Case Nos: LS21C00133, KH22C5008, LS22C50104

Neutral Citation Number: [2023] EWFC 329

IN THE FAMILY COURT AT LEEDS

Date: 6 July 2023

Before :

MR JUSTICE POOLE

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BR and others (Three Families: Fabricated or Induced Illness: Anonymisation, Disclosure of Judgment, and Permission to Appeal by Witness)

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Family R

Julia Cheetham KC, Sara Anning, and **Emily Chipchase** (instructed by the Local Authority) for **Leeds City Council**
Darren Howe KC and **Iain Hutchinson** (instructed by Ramsdens Solicitors) for the Mother, **MR**
Karl Rowley KC and **Louise McCallum** (instructed by Switalskis Solicitors) for the Father, **FR**
David Orbaum and **Michael George** and (instructed by JWP Solicitors) for the child **AR**

Ruth Henke KC and **Jane Curnin** (instructed by Wilkinson Woodward Solicitors) for the children **BR** and **CR**

Family S

Taryn Lee KC and **Sarah Blackmore** (instructed by the Local Authority) **for East Riding of Yorkshire Council**
Rachel Langdale KC and **James Hargan** (instructed by Williamsons Solicitors) for the Mother **MS**
Paul Storey KC and **Naomi Madderson** (instructed by Symes Bains Broomer Solicitors) for the Father, **FS**
Frances Heaton KC and **Gaynor Hall** (instructed by Lockings Solicitors) for the children, **DS**, **ES**, **GS** and **HS**

Family T

Jacqueline Thomas KC and **Brett Davies** (instructed by the Local Authority) for **Wakefield Metropolitan District Council**

Joseph O'Brien KC and **Justine Cole** (instructed by GWB Harthills Solicitors) for the Mother, **MT**

FT, father of HT, not appearing

FV, father of JV and KV, not appearing

Elizabeth Maltas (instructed by Peace Legal Solicitors) for the Father of LW, **FW**

Martin Todd and **Huw Lippiatt** (instructed by King Street Solicitors) for the children **HT**, **JV**, **KV**, and **LW**

Interveners

Bryan Cox KC and **Luke Berry** for **Sheffield Children's NHS Foundation Trust**

And

Fenella Morris KC (instructed by the Medical Defence Union) for **Dr SAA**

Hearing date: 5 July 2023

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JUDGMENT

This judgment was delivered in private and a transparency order is in force. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Poole:

Introduction and Background

1. On 18 May 2023, sitting in the Family Court in Leeds, I handed down judgment following a long and complex fact finding hearing involving three families each of whom had a child treated for long term gastroenterological presentations at Sheffield Children's Hospital (SCH). Staff at SCH suspected that each mother had deliberately harmed their child by administering noxious substances or non-prescribed medication, and by contaminating their central lines with faecal material. The mothers in each family had been arrested by police following referrals by staff at SCH. I refer to the judgment *Re BR (Three Families: Fabricated or Induced Illness: Findings of Fact)*, 18 May 2023, [2023] EWFC 326.

2. This judgment is intended to set out the reasons for determinations arising out of challenges by a witness in the proceedings in *Re BR*. I consider it necessary to do so in order to provide clarity in a complex situation. Due to the applications now made I am required to comment on my own judgment. However, this judgment is not to be taken to gloss or qualify the judgment in *Re BR.*

3. The handed down judgment was anonymised: the children, members of their families, and all treating and other healthcare professionals were given ciphers. Expert witnesses were named. At the date of handing down, all three mothers were on bail having been arrested by the police. Due to ongoing police investigations I directed that the judgment would not be published and could not be communicated, save to a restricted list of individuals, including the expert witnesses and key treating clinicians, until the police and/or Crown Prosecution Service have either decided that there would be no prosecutions or have brought prosecutions but each set of criminal proceedings had concluded, or until further order.

4. On handing down the judgment, some of the parties invited the court to remove the anonymisation of one of the treating clinicians, Dr SAA. He was one of the team of consultant paediatric gastroenterologists at SCH and had played an important role in the referrals of the mothers, MS and MT, to social services and to the police. Dr SAA was not aware that such a request was going to be made and he was not represented. The Trust responsible for SCH was an intervenor and was represented by Counsel but Dr SAA no longer works for that Trust. Accordingly, I gave notice to Dr SAA of the request and invited him to respond, in particular to the requests,

> "(i) that the court should not anonymise your name in the judgment, and (ii) if the judgment cannot be published shortly, there should be a means of providing a copy of the judgment, and information that you are Dr SAA, to parties and the courts in other cases of alleged Fabricated or Induced Illness in which you are involved as a witness or expert."

In the notice to Dr SAA I also asked him to consider,

> "whether you would undertake (promise) to the court that you would provide a copy of the judgment, and information that you were Dr SAA, to all parties in any case in which you are or are likely to be a witness, or are instructed or are invited to accept instructions to act as an expert witness, where that case involves allegations of Fabricated or Induced Illness."

5. Dr SAA received the notice on 19 May 2023 but was away from the country at the time. At his request I extended the time to respond to 16 June 2023. He contacted the Medical Defence Union and Ms Morris KC was instructed to act for him.

6. Whilst awaiting Dr SAA's response I was contacted separately by two Counsel who had been involved in the fact finding hearing before me, and who were now involved in other cases of alleged FII in which Dr SAA was respectively a key witness as the treating clinician who had made a referral to the authorities, and as an expert witness. Those Counsel asked whether they could refer to the judgment but I had not given permission for it to be disclosed or published save to the limited number of individuals I had already named on 18 May 2023.

7. The request in respect of the first case, which was being heard in the Family Court at Middlesbrough, was very urgent: Dr SAA was due to begin his oral evidence in a fact finding hearing in two working days from when I received the request. I did not know the facts of the case and could not determine the relevance of my judgment to that case. Rather than giving permission to Counsel to refer to the judgment, the course I took was to self-direct that I send an anonymised copy of the judgment to the judge in the Middlesbrough case, HHJ Murray, permitting him to share it, or parts of it, with the parties in the case before him as he considered fit and on conditions he decided were appropriate. I made that order on 8 June 2023 and I immediately informed Dr SAA that I had done so. At that time I did not know he was represented. Ms Morris KC then informed the court that she was representing Dr SAA. I informed HHJ Murray accordingly and Ms Morris KC made representations to him before he made any decision about sharing the judgment with the parties in his case. Having considered submissions on behalf of Dr SAA, the judge decided to share limited, anonymised extracts from my judgment with the parties, informing them of the identity of Dr SAA.

8. In the second case, I informed Ms Morris KC of the request by Counsel who was involved in a case in the Family Court in Swansea which was due to be heard the following day at a case management hearing concerning expert evidence. Dr SAA had been instructed as an expert in that case. The judge in that case ultimately decided not to disclose any of the judgment to the parties but did decide to dispense with Dr SAA as an expert witness.

9. In fact, on 19 June 2023 I was contacted by a third judge in relation to another case of alleged FII. Dr SAA had been instructed as an expert witness but, so I was informed, had withdrawn as an expert. The judge did not know why but had been informed by Counsel in the case before him (who were not Counsel in the fact finding hearing before me) that I might be able to provide an explanation. In the

circumstances it did not seem to me to be necessary to do so or to provide him with a copy of the judgment.

10. In her response on behalf of Dr SAA dated 18 June 2023, Ms Morris KC:

    a. Objects to the removal of his anonymisation from the judgment.

    b. Seeks to appeal the findings in the judgment insofar as they wrongly criticise Dr SAA, so that those parts of the judgment be redacted, together with an associated application for time for making such an application to be extended;

    c. Seeks to appeal the without notice order dated 8 June 2023 disclosing the un-anonymised judgment to HHJ Murray.

    d. Seeks disclosure of the following materials from the case, namely:

        i. the expert evidence;

        ii. the medical records;

        iii. Dr SAA's witness statements;

        iv. statements and transcripts of the oral evidence of witnesses who addressed relevant matters;

        v. letters to the children from the Court;

        vi. a transcript of his oral evidence, and any relevant submissions made by counsel or exchanges between counsel and the Court;

        vii. the materials that the Court considered before making the order of 8 June.

    e. In relation to the issue of publication, seeks permission to file more detailed submissions upon receipt of the additional materials and an oral hearing at which Dr SAA is represented by his counsel.

    f. If further interim requests are made for disclosure of the judgment and Dr SAA's identity pending such a hearing, seeks an order that any disclosure is made upon the express basis that it is only to the Court, that the Court should be notified that Dr SAA wishes to address the Court as to any further disclosure, and that the judgment is subject to an appeal.

11. In later email correspondence Ms Morris informed me that Dr SAA had relinquished all his expert witness work and that he has two ongoing cases in which he is due to give evidence as a treating clinician (being in addition to the case in which he has already given evidence before HHJ Murray). In oral submissions Ms Morris clarified that he has relinquished expert work only pending the outcome of his appeal against the judgment.

12. I gave an opportunity to all the parties in *Re BR* to respond to Ms Morris's submissions by 30 June 2023. Ms Morris KC strongly requested an oral hearing and that was arranged for 5 July 2023. None of the parties in *Re BR* wished to attend. In their joint response to Ms Morris's submissions, Counsel for MS, FS, and MT in the *Re BR* case stated that they are "not pressing for the naming of Dr SAA" in the light of (i) Dr SAA withdrawing from his role as an expert witness in FII cases and (ii) a mechanism being found to alert parties in future cases of the judgment in *Re BR* and Dr SAA's position within it. This, it was made clear, was a pragmatic response.

13. Counsel for the Trust filed submissions supporting Dr SAA's position in relation to anonymisation and the "importance of procedural fairness where there is to be judicial criticism of an individual clinician." The Trust has also requested permission to disclose the anonymised judgment to the Chair and members of its Board of Trustees and two "colleagues covering the Communications Director role". Previously, on 18 May 2023, at the trust's request, I permitted disclosure to the trust executive team, the clinical leadership team, the designated and named doctors for safeguarding, the lead clinicians, and the author of the SII report, Dr Grayson. I refused disclosure to a wider group of healthcare professionals who had given evidence because of the need to protect the integrity of the criminal investigation and possible criminal proceedings. I have not previously been asked for permission to disclose to the Trustees or acting communications directors.

14. No other parties in *Re BR* wished to make any written submissions.

15. Although I did not direct that further submissions should be filed, Ms Morris KC has filed supplementary submissions dated 3 July 2023 addressing the responses from the parties. I take those supplementary submissions into account. In them Ms Morris KC asks

> "Will the Court require Dr SAA to make disclosure of the criticisms in the judgment in [cases of injuries other than FII] as well? What if Dr SAA is to witness an assault on another member of NHS staff and be called to give evidence in relation to that?"

I was a little surprised to read that question since there has never been any suggestion that the judgment should be provided to courts other than those considering allegations of FII where Dr SAA was a treating clinician or an expert witness. There has never been any prospect, for example, of Dr SAA having to disclose the judgment to a criminal court hearing evidence of an assault on a colleague.

16. Ms Morris KC referred in her supplementary submissions to undertakings given by Dr SAA but I had not seen any at the time of the hearing. After the hearing I was sent a letter from the MDU dated 26 June 2023 in which it is stated that Dr SAA offered the following for the court's consideration:

> "I undertake the following, pending the outcome of my legal team's appeal of the judgment of Mr Justice Poole:

1. That I will not take on new expert witness cases in which a diagnosis of Fabricated and Induced Illness (FII) is at issue.

2. That I will seek leave to withdraw as an expert witness from such cases in which I have already been engaged, by sending my instructing solicitors a message along the following lines:

It is with regret that I must ask if you will please release me as expert witness in this case. I have been subject of judicial criticism in another case where I appeared as a witness, which places me in a position of professional embarrassment. Due to a Transparency Order in force, I am unable to share the details of that judgment with you. My legal advisers and I intend to challenge the publication of the judgment and to appeal the basis on which criticisms were made, but until I know the outcome, I regret that I am obliged to ask for your discharge as witness in this case.

3. That, if I am asked or summoned inform any courts in which I am called to appear as a witness of fact in cases where a diagnosis of FII is at issue, I will respond by sending requesting instructing solicitors a message along the following lines:

Thank you for asking me to act as a witness in this case. While I am prepared to serve as witness to the relevant facts in this case if necessary, I must inform you that I have been subject of judicial criticism in another case where I appeared as a witness. Due to a Transparency Order in force, I am unable to share the details of that judgment with you. You may therefore wish to reconsider calling me as a witness if my involvement is not essential. My legal advisers and I intend to challenge the publication of the judgment and to appeal the basis on which criticisms were made, but until I know the outcome, I regret that I am obliged to inform instructing solicitors of this information."

17. It is against that background that I shall consider the applications made by Dr SAA and his responses to the requests made by certain parties concerning his anonymisation and the disclosure of my judgment into other cases.

Anonymisation within the Judgment

18. I should first note that in January 2023, at the outset of the finding of fact hearing, I made a transparency order, adopting the approach within the, then forthcoming, Reporting Pilot in Leeds. I refer to the order in full. It restricts reporting of the case, including the evidence and the judgment, until any criminal proceedings have been concluded, or the police or CPS decide that no such proceedings will be pursued against each of the mothers. The police have not made any such decisions yet and, despite being pressed, have not yet given information to the

court as to the likely timetable for such decision-making save that it is likely to be at least several weeks before any decision is made. Therefore, to protect the integrity of the criminal justice system, the publication of my judgment on the National Archive is not likely to take place for some weeks, possibly months. I have asked the police if they object to a short summary judgment being published, without the determinations on the facts being included, so that some of the lessons to be learned from the events I have considered can be made public. They have objected to such a course being taken.

19. The decision whether to anonymise a treating clinician within a judgment has been considered, in different contexts, in recent judgments of Lieven J in *Manchester University NHS Foundation Trust v Namiq and ors* [2020] EWHC 181 (Fam) and the President of the Family Division in *Abassi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2021] EWHC 1699 (Fam). The court must consider the competing rights and interests engaged: the Art 10 right to freedom of expression, the Art 8 rights to a private and family life, the public interest in transparency and knowing how an institution, here the NHS, deals with such cases. Lieven J summarised the position as follows,

> [11] Ultimately, in all these cases, the matter comes down to a balance between competing interests. There is an undoubted, and critical importance, in open justice and transparency of the court system. There is also a critically important public interest in the freedom of the press to report without restriction, protected by article 10 ECHR. There is a more specific public interest on the facts of this and similar cases, in the public understanding what is happening in these sensitive cases, and the very difficult factual and human issues involved. Often, there is an important public interest in protecting the identity of the child and the wider family. However, in this case the parents have waived their and Midrar's confidentiality, and the Guardian raises no objection to this.
>
> [12] However, there are competing interests. Firstly, that of the treating professionals to their private life (protected by article 8). Secondly, there is a strong public interest in professionals who are doing a difficult and extremely important job (the care of critically ill children) in being able to do that job without feeling that their privacy and their ability to work is being jeopardised. Not least, the public interest lies in ensuring that appropriately qualified people do not avoid these type of cases because of the fear of becoming the target of hostile comment, and that comment even extending to their families.
>
> [13] My task is to balance those interests. In my view the public interest in open justice is very largely protected in the present case by the fact that the proceedings are in public and the judgment is in public. Further, relevant to the facts of this case is that the Hospital is named, as is the child. There is therefore no question of secret justice, or the public not being fully informed

as to what is happening to Midrar and in the proceedings generally.

[14] It is, in my view, difficult to see why either open justice or the public interest is harmed, save to a minimal degree, by the anonymisation of the treating professionals. This is not a medical negligence case, and although the Father has made allegations about the treatment, those are not substantiated by evidence and not pursued by Mr Quintavalle. On the other side of the balance, I do take into account the fact that this is not a case where there have been (so far as I am aware) hostile comments either in the press or social media about the hospital staff, and there has not been any harassment towards them. There has been some, but not extensive, press comment, although it is not possible to know whether this will increase or decrease after the judgment. However, these type of cases concerning the treatment of very ill young children, raise very strong views and there is a well documented history of hostile and distressing comments about treating staff in other cases. I also note that the Father has made some very damaging, and wholly unevidenced, allegations against staff. I do not consider it appropriate to wait until such hostile comment, or worse, arises and then decide that an RRO should be granted. That is to shut the door after the horse has bolted.

[15] I accept Mr Farmer's point that many people may find it traumatic to be named in the press in the course of litigation, and that is no ground to grant anonymity. However, the position of treating professionals is somewhat different. There is a significant public interest in allowing them to get on with their jobs, and in minimising the disturbance to them and their other patients whilst they are providing that care.

[16] These cases are necessarily fact specific and I do not purport to set down general guidance. I do however somewhat differ from the views expressed by the President in A v Ward as set out above. This may be because the facts of the case differ. In my view there is an important distinction between professionals who attend court as experts (or judges and lawyers), and as such have a free choice as to whether they become involved in litigation, and treating clinicians. The latter's primary job is to treat the patient, not to give evidence. They come to court not out of any choice, but because they have been carrying out the treatment and the court needs to hear their evidence. This means they have not in any sense waived their right to all aspects of their private life remaining private. In my view there is a strong public interest in allowing them to get on with their jobs without being publicly named. I do not agree with the President that such clinicians simply have to accept whatever the internet and social media may choose to throw at them. I note that the President's

> comments were made before the well publicised cases of Gard and Evans, and perhaps at a time where the risks from hostile social media comment were somewhat less, or at least perceived to be less. There may well be cases where the factual matrix makes it appropriate not to grant anonymity and each case will obviously turn on its own facts. But in my view the balance in this case falls on the side of granting the order.

20. In *Abassi* (above) the President was concerned with whether reporting restriction orders should continue after the deaths of the children who were the subject of proceedings. In relation to the balancing exercise he referred firstly to the House of Lords decision in *Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47; [2005] 1 AC 593 and in particular to the speech of Lord Steyn (with whom the House agreed):

> "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."

At [97] the President stated,

> "In determining where the balance lies, the approach remains as stated by Lord Steyn in *Re S*, without gloss, so that neither the Art 8 rights of the NHS staff, nor the Art 10 rights of the parents, as such, have precedence. An intense focus is therefore required on the comparative importance of the specific rights being claimed with respect to each."

The President noted the parents' wish to publicise their grievances about the treatment of their children, and of them, and the public interest in allowing the press "alerting the wider public to matters of legitimate concern." In *Abassi*, the parents' position was weakened because there had been no detailed fact finding exercise in which their concerns had been found to be justified. The President referred to the Art 8 rights of treating clinicians:

> "[105] On the other side of the balance lie the private life rights under Art 8 of the two groups of NHS doctors and staff. In this regard … those for whom protection is sought are entitled to look to the law to respect their right to a private life and for that to be

> balanced, without precedence to the claims of others, and without the need to establish some compelling reason before the court may act.
>
> [106] Here, substantial weight must be given to the strong and coherent body of evidence that has been adduced and which is summarised at paragraph 30. I do not repeat that summary here, but the potential for individuals to become vulnerable to physical or personal attacks and to suffer adversely in terms of their mental health and wellbeing, requires to be taken seriously. The experience of professionals and the court around the cases of Charlie Gard, Alfie Evans and others, lead this factor now, in 2021, to attract significantly more weight than would have been the case even a decade earlier.
>
> [107] More generally, and considering the public interest, the potential negative impact upon morale, integrity of the staff group and its ability to function, and upon staff recruitment and retention, for those providing care for the most vulnerable and sick children, is of real concern.

The President then noted that having identified the competing rights, the second stage of the process is for an intense focus should be applied to those competing rights. There are then two further stages to be undertaken by the Court. The first of those, the third stage of the process, is that "justifications for interfering with or restricting each right must be taken into account." The fourth is the "proportionality test, or ultimate balancing test."

21. I am grateful to Ms Morris KC for alerting me to the Court of Appeal decision overturning the President's decision – *Abassi v Newcastle* [2023] EWCA Civ 331 – but as I read the judgment on appeal, the general approach articulated by the President was not questioned. The Court of Appeal considered that the President had wrongly relied upon "the systemic health service impacts", such as at [107] of his judgment. I adopt the four stage process in relation to the anonymisation of Dr SAA within the judgment. A salient feature of the case I have to consider, which does not appear to have been relevant in the cases before Lieven J and the President, is that Dr SAA is known to be a treating clinician who has been involved in referrals to authorities in other cases of alleged FII which are before the courts, and who has acted as an expert witness in other ongoing FII cases, and may do so again in the future. It is also relevant that the request to remove anonymisation is made solely in respect of him, not the other treating clinicians.

22. I shall assume that the judgment will be published for the public to read at some point in the future and that it is possible, albeit unlikely, that that date might come within the next few weeks. In the present case the S and T families have been subjected to state interference with their families as a result of perceived risks to their children from their mothers but I have found that the allegations against those mothers were not proved, indeed that the mothers did not act as alleged. It does not follow that the interim protective steps were not justified given the risk assessments made at the relevant times. However, the impact on these families of the decisions made at SCH and, on referral, by the local authorities and the police,

have been very considerable. They have a right to speak about their experiences and about the findings that the Court has made after a comprehensive hearing. I recognise also the general public interest in knowing how cases of perplexing presentations and suspected fabricated or induced illness are managed within the NHS, and the impact of decisions about suspected FII on families. In this case the fact that there has been a detailed finding of fact hearing and judgment is relevant. There is a further interest in publication of Dr SAA's name, which is that he is known to be an important witness, as a treating clinician, and (at least until now) as an expert, in other FII cases.

23. I must take into account the undertakings offered by Dr SAA. Although offered, I do not require an undertaking from him not to take on new expert witness cases in which a diagnosis of FII is at issue or to withdraw as an expert witness from such cases. I do not regard my judgment and findings to be incompatible with Dr SAA acting as an expert witness in FII cases. However, whether he acts as an expert witness or as a lay witness as a treating clinician, I shall accept an undertaking from him to inform the relevant courts of my judgment in *Re BR* and that he is Dr SAA. I shall return to the terms of that undertaking later.

24. I adopt the observations about the Art 8 rights of treating clinicians made by Lieven J and the President. I am not concerned with a case which involved life sustaining treatment of the kind referred to by the President which has been known to attract particularly strong feelings in those who come to know the facts, or some of the facts, of a case. Here, because of the restriction on publicity ordered to protect the integrity of the criminal investigations and potential criminal proceedings, the wider public have no knowledge of this case as yet. However, I do take into account that, upon publication, there could be some adverse response from a small part of the public to one or more treating clinician.

25. Applying an intense focus to the respective Art 10 and Art 8 rights, I consider that the following matters are of particular relevance:

    a. Perplexing presentations and suspected FII are particularly difficult cases for clinicians to manage. When the courts are required to make findings of fact in relation to allegations of FII, sometimes the courts will find that the allegations are not proved. I accept that publishing the names of clinicians in those cases may have a "chilling effect" on treating clinicians generally, as well as on those particular clinicians, in future cases. If clinical judgments made in good faith may be the subject of public criticism by the courts, then defensiveness might be encouraged. That in itself might be contrary to the best interests of children who are being treated and who have perplexing presentations.

    b. I did not make any findings that Dr SAA was dishonest, negligent or otherwise incompetent. I did not find that he acted without integrity in his dealings with the patients or in his evidence before the court. This was not a case where I contemplated referral to his professional body and no party to the proceedings invited me to do so. Dr SAA has taken it upon himself to notify his professional body – that was a matter for him but I did not require him to do so. Whilst I found that he played an important part in the referrals of MS and MT in October 2021 and that those referrals would have been

avoided had certain steps been taken, I did not find that his decision-making was in bad faith or negligent. I made it clear that there was a collective responsibility for failures to take appropriate steps in line with national guidelines on managing cases of suspected FII. I did find that his evidence on a particular issue was exaggerated but not that his evidence was dishonest. The findings or observations that I made about him as a witness and clinician were of a kind that, I dare say, are not uncommon in very many judgments. Judges commonly find a witness's evidence to be unreliable on a particular incident, or may comment on the performance of a professional's duties, such as the conduct of a child protection medical, or an ABE interview, or a police search. My findings and observations about Dr SAA fell within that category and were not anything more serious. Hence the public interest in knowing his identity is less than it would be had more serious findings been made about his conduct.

c. Dr SAA's role was not so central that commentary on the case, the judgment, the role of SCH or the Local Authorities and the police could not be made without naming him.

d. If I were to allow Dr SAA to be named whilst the other treating clinicians remained anonymised, it would be likely to draw particular attention to his role and his decision-making.

On the other hand,

e. Decisions about managing cases of suspected FII have potentially very serious consequences for the children and families involved. The very fact that they are difficult decisions with serious consequences means that they should be open to scrutiny and comment.

f. Dr SAA is acting as an important lay witness and, until now and perhaps in the future, as an expert witness in other cases of alleged FII. I have already been made aware of three ongoing cases in which he is involved since handing down my judgment. I am informed that there are two other ongoing FII cases in which he is involved as a lay witness. Each of those cases will be different, but I am satisfied that my assessment of Dr SAA's evidence and role in the current proceedings might be a legitimate subject for cross-examination of him in at least some of those other cases. I cannot know whether my judgment will be relevant to those other cases but it might be. There is a risk of injustice occurring in those other cases if the Judge and the parties are unaware of my judgment.

26. Any interference or restriction of the respective Art 10 and Art 8 rights that are engaged must be justified. Here, allowing Dr SAA's name to be published would promote the right to free speech, specifically to comment on matters of legitimate public interest, and to allow for other parties in other similar cases in which he is involved, to know about the findings in the present case where they are of relevance to their own cases. Preventing or restricting the publication of communication of his name would promote the protection of his private and family life and the public interest in avoiding defensive decision-making in difficult cases by him and other clinicians.

27. I have to arrive at a proportionate final balance. In my judgment, absent Dr SAA's involvement, or potential involvement, as an important lay witness and expert in other FII cases, I would not allow the removal of his anonymisation as a treating clinician in the present case. I took the view at the outset of the finding of fact hearing that the treatment clinicians would not be named. I am not persuaded that Dr SAA's conduct justifies making him an exception to that rule. His conduct was not reprehensible or negligent and the observations I have made in my judgment about the management of the three cases of suspected FII at SCH do not focus on his role alone. To remove his anonymisation but not that of the other treating healthcare professionals would focus disproportionate attention on him, with a corresponding added interference with his private and family life that could not be justified only by his evidence and conduct in the present case.

28. However, I have also to consider Dr SAA's involvement or potential involvement in other cases, albeit Dr SAA has for now relinquished his expert witness work in FII cases and has offered an undertaking to inform judges in the ongoing FII cases in which he is a lay witness as a treating clinician of my judgment and that he is Dr SAA. I cannot know the details of each of those other cases or further cases which might arise, but I anticipate that in one or more cases it might be a legitimate subject for cross-examination to question Dr SAA in about his involvement in *Re BR*, as evidenced through my judgment. It does not follow that his evidence in other cases will not be accepted – the nature of my findings and observations about him do not fatally undermine his credibility. They do not undermine his claim to have expertise in FII cases. They do not bring into question his competence as a clinician or an expert. However, there may be parts of my judgment concerning him that resonate in other cases and about which, if they were aware, Counsel or the parties in those other cases would want to question Dr SAA. That appears to have been the position in the case before HHJ Murray. Counsel in *Re BR* will know about his involvement even before the judgment is published. Others will not know anything about the case prior to publication and, if he is anonymised, they will not know after publication. Those others would be at a potential disadvantage compared with Counsel or solicitors in the case before me. They would be deprived of a potential line of cross-examination or submission. Injustice could result. Mr Storey KC suggests that appeals and re-hearings could follow. Counsel in the case of *Re BR* would be placed in professional difficulties by knowing about my judgment and Dr SAA's role in it, whilst their clients and other representatives remained unaware.

29. Dr SAA is subject to professional regulation but it is not for me to direct the GMC what to require of him in relation to informing others of my judgment. I have not made any findings in respect of Dr SAA that impugn his fitness to practice or which I would expect to result in regulatory sanctions or conditions being placed on his registration.

30. One solution to the question of providing access to the judgment to Judges and potentially to parties in other FII cases in which Dr SAA is involved, would be to remove his anonymisation from the judgment. That would avoid the need directly to inform parties in other cases of my judgment and Dr SAA's identity. However, the judgment may not be published for a number of weeks or months because of

the time it will take for the police and/or CPS to make prosecution decisions, or for any prosecutions to be concluded. If Dr SAA is anonymised in the judgment, then the risk of an injustice being caused in other FII cases in which Dr SAA is involved will continue. Furthermore, in my view, it would be disproportionate to remove his anonymisation in the judgment when a measure less invasive of his Art 8 rights could be taken to ensure that injustice is avoided in other cases in which he is involved and that Art 10 rights are protected.

31. Providing that a mechanism can be devised to ensure that injustices can be avoided in other cases in which Dr SAA is or may be involved, I consider that it would be a disproportionate interference with his Art 8 rights, and that it would not be in the public interest, to name him in the published judgment. Pending publication of the judgment that mechanism should be in place. I have considered carefully whether to require that the mechanism should continue after publication of the judgment. Ms Morris KC has raised the question of how long the court should keep control over what Dr SAA tells judges in cases in which he may become involved – would this be a lifelong requirement? I accept that such a requirement would be disproportionate. In my view once the judgment has been published on the National Archive, then the requirement of Dr SAA pro-actively to inform judges of his role in the case of *Re BR* should cease. Of course, he will still have to answer questions about his role in *Re BR* should they be asked of him either as an expert or as a lay witness and he must not mislead any court. The judgment will be available to all involved in other cases of alleged FII. It would be known from Dr SAA's c.v. that he worked as a paediatric gastroenterologist at SCH at the relevant time.

32. The mechanism for ensuring that other judges are informed of Dr SAA's role in *Re BR* should be tightly worded so that it is not in itself a disproportionate imposition. It seems to me that it should apply only to cases in which FII is alleged, where the allegation is disputed, and in which Dr SAA is either an expert witness or a treating clinician who was involved in the referral to social services or the police of a case in which an adult is alleged to have fabricated or induced illness in a child. Out of fairness he should give a judge in such cases copies of both the judgment in *Re BR* and of this judgment. He should inform the judge that he is Dr SAA. He may inform the judge, if this is the case, that an appeal against the judgment in *Re BR* is pending. He should provide the judgments and information at the time when a case is listed for hearing.

33. Accordingly, in my judgment the final balance requires the court to,

    a. Anonymise Dr SAA's name in the judgment in *Re BR* handed down on 18 May 2023.

    b. Accept his undertaking and make orders to ensure that pending the publication of my anonymised judgment in *Re BR*, judges in other cases of alleged FII in which Dr SAA is involved are aware of the judgment in *Re BR* and of his anonymisation as Dr SAA in that judgment.

No party in *Re BR* now presses for Dr SAA's anonymisation to be removed from the judgment when published.

Permission to Appeal the Order of 8 June 2023

34. As I have already set out, the order of 8 June 2023 was made on an urgent basis and was designed to prevent a potential injustice occurring in another case of alleged FII being heard by HHJ Murray. I must correct the description of the order given by Ms Morris KC in her supplementary submissions dated 3 July 2023 when she says,

> "[the court] has published (by way of an ex parte order when Dr SAA had been informed that he would have time to make submissions) and required its publication to judges, lawyers and parties to child protection proceedings."

The order I made, which was indeed without notice to Dr SAA, was to provide the judgment to HHJ Murray for him to share with the parties in the case before him in his discretion and on such terms as he considered fit. The judgment was not "published" by the order of 8 June 2023 nor did the order "require its publication to judges, lawyers and parties" to those proceedings.

35. Ms Morris KC made submissions to HHJ Murray who then decided to share certain parts of the anonymised judgment with the parties in the case before him on strict conditions designed to prevent further dissemination. I am not aware of the facts of the case before HHJ Murray but no doubt he made the order so as to deal justly with that case. Given that HHJ Murray did consider that justice required parts of the judgment to be shared with the parties in his case indicates that had I not provided the judgment to him, there would have been a risk of an injustice being caused. Further, Counsel for the Local Authority in that case, who was Counsel in *Re BR* and therefore had possession of my judgment, would have been placed in the professionally difficult position of calling Dr SAA to give evidence, knowing of potentially relevant material in the judgment which might have been of assistance to her client or to the other parties in the case, but being unable to refer to it. I accept that I could have given Dr SAA short notice of my intention to make the order, but I considered that disclosure of the judgment was a matter for the judge in that case, not for me. The only person I provided the judgment to was another judge. I notified Dr SAA immediately. I regard the process as having been transparent in urgent and difficult circumstances. No prejudice was caused to Dr SAA. The actions HHJ Murray then took mean that an appeal against my order of 8 June 2023 would be futile.

36. There is no real prospect of the appeal succeeding and no other compelling reason for the appeal to be heard. I therefore refuse permission to appeal the order of 8 June 2023.

Permission to Appeal the Judgment as a Witness

37. Dr SAA seeks permission to appeal the judgment itself, or at least parts of the judgment that concern his evidence and decision-making. Following *Re W (A Child)* [2016] EWCA Civ 1140, it is clear that there is no bar to a witness

appealing a decision of the court when they were not a party to proceedings. By CPR r 52.6(1)

> permission to appeal may be given only where—
>
> (a) the court considers that the appeal would have a real prospect of success; or
>
> (b) there is some other compelling reason for the appeal to be heard.
>
> (2) An order giving permission under this rule or under rule 52.7 may—
>
> (a) limit the issues to be heard; and
>
> (b) be made subject to conditions.

38. By CPR r 52.12,

> (2) The appellant must file the appellant's notice at the appeal court within—
>
> (a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing (which may be longer or shorter than the period referred to in sub-paragraph (b)); or
>
> (b) where the court makes no such direction, and subject to the specific provision about time limits in rules 52.8 to 52.11 and Practice Direction 52D, 21 days after the date of the decision of the lower court which the appellant wishes to appeal.

Dr SAA was not in attendance on 18 May 2023 when I handed down judgment thereby making the decision that he seeks to appeal, but I regard that hearing as having been adjourned because I have had to deal with the request regarding his anonymisation and his response. Accordingly, I do have the power now to direct that he must file his notice at the appeal court within a longer time than the period in 52.12(2)(b).

39. Dr SAA is out of time to apply for permission to appeal. However, I have allowed him until 16 June to respond to the request as to the removal of anonymisation, he was not present on 18 May when judgment was handed down, he was away when first alerted to the judgment, he has understandably sought legal advice. I am prepared to extend time, beyond the 21 day time limit, to apply for permission to appeal so that he can make his application for permission to appeal to me now.

40. I have considered the Court of Appeal decision in *Re W (A Child)* (above) in which Lord Justice Dyson's judgment in *MA Holdings Ltd. v George Wimpey UK Ltd. and Tewkesbury Borough Council* [2008] EWCA Civ 12 is cited as authority for the proposition that a non-party may be given permission to appeal. This is a rare circumstance, but permission may be given where the proposed appellant who was not a party to the proceedings "has a real interest in their outcome, wishes to appeal, the losing party does not wish to appeal and an appeal would have real prospects of success." [per Dyson LJ at [9]].

41. In *Re W* the appellants were a social worker (SW) and police officer (PO). Giving the lead judgment, Lord Justice McFarlane noted that the Judge at a finding of fact hearing had not only rejected allegations of sexual abuse made against a number of family members by a child, C, but had found that,

> "SW and PO, together with other professionals and the foster carer, were involved in a joint enterprise to obtain evidence to prove the sexual abuse allegations irrespective of any underlying truth and irrespective of the relevant professional guidelines. The judge found that SW was the principal instigator of this joint enterprise and that SW had drawn the other professionals in. The judge found that both SW and PO had lied to the court with respect to an important aspect of the child sexual abuse investigation. The judge found that the local authority and the police generally, but SW and PO in particular, had subjected C to a high level of emotional abuse over a sustained period as a result of their professional interaction with her. In addition to the specific adverse findings made against the local authority, SW and PO also complain that there was no justification for the judge deploying the strong adjectives that he used in describing the scale of his findings in a judgment which, in due course, in its final form, will be made public."

42. The Court of Appeal allowed the appeal by SW and PO, holding that the Judge had not satisfied the "essential factor" of fairness, namely, "giving the party or witness who is to be the subject of a level of criticism that is sufficient to trigger protection under Art 8 (or Art 6) rights to procedural fairness proper notice of the case against them." The following passages at [97] to [100] of the judgment of McFarlane LJ are of importance:

> [97] In the light of the law relating to ECHR Art 8 as I have found it to be, it is clear that the private life rights of SW and PO under Art 8 of these individuals as witnesses would be breached if the judgment, insofar as it makes direct criticism of them, is allowed to stand in the final form as proposed by the judge. The finding of breach of Art 8 does not depend on whether or not the judgment is published; the need to inform employers or prospective employers of such findings applies irrespective of whether the judgment is given wider publication. In short terms, the reasons supporting this conclusion are as follows:

a) In principle, the right to respect for private life, as established by Art 8, can extend to the professional lives of SW and PO *(R (Wright) v Secretary of State for Health* and *R (L) v Commissioner of Police for the Metropolis)*;

b) Art 8 private life rights include procedural rights to fair process in addition to the protection of substantive rights (*Turek v Slovakia and R (Tabbakh) v Staffordshire and West Midlands Probation Trust*);

c) The requirement of a fair process under Art 8 is of like manner to, if not on all-fours with, the entitlement to fairness under the common law (*R (Tabbakh*) referring to Lord Mustill in *R v Secretary of State for the Home Department, Ex Pte Doody*);

d) At its core, fairness requires the individual who would be affected by a decision to have the right to know of and address the matters that might be held against him before the decision-maker makes his decision (*R v Secretary of State for the Home Department, Ex Pte Hickey (No 2)*);

e) On the facts of this case protection under Art 8 does extend to the 'private life' of both SW and PO for the reasons advanced by their respective counsel and which are summarised at paragraphs 61, 86 and 87;

f) The process, insofar as it related to the matters of adverse criticism that the judge came to make against SW and PO, was manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law. In short, the case that the judge came to find proved against SW and PO fell entirely outside the issues that were properly before the court in the proceedings and had been fairly litigated during the extensive hearing, the matters of potential adverse criticism had not been mentioned at all during the hearing by any party or by the judge, they had certainly never been 'put' to SW or PO and the judge did not raise them even after the evidence had closed and he was hearing submissions.

[98] As will be apparent from this analysis of the issues in the context of ECHR Art 8, I regard the process adopted by the judge in the present case to have fallen short by a very wide margin of that which basic fairness requires in these circumstances. The occasions on which such circumstances may occur, or develop during proceedings, will, I anticipate, be rare. This judgment should be seen by the profession and the family judiciary to be a particular, bespoke, response to a highly unusual combination of the following factors:

a) a judge considering himself or herself to be driven to make highly critical findings against professional witnesses, where

> b) such findings have played no part in the case presented by any party during the proceedings, and where
>
> c) the judge has chosen not to raise the matters of criticism him/herself at any stage prior to judgment.
>
> [99] The fact that, so far as can be identified, this is the first occasion that such circumstances have been brought on appeal may indicate that the situation that developed in the present case may be a vanishingly rare one. For my part, as the reader of very many judgments from family judges during the course of the past five years, I can detect no need whatsoever for there to be a change in the overall approach that is taken by judges.
>
> [100] The present case is, unfortunately, to be regarded as extreme in two different respects: firstly the degree by which the process adopted fell below the basic requirements of fairness and, secondly, the scale of the adverse findings that were made. This judgment is, therefore, certainly not a call for the development of 'defensive judging'; on the contrary judges should remain not only free to, but also under a duty to, make such findings as may be justified by the evidence on the issues that are raised in each case before them.

43. In the present case the paragraphs of my judgment that directly address Dr SAA's evidence and conduct are paragraphs 71-72, 86-90, 170, 182-190, 317 and 319. However, the broader context of the whole judgment is relevant including for example, paragraphs 168-172, the beginning of 173, and 31. As is clear from the judgment as a whole I recognised the very difficult position that the treating clinicians found themselves in when, as Dr SAA did, they made decisions about the children in the three cases with which I was concerned. I did not find that Dr SAA had been guilty of lying to the court, of dishonesty in his professional practice or otherwise, of conspiring with others, of negligence, of incompetence, or of inappropriate conduct.

44. I heard oral evidence from 90 witnesses at the finding of fact hearing and received written statements from many more. There were thousands of pages of medical records for me to consider. There were many incidents within the three cases which I had to review. Unsurprisingly, sometimes witnesses' accounts of incidents differed or were inconsistent with contemporaneous records. Evidence from different witnesses about a particular incident is not given simultaneously: evidence relevant to an event might be given by witnesses on days 5, 25 and 50, for example. It would not be feasible to recall witnesses to give further evidence whenever other evidence was given that contradicted their own. Very serious allegations were made against three mothers and those allegations were strongly contested. The court's role was to consider all the evidence and to determine whether the allegations were proved on the balance of probabilities. Inevitably, some evidence, including witness evidence, would not be accepted by the Court. It would not be feasible to give every witness notice that the court might not

accept their evidence, and to give them an opportunity to respond before the final judgment was handed down.

45. The Trust responsible for SCH was an intervening party at the hearing and played a full role. Dr SAA was one of a group of three or four consultant paediatric gastroenterologists who had prominent roles in the three cases, but others also had prominent roles, including Dr SA, Dr SI, Dr SW, Ms SAE, Dr SAI, Dr SAO and Nurse SAX. Whilst Dr SAA was no longer an employee of the Trust, he had been at the time of the material events. The draft judgment was sent to Counsel for the parties and to Leading and Junior Counsel for the Trust, prior to handing down. No suggestion was made that Dr SAA, or other clinicians about whom I made observations in the judgment, should be given an opportunity to respond prior to the handing down of the final judgment. No suggestion was made of any procedural unfairness affecting any of the past or present employees of the Trust.

46. From the submissions of Ms Morris KC it appears that Dr SAA's main concern is that I found that he had "exaggerated" his evidence in respect of one issue in the case. Ms Morris said in oral submissions that I had found Dr SAA to have been dishonest and that his integrity was called into question. I do not accept that characterisation of the judgment. I have to have regard to the words used in my judgment rather than my intentions. Dr SAA's evidence was that at the time of the referral of MS to social services and the police, HS had an appearance "akin to an African child in a famine, just skin and bones." I had to weigh that evidence against a contemporaneous record of Dr SAA's ward round which noted that HS "looked well" and other evidence, including evidence from the family that HS was able to play on his i-pad and a photograph of HS from the relevant time. I preferred the evidence that HS was not as unwell as Dr SAA had described in his evidence which, I found was "exaggerated" in this particular respect. Dr SAA had chosen to use a somewhat emotive description of HS's appearance which was not, in my judgment, supported by other evidence. His description portrayed HS's condition as worse than it was. It was an exaggeration. I did not state or imply that his evidence was dishonest.

47. Ms Morris complains about my observation that Dr SAA had made up his mind about MS and MT being perpetrators of abuse of her child, but that observation was taken from his own evidence as set out at [182] of the judgment. It was a statement of fact not of criticism.

48. Ms Morris complains about the use of the words "supposition" at [184] and "assumption" at [186] in relation to Dr SAA but a fair reading of those paragraphs shows that the words are not used critically. I did not say or imply that his assumptions or suppositions were in bad faith or ill-founded.

49. In my conclusions I began by emphasising at [311] that "my findings do not imply that personnel at SCH were wrong to consider or even to suspect FII in the cases of MS and MT." That applies to Dr SAA as it does to other personnel at SCH. Indeed, at paragraph [317], the whole of which is relevant to Dr SAA's applications now, I stated that,

> "It does not follow from my findings that those referrals [of MS and MT to social services and the police] were wrongly made in the circumstances that prevailed at the times they were made …"

Nor do I suggest that Dr SAA was solely responsible for the referrals. I shall not repeat the whole of paragraph [317] in this ruling but I do not believe that it is fairly reflected in Ms Morris's submissions on behalf of Dr SAA.

50. The allegations that I had to determine were of a most serious nature. Each of the three children concerned came close to death during their treatment at SCH and they each had prolonged, invasive, and distressing interventions. Their mothers were accused of deliberately causing their children profound pain and suffering. The consequences of those accusations were that the mothers' families were split apart. Along with some of his fellow gastroenterological consultants, Dr SAA expressed the view that the evidence strongly pointed to the mothers MS and MT being guilty of inducing potentially fatal illness in their children. He played an important role in the referral of those mothers to the authorities. The mothers strongly disputed the allegations and that the referrals were justified. The court had to make determinations on disputed facts. One of the key allegations brought by ERYC against MS was that on 19 October she deliberately interfered with her child's feeding line,

> "19 October 2021: At a time when HS was critically unwell, suffering the consequences of repeated and serious line infections and in circumstances where the medical advice was that HS should be admitted to the High Dependency Unit ("HDU") for enteral feeding under sedation, and therefore unable to remove any line himself, she pulled out, completely, his PICC line."

MS and FS disputed this allegation. Dr SAA's description of HS's condition as being akin to a famine victim was very relevant to the allegation that HS himself was too unwell to remove any line himself. Likewise, Dr SAA's evidence about how he thought HS's line came out on 19 October 2021 was central to that allegation. He was cross-examined about these disputed issues. The determination of those issues was important to the findings of fact the court had to make. The question of whether the referrals, with which Dr SAA was closely involved, were justified was within the ambit of the issues the court had to determine.

51. The parts of my judgment concerning Dr SAA, and which he wishes to appeal, fall far short of the kind of findings that justified the appeal in *Re W (A Child)*. The Court of Appeal's criticisms of the approach taken in that case do not apply in the present case. I am satisfied that there is no real prospect of success on the appeal against the relevant parts of my judgment. Nor is there any other compelling reason for the appeal to be heard: there is no new point of law raised by this appeal. The approach to be taken is clear from the authorities.

52. Dr SAA is out of time to seek permission to appeal to the Court of Appeal against my judgment in *Re BR* handed down on 18 May 2023. As noted, I have the power to direct that any application to the Court of Appeal shall be made within a longer period than 21 days from my judgment. I am content to do so, given the difficulties faced by Dr SAA and the complexities involved in determining his position in relation to the judgment, anonymity, and the sharing of the judgment with others. I also note that he seeks to appeal the order I made on 8 June sharing the judgment with HHJ Murray for him to share with the parties in the case before him at his discretion and on such conditions as he considered fit. It seems to me that any applications for permission to appeal the judgment and the later order, should be made together and so I shall set a common deadline.

53. Accordingly, I shall direct that any application for permission to appeal to the Court of Appeal by Dr SAA in respect of (i) the judgment itself; (ii) the order of 8 June 2023; (iii) my determination on the future disclosure of the judgment and his identity, shall be made by no latter than 4pm on 19 July 2023. The appeals have potential ramifications for other cases in which Dr SAA is involved and for the parties in *Re BR* and even the police investigations. Dr SAA has been advised in relation to the appeals for over a month and so a further two weeks is ample time for him to prepare and make his applications.

54. Ms Morris KC has requested disclosure of what would amount to tens of thousands of pages of documents from the proceedings in *Re BR* (there are approximately 10,000 pages of medical records in respect of each of the three children). I am content to order disclosure to Dr SAA and his legal representatives of his statements (which he should already have but which the Trust will be able to provide to him) and an expedited transcript of his oral evidence. I shall order that a transcript shall be prepared accordingly at his expense. I imagine that the Trust will have notes of his evidence and I give permission for them to be disclosed to him and his legal representatives forthwith to help him prepare his application for permission to appeal. I am not prepared to order any further disclosure. If permission to appeal is sought from the Court of Appeal, then the Court of Appeal will consider any application for disclosure accordingly. My view is that the requests are disproportionate.

55. The Trust has applied for a permission to disclose the judgment to a wider group of individuals. I understand the desire for the Chair and members of the board of Trustees to be given a copy of the judgment. I do not recall this request being made on 18 May 2023. I am anxious to maintain the integrity of the criminal investigations and possible prosecutions. The more people see the judgment, the more difficult it will be to maintain that integrity. However, on balance I consider it to be in the public interest that the Chair and members of the board of Trustees should be able to see the judgment – I give permission accordingly. As for disclosure of the judgment to the acting Communications Directors, I am unclear as to why they need to see the judgment at this stage but I regard them as part of the executive team to whom the judgment has already been disclosed and I give permission for the judgment to be disclosed to them.

56. Accordingly, my orders are:

a. Time for Dr SAA to apply for permission to appeal the judgment in *Re BR* handed down on 18 May 2023 is extended to today's date and the application is deemed to have been made in time.

b. Permission to Dr SAA to appeal the judgment in *Re BR* handed down on 18 May 2023 is refused.

c. Permission to Dr SAA to appeal the order of 8 June 2023 is refused.

d. Any application to the Court of Appeal for permission to appeal the judgment in *Re BR* handed down on 18 May 2023 and/or for permission to appeal the order of 8 June 2023 must be made by no later than 2pm on 19 July 2023.

e. Permission to the Trust to disclose the judgment in *Re BR* to the Chair and members of the Board of Trustees and to those covering the Communications Director role, Geoff Podmore and Dominic Chessum, and to any person subsequently appointed as Communications Director.

f. Upon Dr SAA informing the court that he has relinquished all work as an expert witness in cases of alleged Fabricated or Induced Illness (FII) pending the outcome of his appeal against the judgment in *Re BR*, and upon him undertaking, until the judgment in *Re BR* is published on the National Archive, to provide a copy of the judgment in *Re BR* handed down on 18 May 2023 and the information that he is Dr SAA, to any judge ("the judge") hearing a case of alleged FII in the Family Court, the Family Division of the High Court, or a criminal court:

    i. In which the allegation of FII is disputed, and

    ii. In which Dr SAA is (i) an expert witness or (ii) a witness as a treating clinician involved in any referral to Social Services and/or the Police of an adult alleged to have fabricated or induced illness in a child,

    and to do so at the time that he is informed that the hearing of evidence in the case is listed, in order for the judge to determine whether the judgment and/or information should be shared with the parties in the case and on what conditions,

    It is ordered that at that time:

    i. Dr SAA shall provide the judge with a copy of this judgment together with a copy of the judgment in *Re BR* handed down on 18 May 2023;

    ii. Dr SAA may inform the judge of any application for permission to appeal or appeal proceedings that are then ongoing;

    iii. Dr SAA shall inform the judge that Mr Justice Poole has invited the judge to determine the relevance of the judgment in *Re BR* and of this judgment to the case before the judge and to decide whether the judgments or any part of them should be shared with the parties in the case before the judge and if so, on what terms as are necessary to protect confidentiality beyond the case which the judge is hearing.

g. An expedited transcript of the oral evidence of Dr SAA shall be prepared at Dr SAA's expense.

h. Sheffield Children's Hospital NHS Foundation Trust shall forthwith, on request by or on behalf of Dr SAA, disclose notes of the oral evidence of Dr SAA at the hearing of *Re BR* to Dr SAA made by its Counsel or solicitor.

i. For the avoidance of doubt, the Transparency Order of 17 January 2023 applies to this judgment. Any publication of this judgment shall be anonymised in the same manner as the anonymisation of the judgment in *Re BR*.

j. The Transparency Order of 17 January 2023 prohibits the publication of the judgment in *Re BR* and now this judgment until the conclusion of criminal investigations or, if brought, criminal proceedings, in relation to each mother: MR, MS and MT but, in any event, neither the anonymised judgment in *Re BR*, handed down on 18 May 2023, nor this judgment shall be published before the later of,

    i. 19 July 2023, or

    ii. if an application for permission to appeal the judgment is made to the Court of Appeal, the date of refusal of permission to appeal, or

    iii. if permission to appeal the judgment is given, the final determination of those appeals, or

    iv. Such other date as the Court of Appeal may direct.

k. Upon publication of the judgment in *Re BR* on the National Archive, or upon such further or different order from the Court of Appeal, Dr SAA shall be released from his undertaking at (f) above and the order at (f) above shall be discharged.

I have asked Ms Morris KC to draft an order accordingly for my approval.

57. I did not ask for and did not receive submissions as to whether this judgment should, at an appropriate time, be published. Having prepared the judgment it seems to me that it might be helpful for this judgment to be published in anonymised form when the judgment in *Re BR* is published.

58. I would expect the Court of Appeal to confirm, vary or discharge the orders in relation to the provision of the judgments to other judges as it considers fit, as and when applications for permission to appeal are made to it.