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

**Neutral citation: [2024] EWFC 25 (B)**

**IN THE FAMILY COURT**

**Case No: BM19P50155**

**SITTING AT NORTHAMPTON**

**IN THE MATTER OF THE CHILDREN ACT 1989**

**AND IN THE MATTER OF:**

**A, B and C.**

**Before:**

**HER HONOUR JUDGE CARTER:**

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The Mother represented herself.

The Father represented himself.

Counsel for the Children: Ms Taylor

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**JUDGMENT**

**HANDED DOWN 9.2.24**

HER HONOUR JUDGE CARTER:

**Introduction:**

1. In this judgment I am concerned with the litigation surrounding three children, and in particular a finding of fact judgment handed down in 2021. The children are A who is 15, B who is 12, and C who is 10. I shall refer to their parents as simply the mother and the father in this judgment.

**The history of the case**

2. It can immediately be seen by the case number of this matter that it has been ongoing for nearly 5 years. I do not need in this judgment to recite the history of the case, but in very brief summary the parents separated almost 8 years ago, and the children remained living with the mother. An order was made for the children to spend substantial time with the father after a contested hearing in December 2016. Further proceedings were taken which concluded with the order of December 2016 being varied in March 2019. A consent order was made which slightly reduced the time the children spent with their father.

**These proceedings:**

3. These proceedings started in November 2019, when the father started enforcement proceedings. The court made the children parties at a hearing on 5 June 2020. Various allegations were made by each parent against each other, a psychological report was prepared, and I heard the case over a number of days in 2021, handing down the written judgment on 24 March 2021. The finding of fact hearing was my first involvement with the case. The evidence that I considered was set out within a bundle of 2800 pages, and there was in addition a ‘communication bundle’ of 1200 pages, which at times included hundreds of pages of emails between the parents.
4. It is that finding of fact judgment from March 2021 which is the subject of this judgment and whether it should be published in anonymised form.

5. In considering my decision in this case I have of course re read the judgment to remind myself of the facts and findings and how I expressed those. That is a very substantial judgment. It is 84 pages long, with 359 paragraphs. It commences with a history of the proceedings, and the events of that hearing. It sets out the law that needed to be applied. I heard evidence from both parents, the expert witness, the father's partner, and 3 further witnesses one for the father and two for the mother. The allegations were set out in Scott schedules, and both parents made allegations against each other. I considered the evidence for each allegation and made findings with my reasons for those findings.
6. The essential dispute was whether the children's difficulty in their continuing relationship with their father was a result of his actions during the marriage and shortly afterwards, or the actions of the mother in some way disrupting that relationship, deliberately or otherwise.
7. I summarised my conclusions in one paragraph to assist in that judgment which was that:

*Having heard all of the evidence, and considered the allegations against each parent and the examples used to support those allegations, I was quite satisfied that the mother's actions are the substantial cause for the children's difficulties in this case, and that she has been unable to act in an appropriate way to support the children having a normal and loving relationship with their father. Whilst (the father) has not always behaved appropriately, nothing that he has done explains the difficulties in the children's relationship with him.*

8. In my view for the purposes of this judgment that summary is sufficient to show the essence of the decision.
9. The position in relation to the children is that following that finding of fact judgment both parents agreed and committed to a substantial programme of therapy and work, with a view to increasing the time that the children spent with their father, and improving relationships between the parents. Given the amount of work needed, and

the significant history of this matter, I allowed the case to continue for some time in the hope that progress would be made.

10. The case has however been substantially delayed over the last year due to the significant illness of the guardian, which has been recurring and caused a number of hearings to be vacated. At the final hearing of this matter listed on 18 January 2024 the father sought permission of the court to withdraw his enforcement application, and that was granted. There is still an order in force for time that the children spend with him. There is no need in this judgment to set out in detail the reasons for that, but there are still very substantial difficulties with the children spending time with their father, and indeed their willingness to spend time with him appears to have become worse since the issue of the 2021 judgment being published has been raised with them.
11. At a hearing on 6 June 2023 the father had raised with the Court that he would wish the fact-finding judgment handed down in 2021 to be published in a suitably anonymised form. Directions were therefore made at that hearing for that issue to be properly argued as I was told the mother and the guardian opposed that. That has taken some time to occur due to the unfortunate illness of the guardian.
12. I heard submissions and read the position statements of all parties in relation to that issue on 18 January 2024, and handed down this judgment today on the 9<sup>th</sup> of February 2024.

**The position of the parties:**

The father

13. The father was represented for some time after the finding of fact hearing, but has now conducted these proceedings as a litigant in person for some time.
14. In readiness for the final hearing, the father filed a lengthy position statement. In summary, he is extremely critical of delays in the proceedings leading up to the finding of fact hearing in March 2021. He is critical of the involvement of many

professionals. He sets out his concern that arrangements for the children to spend time with him by mid 2023 had deteriorated, and links that with the Guardian having discussions with the children about the judgment being published.

15. It is clear that the father feels strongly that ‘the system’ has let him and the children down. He and the mother have very different views as to the actions each other and the professionals had taken in these proceedings since the finding of fact hearing, and the reasons why we are currently in this position. Given that, the Court could not hand down another judgment relating to that without there being another wholesale finding of fact hearing, which everyone accepted would serve no purpose for the welfare of the children concerned.
16. The father accepts that his views about what has taken place overall are relevant to his stance as to whether the March 2021 finding of fact judgment should be published.
17. He argues in his position statement that the following factors are relevant in relation to the finding of fact judgment, and point to why that judgment should be published.
  - a) He asserts that it is important that judgments are published so that Cafcass and courts will consider more seriously factual evidence put forward by a parent which the parent asserts shows that the children are being influenced against the parent who does not have care of the children.
  - b) He suggests that the delay in these cases, in his situation of 15 months, from 2019 to 2021 causes harm to the relationship between the children and the non-resident parent, and the judgment illustrates that, and how the situation can become irreversible.
18. In a more detailed skeleton argument, the father elaborates upon these arguments by suggesting:
  - a) the judgment sets out a case study of the types of behaviour carried out by a parent that seeks to damage or destroy the children’s relationship with the other parent,
  - b) it will give hope to parents that the family court will see the truth, and help make a change,

- c) it will help parents think about the evidence they should prepare in order to enable the judge to determine the facts and
  - d) it could provide useful guidance to other courts when initially faced with cases of this nature how to progress matters more swiftly.
19. The father also argues that there is currently a ‘movement’ on social media and elsewhere which seeks to argue that ‘alienating behaviours’ (to use the Cafcass description) do not occur, and that it must only be the behaviour of the non-resident parent that is to blame, suggesting for example that suggestion may be raised to deflect from them being abusive, or some other reason. The father argues that this case gives clear evidence that such behaviour does happen, and is damaging for the children, and that would then create more discussion around solutions to provide better outcomes for children. He also argues that the reality of his case is that there was not a better outcome for all of the children, notwithstanding the findings made, but that conclusion is also an important one that should be in the public interest and domain.
20. The father reminded the court of the words of the President of the Family Division in his report of October 2021 headed “Confidence and Confidentiality: Transparency in the Family Courts”. The father submits that judgments such as the finding of fact judgment of March 2021 are helpful to the broader public in terms of increased knowledge of the workings of the family justice system. He points out that the judgment covers such matters as how the contested hearing was conducted, the legal principles applied in reaching a determination of the facts, the way in which the court considers any expert evidence, and the detailed consideration afforded to each allegation, which sets out the evidence, and an analysis of the evidence to reach an overall conclusion. He asserts that provides invaluable insights to the public in an age of ever increasing litigation in person.
21. The father suggests that the March 2021 judgment identifies instances where both parents could have acted differently to benefit the children’s needs, and so that also would promote better coparenting behaviours for recently separated parents who may

be faced with similar difficulties. He suggested it offers examples where the parent with care could have intervened or responded differently to the behaviours exhibited by the children to prevent the hostility from becoming so entrenched. He suggests it also highlights how children may be affected and influenced by negative thoughts and feelings held by parents towards each other, or towards future blended families. He suggests that could aid separated parents in being more mindful of exposing their children to those aspects.

22. In relation to the criteria in the guidance, the father asserts that the judgment would fall within the category of cases that 'must' be published. He asserts that it was a substantial contested finding of fact hearing at which serious allegations of physical or emotional harm were determined.
23. The father accepts that the mother is fearful that she or the children would be identifiable, and that she is concerned the father could use the published judgment in a malicious fashion against her. The father denies any such intention from himself, and points out that although both parents have had a copy of the final judgment for over 2 years, there is no evidence that it has been shared with anyone. The father is clear that there could be no question of himself circulating it or publishing it amongst family or friends which could cause the identity of the parties to be known.
24. In relation to the impact upon the children, the father makes the following points:
  - a) Although the children are aware of potential publication, that is because of the guardian's discussions with them about it.
  - b) He suggests this was not a matter that should have been discussed with the children.
  - c) He states that if the possibility of those involved in the case being distressed was a reason not to publish a judgment, that would prevent most family court judgments being published.

- d) He points out that this is addressed by the President of the Family Division at paragraph 22 of his speech referred to above, where he is clear that the family court should not be an exception from the ordinary imperative for open justice.
- e) A is now 15, and taking GCSEs. He argues that their possible decision to study law at university in 3 or 4 years time and the remote possibility of this case being referred to by any of the lecturers is too vague a prospect to be a real issue. He points out that this is a decision of a Circuit Judge, and is unlikely to be any form of authority such that it would be cited in legal arguments, or set out in textbooks.
25. The father also argues that even if the court were not to agree that this is a category of judgment that ‘must’ be published, then the court should still exercise its discretion to publish the judgment in accordance with paragraph 18, which promotes greater transparency within the family justice system. He again refers to the lack of judgments being published, despite the clear recommendations.
26. In respect of some of the mothers’ arguments which I shall set out below, father denied specifically that any part of his wish to publish the judgment was about vindication or hostility, and suggested that instead he genuinely wanted to see something good coming from the current situation, and something that could make a difference.
27. In relation to the suggestion that by him forcing the publication of this judgment that would destroy his relationship with his children, and particularly A, the father said he did not want of course to damage that relationship any further, and told me that he thought that when A was older, they would understand the good that he was trying to achieve in pursuing this.
28. The father is critical of the guardian for how the application has been communicated to the children, when it was done, and the language used.

#### The mother



29. The mother also now represents herself and has also filed a helpful position statement, and like the father sets out her views in relation to progress over the last few years. She does not accept the father's criticisms, and sets out the efforts she asserts she has made to ensure the children have a relationship with the father.
30. The mother asserts that A does plan to follow a career in law, and the mother asserts that the idea that the father was actively working to achieve a publication which detailed their private life was 'abhorrent' to A. The mother asserts that A is an extremely private individual, and that the father's actions have been seen by A as a betrayal of their trust and privacy. Despite the fact that names would be anonymized, the mother asserts that A is 'horrified' at the prospect of anyone else studying the details of this case, including potentially peers at university, especially when it has a clear 'negative emphasis' (her words) against the mother.
31. The mother sets out her view that granting publication of the judgment would be a definite and distinct causal factor in the breaking down of any positive relationship between A and the father, and she suggests that the court "cannot wish for this to happen".
32. In relation to the younger children the mother states that they have also been very vocal in their distress at the prospect of having the judgment published. The mother points out that the children have been given a summary of the findings in the judgment which was agreed and presented by the guardian. The mother suggests that in that context, the worst possible conclusion would be a "permanent record hanging over the children's heads, orchestrated by their father against their mother". She goes on to suggest "this would without question permanently damage their relationship with (their father)".
33. The mother goes on to argue that the publication would be harmful to the children's self-esteem, as it would be seen as an official criticism of their lives, and of who they are. The mother suggests it would cause feelings of self-consciousness and anxiety.

The mother argues that for the father to succeed in causing the publication in order to “help other children” in priority to his own children’s wishes and feelings would “cement” their current beliefs that their father does not prioritise them. The mother asserts that the publication would cause great emotional distress and that that is a compelling reason why the application should not be granted.

34. The mother goes on to discuss the impact upon herself of the potential publication. She points out that the case has taken many years to be heard, and taken what she describes as a “heavy toll” on every single member of the family. She suggests, that if there is no final judgment it could be argued that there is no satisfactory conclusion to enable the court to weigh the case as a whole, suggesting that publication leaves open the question of “whether there was more to the story than the face of the court findings show”. The mother suggests that previously, and before the finding of fact judgment, the father posted details of the dispute on the professional networking site LinkedIn.
35. The mother’s case is that the children and she experience a continued level of hostility from the father, and she suggests that publication of the judgment would be a final “vindication and permission” for the father to hold onto those feelings. She points out that that will be detrimental to their ability to co-parent going forwards, particularly given the younger children’s ages, and suggests that the children should be able to move away from the ‘shadow’ of these proceedings which have been ongoing for so long.
36. In her oral submissions to me the mother elaborated that she wanted the court to remember the only people who were important here were the children, and there could be no doubt that any publication was a negative to them. She told me that A in particular has real difficulties with anxiety and self-confidence, and have emphasised their concerns that there would be “something out there, something negative out there”. She told me that the children had been through a lot, and could not bear the thought that there would be something permanent in relation to them. She told me that she felt the impact on the children’s relationship with the father would be so negative,

and that instead of that we should be trying to move forward and make that relationship successful.

The children's guardian.

37. The guardian informed the children in having discussions with them last summer that their father wanted the judge to consider publishing the judgment and that is done to allow other professionals to look at the findings made and how this decision was made. The guardian tried to explain that judgments were used to help judges and lawyers to look at how these matters are dealt with and what learning comes from this, to make practice better and how this can be applied to case law. The guardian told the children that the judgment, if published, would be anonymised to protect the identity of the family involved and it would be the decision of the judge whether the judgment is published or not. The children wanted to know if the judge would think about what their feelings were about the judgment being published, and the guardian said that she was not sure. The children said their views should be considered as this was about their lives. The children asked the guardian if the judgment had been published already, the guardian told them 'no', and that no decision had been made as yet by the judge.
38. The guardian sets out in her position statement that she had a message later on from the mother, saying the children, particularly the older two, had some questions about the judgment being published. They wanted to know who it would be available to. Mum said if it would be publicly available they were unhappy about it and A was quite upset. Although she understood actual names would not be on it, it was still their life and their experiences and shouldn't they have to agree to that for it to happen? The guardian arranged to speak to the children again via Teams.
39. A told the guardian that they wanted to study law and they were worried about coming across the judgment as part of their studies and they did know how they would deal with this. The guardian explained that A could always speak to her tutor about this and ask them not to use this as an example during any lessons they have. A maintained that their views should be sought before the judgment is published as this was about her

life. B said their views should be considered and taken into account. C said they did not agree with the judgment, and they should be asked about the judgment being published. The children were worried if the judgment was published already and the guardian advised that it had not and it was the judge that makes the final decision about whether the judgment is published and she did not know whether the judge will consider their views about this or not.

40. In her position statement of the 15.12.23 the guardian set out again that she does not support the publication as she is concerned as to the distress and emotional impact the publication could have on A, B and C. Even with their names anonymised, they would still know the judgment was about them. All three children feel their views should be sought about the publication of the judgment given this is about their lives.
  
41. On behalf of the children Ms Taylor filed a further position statement on the 11<sup>th</sup> January 2024. In that she:
  - i) set out the guidance of 16 January 2014, and summarised that. She reminded the Court of the other matters to bear in mind which included the article 8 and article 10 rights of the parties and children,
  
  - ii) reminded the Court of s97 Children Act 1989 which places the confidentiality of the child in family proceedings on a statutory footing. Consideration of this section in Re S determined that the interests of the child were a “major factor” and “very important” but were not paramount.
  
  - iii) Reminded the court of the evolving guidance namely Practice Guidance (Transparency) 2014, and Practice Guidance on Anonymisation, 2018; Transparency project: a guidance note for families and professionals June 2017.
  
  - iv) Set out the case law of Griffiths v Tickle (2021) EWCA Civ 1882, which provides some clarity as to court’s approach to publication, restates the principles of open justice and considers the ultimate balancing test.

42. Ms Taylor suggested that on the facts of this case, the view of the guardian was not that this judgment is one which must be published in accordance with paragraph 16 and 17 of the guidance. It was also suggested on behalf of the guardian that this situation did not fall within the criteria where it ‘may’ be published. It was suggested that this situation fell within paragraph 18 of the guidance instead.
43. On behalf of the children Ms Taylor went on to set out the concerns of the guardian and that the court would need to balance the desire of the father to ‘tell his story, against the strong views of the children and of course in doing so consider the competing article 8 and article 10 rights’.
44. Ms Taylor specifically drew the attention of the Court to the strong views of A, suggesting that the impact of any publication upon them was likely to be profound. They are expressing a clear desire to study law, and it was submitted that:

*“Whilst anonymisation of identifying features might reduce the fear of others becoming aware of it, it will not reduce A’s anxiety, knowing that the judgment about (the children) exists and to be seen. Anonymisation itself is not infallible and the risk of identification must remain. There do not appear to be any public interest issues of relevance in this matter. The guardian does not support publication of the judgment(s) in this matter. In her professional assessment, the emotional impact upon the children is too great and should tip the balance from permitting publication”*

45. During the hearing I asked Ms Taylor why it was suggested that this case did not fall within the criteria in paragraph 15 (i) that this was a judgment that must ordinarily be published. She explained that she considered there was some doubt as to whether it fell within Schedule 1(i) as being “*a substantial contested fact-finding hearing at which serious allegations, for example allegations of significant physical, emotional or sexual harm, have been determined*”. I asked her to elaborate upon that, suggesting

to her that given the findings I had made it did appear to me that this fell within that description. She accepted that could be the court's conclusion, but that the guardian considered that aspect was still possibly not clear.

46. At the hearing Ms Taylor also elaborated therefore as to the guardian's stance whether there were compelling reasons for the judgment not to be published. She suggested that for A simply knowing that they may come across this judgment, created an anxiety which may follow A through their studies, and the guardian was very concerned in relation to A's emotional health. I asked Ms Taylor given it would be fully anonymized, why that could have such an impact upon A, as I wanted to understand that aspect. Ms Taylor told me that the anonymization does not change the reality that it is 'out there', and that for A simply the fact that it is the decision of a circuit judge and not of any authority did not assist. The guardian's view was that the views of the children should be given real weight by the court, and their strong position amounted to a compelling reason, particularly given the ages of the children.

### **The Law**

47. There is a significant amount of discussion ongoing in relation to transparency and publicity in the Family Court at the moment. This judgment is not the place to analyse the many and varied discussions about that.
48. I remind myself however of the real issues I must consider, which are in relation to this case and these children.
49. The law has been repeatedly confirmed as still being as set out in Re S (A Child) (Identification: Restrictions on Publication) [2004] UKHL 47, 1 AC 593,

*16. It is, however, the interaction between articles 8 and 10 which lies at the heart of this appeal. They provide 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.”*

*“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.”*

*By section 12(4) of the Human Rights Act 1998 Parliament made special provision regarding freedom of expression. It provides that when considering*

*whether to grant relief which, if granted, might affect the exercise of the Convention right to freedom of expression the court must have particular regard to the importance of the right.*

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. (Lord Steyn)*

50. In FZ (Congo) v Secretary of State for the Home Department [2013] UKSC 74 the Supreme Court set out that:

(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.*

11. *These principles arise from the United Kingdom's international obligations under the United Nations Convention on the Rights of the Child, and in particular article 3.1 which provides:*

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

51. A number of recent cases have considered these issues. In [Tickle v Farmer and Ors](#) [2021] EWHC 3365 (Fam) Lieven J was considering the interplay between the rights of the parents and that of the child when there was an argument about whether parents should be named in a judgment which would inevitably lead to the child being able to be identified, even if the child was not named. Lieven J was considering a very young child, but summarised the law as follows:

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.*

She also set out that:

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.*
52. The decision of Lieven J was of course upheld by the Court of Appeal in Griffiths v Tickle [2021] EWCA Civ 1882. Of relevance to this case is the analysis set out by Dame Victoria Sharpe (President of the Queens Bench Division) at para 60:
60. *The Judge considered the mother's rights were bolstered by the “very unusual” fact that not only she but also the Guardian supported publication, and the “unusual” fact that those supporting publication wanted to use the case as an example of good handling by the Family Court. We interpose to note that the Guardian's view is of particular significance given that a child has their own individual rights and that the Guardian is appointed to protect those rights. Whilst weight and respect must be given to the views of the mother as the holder of parental responsibility, that parental responsibility is not a trump card and the Guardian's assessment of the impact upon the child's own privacy rights is of considerable importance: Newman v Southampton City Council [2021] EWCA Civ 437 [63].*

Analysis of the competing rights and arguments:

53. I shall first set out my analysis the starting point of this judgment being published.

*The Guidance sets out:*

*15. The following paragraphs of this Guidance distinguish between two classes of judgment:*

*(i) those that the judge must ordinarily allow to be published (paragraphs 16 and 17); and*

*(ii) those that may be published (paragraph 18).*

*16 Permission to publish a judgment should always be given whenever the judge concludes that publication*

*would be in the public interest and whether or not a request has been made by a party or the media.*

*17 Where a judgment relates to matters set out in Schedule 1 or 2 below and a written judgment already exists in a publishable form or the judge has already ordered that the judgment be transcribed, the starting point is that permission should be given for the judgment to be published unless there are compelling reasons why the judgment should not be published.*

### **SCHEDULE 1**

*In the family courts (and in due course in the Family Court), including in proceedings under the inherent jurisdiction of the High Court relating to children, judgments arising from:*

*(i) a substantial contested fact-finding hearing at which serious allegations, for example allegations of significant physical, emotional or sexual harm, have been determined;*

*(ii) .....*

*(iii) .....*

*(iv) .....*

*(v) .....*

*(vi) any application for an order involving a restraint on publication of information relating to the proceedings.*

*18 In all other cases, the starting point is that permission may be given for the judgment to be published whenever a party or an accredited member of the media applies for an order permitting publication, and the judge concludes that permission for the judgment to be published should be given.*

*19 In deciding whether and if so when to publish a judgment, the judge 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.*

54. The finding of fact judgment is already in a publishable form. Does it relate to matters set out in Schedule 1? In my view it clearly does, it was a substantial contested finding of fact hearing at which serious allegations of significant physical and emotional harm had been determined.
55. The starting point therefore is that permission should be given for the judgment to be published unless there are compelling reasons for it not to be.
56. The father in my view sets out a number of very genuine and appropriate reasons why the judgment should be published. He is right in much of what he says, and the arguments that he puts forward are entirely well founded as to the general views about judgments being published. Indeed, most of what he argues is now well accepted as to why the publication of judgments in general is to be encouraged and in accordance with the subsequent case law.
57. It is perhaps inevitable that the father cannot assert positive benefits in relation to his own children's welfare of this judgment being published. Indeed, there will be few cases where that can be asserted. In this case, the children have had the essential matters found in the judgment shared with them several times by their guardian by way of an agreed narrative. They know what it says. They disagree with it, but in any event as far as they are concerned their lives have moved on from that point. Whatever is set out in the judgment will not change their views.
58. The father suggests that the children did not need to be consulted about this issue. There is always a sliding scale for a guardian in what is shared with children. Given the age of A, it seems inevitable that they would have this discussed with them by the

guardian. Once it has been discussed with A, then it is also inevitable that B and C would be aware of the issue.

59. There is no doubt that the Article 10 rights of the father are engaged. They are limited of course however by the statutory requirements of ss97 of the Children Act 1989.
60. I must then give careful scrutiny given the test as I set it out above as to whether there are compelling reasons for the judgment not to be published, balancing particularly Article 8 and Article 10.
61. The mother and the guardian on behalf of the children set out what they assert are the compelling reasons. These are more focussed of course on the facts of this case and upon the impact of publication upon the mother and the children. Both the mother and the guardian suggest in strong terms that A would be significantly impacted by this judgment being published even in anonymised terms.
62. I am careful in relation to some of the arguments they employ. It is suggested by the mother that as the judgment is critical of her, that is a factor the court should consider as to the impact upon A and the other children. She suggests that the publication of the judgment would operate to be a permanent record hanging over the children's heads. I reject that as a valid factor. The judgment already exists and both parents have a copy of it. The reason the judgment is critical of the mother is due to her behaviour and actions. In any event the children are fully aware that the judgment is negative of the mother's actions.
63. I am also cautious about the argument that possibly in a number of years time A could come across the judgment in the course of some studies. It seems to me that is rather unlikely in relation to a circuit judge judgment that sets out no new or unusual area of law.
64. I also reject the suggestion that the judgment being published would be some form of final vindication and permission for the father to continue with his negative views of the mother. The parents made cross allegations against each other and I found that the

mother's actions were the substantial cause of the children's difficulties in this case. In that situation the father is inevitably going to have some negative views of the mother. Her actions set out in that judgment however were now mainly 3 or more years ago, and publication does not address both parents' views of each other now and the more recent events. I cannot see how publication would be permission to 'hold onto' his feelings which in relation to those actions was justified. I am quite satisfied that nothing published now will change his views.

65. The mother also points out that the judgment is effectively a snapshot in time, seemingly to suggest that there may be some different way of viewing those findings with other events having taken place. I reject that argument as being misconceived. As there has been no further welfare determination or findings, then the judgment stands as it is.
66. The mother also suggest that the judgment could be seen by the children as some form of criticism of their lives and who they are. I do not accept there is anything in the judgment that could cause them to think that, there is at no point any criticism of their actions, only of the mother's actions and indeed at times some more limited criticism of the father and his actions. In any event, these points do not go to the issue of publication, but rather to the children's reaction to the judgment itself.
67. What I must consider very carefully however is the accepted emotional impact upon all the children, not just A. I am told by the mother that A is an extremely private child, and it is asserted A would be horrified at any publication, they would view it as a betrayal of trust (by the father) and it would cause great emotional distress. The mother asserts that A suffers with difficulties with anxiety and self confidence. The mother may not be particularly objective in her views, however the guardian agrees, and also states that she is concerned about the distress and emotional impact. I remind myself as I have set out above, of the strong words from the guardian that in her professional judgement, in relation to any publication, the emotional impact upon the children would be too great, and expresses concerns about the long and short term impact on the children's emotional health.

68. The other unusual aspect of this case that it seems to me I must carefully consider is that the father accepts that publication of this judgment is likely to further damage his relationship with his children. There are a variety of ways in which the children express some negative views of their father, and within this judgment I do not need to set them out in detail. One of their complaints to the guardian however is that the father does not prioritise them, a view that the mother shares, and the father denies. I have no doubt however that this is a genuine view of the children, and for them to know that the father, against their wishes, has supported the judgment being published, will certainly be damaging to their relationship.

Analysis:

69. There is no doubt that the Article 8 and 10 rights of the father, the mother, and the children in these proceedings are engaged. Indeed, this case neatly encompasses those competing rights, as do so many of the reported decision in relation to whether parties should be named within judgments. Neither of these rights has precedence over the other. In this case they are clearly in conflict, and I must therefore place an intense focus on the comparative importance of the specific rights being claimed in this individual case.

70. I must consider the public interest and assistance that judgments being published offers. It is important in that judges do not just say they support transparency, but actually act upon that. There is significant merit to the argument that only by a genuine cohort of judgments being published does a proper picture emerge of what takes place in the family courts. I am very mindful of the importance of avoiding any suggestion that I or judges as a group simply give ‘lip service’ to supporting and creating transparency, but do not actually publish judgments. As I have said above, I accept the fathers’ arguments as being essentially valid and appropriate, and I must be careful to properly weigh that whilst considering the circumstances of this particular case. I also note the father’s right to ‘tell his story’, as set out in the Court of Appeal in *Tickle*.



71. I must then consider the Article 8 rights of the mother, and importantly those of the children. Even with the judgment anonymised, the impact on the children has been clearly spelt out by the guardian. The finding of fact judgment does of give a lengthy description of the life of the family, the history and actions of both the mother, the father and the children. It must be true that anyone who knew details of this family, if they were shown that judgment, however carefully it was anonymised, would know and recognise the family. These children have endured years of court proceedings, as can be seen by the brief history I gave at the beginning. I must scrutinise the views of the guardian carefully as to whether the impact on these children is any different than the impact upon many other families of anonymised publication. Given the history, I am sure it would have a far more significant impact than in the general run of cases.
72. I bear in mind that the agreed aspect of anonymisation would answer many aspects of the importance of the mother and children's rights to privacy if there was publication.
73. It is an unusual aspect of this case that the father, knowing that publication would materially damage further his relationship with his children, nevertheless considers it to be appropriate. For the avoidance of doubt, I am quite satisfied is not in any sense due to lack of care or love for his children, but his view that the situation for his family is so difficult, so unlikely to now improve, that he has a genuine wish to assist other families. However, in carrying out the Article 8/10 balance, the fact that publication will not merely harm the children's emotional well being, but also harm their relationship with the other parent, is necessarily a very weighty consideration.
74. I must consider the children and their welfare not just at this moment but moving forwards in their lives, which I weigh very carefully. I am quite satisfied from my knowledge of this case, and from what I am told by the guardian, that the children will be very angry with their father if this judgment is published. I accept as correct the guardian's analysis that it will cement the children's views that the father does not place them first, and cause them to be very angry with him. In my view that anger will continue for a substantial period of time, and it is unlikely for many years, if at all, the children would come to understand their father's viewpoint.

75. I remind myself of course that these proceedings were started and intended throughout to consider the children's welfare, and to promote their relationship with both parents, an aim which both parents assert they are still committed to.
76. In respect of the Article 10 side of the balance, although there is a public interest in publication, I note that there is nothing particularly unusual or of special public interest in this case. There is no public interest in any of the parties, as was the case in *Tickle*. There is nothing in the facts of the case that is especially unusual or unique. The fact finding judgment records a depressing history of what might be described as parental alienation, which is quite frequently found in family cases. The public interest in knowing about the generality of these cases is met both by the publication of other non dissimilar judgment, but also by the publication of this judgment, and the fact that this is yet another such case.
77. When I balance all these competing aspects, and apply the proportionality test, I am satisfied that the finding of fact judgment should not be published even in anonymised form. I have set out above the importance of publication in appropriate cases and accepted the genuine views of the father, and his rights. When I balance that however with the distress and emotional harm that publication would bring to the children, the clear views of their guardian and add to that balance the damage to the very important father child relationship, the focus on individual rights in this case leads to that decision.
78. In my view however there can be no such argument about this judgment. It falls within para 16 of the guidance, and as I have decided not to publish the finding of fact hearing it is in the public interest this judgment is published which sets out the reasons for that. For the avoidance of doubt, the father has not made any application for this judgment to be published and in my view given there are no details within it that could identify the family. Everything set out in this is known to the children and I have attempted to ensure it is focussed on the essential facts of the case sufficiently to allow it to be understood.

END OF JUDGMENT.