versions of this judgment and my judgment of 22 March 2016 will be published on Bailii.

114. As to the question of disclosure, the local authority should, in consultation with the Children's Guardian, submit to the court and to the parties a list of documents it seeks to disclose to the authorities in Zimbabwe together with the identity of the 'authorities' to which it proposes to send such documents, at which point I will determine the proper ambit of such disclosure.

115. That is my judgment.

SCHEDULE

IN THE HIGH COURT OF JUSTICE **Case Number: ZE15C00253**
FAMILY DIVISION

BEFORE Mr Justice MacDonald on 5 May 2016

IN THE MATTER OF THE COURT'S INHERENT JURISDICTION

BETWEEN

The London Borough of Sutton

-and-

MH

-and-

RH

-and-

NH

REPORTING RESTRICTION ORDER MADE BY MR JUSTICE MACDONALD ON 10 JUNE 2016

IMPORTANT

If you disobey this order you may be found guilty of contempt of court and may be sent to prison or be fined or have your assets seized. You should read the order carefully and are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge the order.

EXPLANATION

A On the 5 May 2016 the Court considered an application to vary a reporting restriction order.

B The following persons and/or organisations were represented before the Court:

(a) The London Borough of Sutton was represented by Ms Anne-Marie Lucy of counsel

(b) MH, the mother did not appear and was not represented;

(c) RH, the father did not appear and was not represented;

(d) NH the child did not appear;

(e) The Children's Guardian was represented by Mr Jeremy Ford of CAFCASS Legal;

(f) Mr Brian Farmer of the Press Association made representations on behalf of the Press Association.

C The Court read the documents filed in the proceedings.

D The Court directed that copies of the attached Explanatory Note and be made available by the Applicant to any person affected by this Order. The explanatory note is in plain English. It forms part of this order. The Explanatory Note must always be supplied to any person affected by this order.

E For the avoidance of doubt this reporting restriction order supersedes the reporting restriction order made in this case on 17 December 2015. The order of 17 December 2015 is discharged with immediate effect.

ORDER

1. ***Duration***

This order shall have effect in respect the child until the child's 18th birthday, namely until […].

2. ***Who is bound***

This order binds all persons and all companies (whether acting by their directors, employees or agents or in any other way) who know that the order has been made.

4. ***Territorial Limitation***

In respect of persons outside England and Wales:

(a) Except as provided for in sub-paragraph (ii) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(b) The terms of this order will bind the following persons in a country or state

outside the jurisdiction of this court:

(i) the first and second respondents or their agents;

(ii) any person who is subject to the jurisdiction of the court;

(iii) any person who has been given written notice of this order at his residence or place of business within the jurisdiction of this court;

(iv) any person who is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order;

(v) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

5. ***Undertakings***

The applicant will not without permission of the court seek to enforce this order in any country, state or territory outside England and Wales.

6. ***Publishing restrictions***

This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, sound or television broadcast or cable or satellite programme service or otherwise of:

(a)The name and current address of:

(i) the child, whose details are set out in Schedule 1 to this order;

(ii) any place of residence, school or hospital or other establishment in which the child is being cared for, educated or treated (‘an establishment');

(b) Any picture of the child or an establishment;

(c)The name and current addresses of the child’s parents;

(d) The fact of the child’s relationship to BD.

7. ***Publication of this order***

No publication of the text or a summary of this order (except for service of the order under Paragraph 7 below) shall include any of the matters referred to in Paragraph 6 above.

8. ***Restriction on seeking information***

This Order prohibits any person from seeking information regarding the child from any of the following:

(a)MH and RH;

(b) the child;

(c)a carer;

(d) the staff, or students, or patients, or residents of an establishment.

9. *What is not restricted by this Order*

Nothing in this Order shall prevent any person from:

(a)reporting the facts of the case (save for the information referred to in Paragraph 6 above);

(b) publishing information (save for the information referred to in Paragraph 6 above) relating to any part of a hearing in a court in England and Wales (including a coroner's court) in which the court was sitting in public and did not itself make any order restricting publication;

(c)publishing or seeking information which is not restricted by Paragraphs 6 or 8 above;

(d) inquiring whether a person or place falls within paragraph 6 above;

(e)seeking information while acting in a manner authorised by statute or by any court in England and Wales;

(f) seeking information from the responsible solicitor acting for any of the parties or any appointed press officer;

(g) seeking or receiving information from anyone who before the making of this order had previously approached that person with the purpose of volunteering information (but this paragraph will not make lawful the provision or receipt of private information which would otherwise be unlawful);

(h) publishing information (save for the information referred to in Paragraph 6 above) which before the service on that person of this order was already in the public domain in England and Wales as a result of publication by another person in any newspaper, magazine, sound or television broadcast or cable or satellite programme service,

or on the internet website of a media organisation operating within England and Wales.

7. *Service*

Copies of this Order endorsed with a notice warning of the consequences of disobedience shall be served by the Applicant (and may be served by any other party to the proceedings):

(a)by service on such newspaper and sound or television broadcasting or cable or satellite or programme services as they think fit, by fax or first class post addressed to the editor (in the case of a newspaper) or senior news editor (in the case of a broadcasting or cable or satellite programme service) or website administrator (in the case of an internet website) and/or to their respective legal departments; and/or

(b) on such other persons as the parties may think fit, by personal service.

8. *Further applications about this Order*

The parties and any person affected by any of the restrictions in Paragraphs 6 to 8 above may make application to vary or discharge it to a judge of the High Court on not less than 48 hours notice to the parties and the press via the Copy Direct service. Such application is to be reserved to Mr Justice MacDonald if available.

SCHEDULE

Child: NH (DOB…)

EXPLANATORY NOTE

London Borough of Sutton v NH

Application for a Reporting Restriction Order

EXPLANATORY NOTE

1 NH, a boy born on 27 October 1999 is a child who was the subject of care proceedings in this jurisdiction and was the subject of a section under the Mental Health Act 1983 s 3. On 26 April 2016 the first respondent mother absconded from the jurisdiction with NH to Zimbabwe. NH continues to receive treatment for his mental health in that

jurisdiction.

2 The purpose of this order is to seek to protect the identity of NH whilst he remains an emotionally fragile and vulnerable young man receiving mental health treatment, whilst otherwise allowing the reporting of the facts of this case.

3. In the circumstances the court has ordered that the name and current address of the child or of any establishment in which he is being cared for, treated and/or educated, the name and current addresses of the child's parents and the fact of the child's relationship to BD, must not be published by anyone at this time.

4. The prohibition on publishing the name and current address of the child or of any establishment in which he is being cared for, treated and/or educated, the name and current addresses of the child's parents and the fact of the child's relationship to BD set out in Paragraph 6 applies irrespective of how those details are ascertained, including where such details are ascertained from material already available in the public domain.