



Neutral Citation No: [2023] EWFC 9

Case Nos: LS21C00133, KH22C5008, LS22C50104

IN THE FAMILY COURT
AT LEEDS

Date: 25th January 2023

Before:

MR JUSTICE POOLE

Re: BR and others (Transparency Order: Finding of Fact Hearing)

Family R

Julia Cheetham KC and Sara Anning (instructed by the Local Authority) for the **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

Michael George and David Orbaum (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**

Natalia Levine (instructed by Howard & Co Solicitors) for **AC** and **BC** (carers for JV and KV)

James Ketteringham for **South Yorkshire Police**

Hearing date: 17 January 2023

JUDGMENT

This judgment was delivered in proceedings held in private but subject to a Transparency Order. 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 who are the subject of these proceedings 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.

Mr Justice Poole:

1. On 29 November 2022, the President of the Family Division, Sir Andrew McFarlane, issued 'The Transparency Reporting Pilot Guidance' heralding a pilot project to test a new approach allowing for reporting of family proceedings. This followed publication in October 2021 of his 'Confidence and Confidentiality: Transparency in the Family Court', a review of the issue of transparency in family justice in which he wrote,

“My overall conclusion is that the time has come for accredited media representatives and legal bloggers to be able, not only to attend and observe family court hearings, but also to report publicly on what they see and hear. Reporting must be subject to very clear rules to maintain both the anonymity of the children and family members who are before the court, and confidentiality with respect to intimate details of their private lives. Openness and confidentiality are not irreconcilable, and each is achievable. The aim is to enhance public confidence significantly, whilst at the same time firmly protecting continued confidentiality.”

2. The reporting pilot will begin in the Family Court at Leeds, Cardiff and Carlisle on 30 January 2023. The present proceedings with which I am concerned is being heard as a finding of fact hearing in the Family Court at Leeds, beginning on 17 January 2023, and is expected to last for eleven weeks. The pilot will begin approximately two weeks after the hearing begins and so I thought it appropriate to adopt the pilot from the outset of the hearing rather than to do so two weeks after the case has begun. Accordingly, I made a Transparency Order (TO) adopting the template order attached to the President's Guidance. The TO was circulated to the parties. Potential pilot reporters were alerted through the auspices of the Press Office at the Royal Courts of Justice. I gave notice that I would consider any written or oral submissions to vary or to discharge the order on 17 January 2023.

The Present Proceedings

3. In 2022 I directed that three public family law applications brought separately by three different Local Authorities concerning three previously unconnected families living in different parts of Yorkshire, should be heard together at a finding of fact hearing. I shall refer to the families as Family R, Family S, and Family T. The hearing concerns allegations that the mother in each family has fabricated or induced illness in one child of each family. There are features common to all three cases, including that for some months the children directly affected were being treated at Sheffield Children's Hospital at the same time. The allegations have ramifications for all the children of the three families. The hearing will involve complex medical and other evidence from the healthcare professionals who treated and cared for the children, from expert witnesses, and evidence from the parents.

The Reporting Pilot

4. I need not set out the President’s Guidance on the Reporting Pilot (RP) in full – it is available online. However, it is useful to note the President’s guidance that,

“The aim of the RP is that in the designated courts, accredited journalists and ‘legal bloggers’ (i.e. ‘duly authorised lawyers’ for the purposes of Family Procedure Rules 2010, r.27.11) will be allowed to report on what they see and hear in court (“the transparency principle”).

All reporting will be subject to the principles of protection of the anonymity of any children involved unless the Judge orders otherwise (“the anonymity principle”).

The Court may depart from the transparency principle in any case. In deciding whether to restrict reporting, the Court must ensure the rights of the family and parties to a fair trial under Article 6 ECHR and must balance the rights to a private and family life under Article 8 ECHR, and the rights of the press, public and parties under Article 10 ECHR (or any other relevant rights which may be engaged).”

5. Article 8 of the European Convention on Human Rights and Fundamental Freedoms states,

“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 states,

“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.”

6. Section 12 (4) of the Human Rights Act 1998 provides that:

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

7. The RP permits only “pilot reporters” to report on proceedings. A pilot reporter is any duly accredited representative of a news gathering or reporting organisation or duly authorised lawyer (legal blogger) who may attend a hearing under the Family Procedure Rules r.27.11. It is important to emphasise that such persons are already permitted to attend hearings, whether or not a case falls within the RP. What the RP allows, if an order is made in a particular case, is for the pilot reporters to report on the case they have attended and observed.

8. The overwhelming majority of cases in the Family Court, and those involving children heard in the Family Division of the High Court, are held in private. Section 12 Administration of Justice Act 1960 prohibits the publication of information relating to proceedings in private that relate to children as follows,

“s 12 Publication of information relating to proceedings in private.

(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—

(a) where the proceedings—

- (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
 - (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or
 - (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;
- (b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;
- (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
- (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
- (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

The court may disapply the provisions of s 12.

9. A Transparency Order (TO) restricts what a pilot reporter can report but is the means by which transparency can be achieved. Without a TO protecting the anonymity of children involved in family proceedings within the pilot areas, there could be no reporting at all. The template TO attached to the President's Guidance may be adapted to suit the particular circumstances of any particular case. The template TO provides that reporting may only be permitted once a particular hearing has been concluded and that the following information may not be reported:

- "a. The name or date of birth of any subject child in the case;
- b. The name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the child(ren) being identified;
- c. The name of any person who is a party to, or intervening in, the proceedings;
- d. The address of any child or family member;
- e. The name or address of any foster carer;
- f. The school/hospital/placement name or address, or any identifying features of a school of the child;

g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;

h. The names of any medical professional who is or has been treating any of the children or family member;

i. In cases involving alleged sexual abuse, the details of such alleged abuse;

j. Any other information likely to identify the child as a subject child or former subject child.

10. The template TO provides that unless the Court orders otherwise the following agencies or professionals may be named:

“a. The local authority/authorities involved in the proceedings;

b. The director and assistant director of Children’s Services within the LA (but usually not the social workers working directly with the family, including the Team Manager, unless the Court so orders);

c. Senior personnel at Cafcass but not normally the Guardian named in the case.

d. Any NHS Trust;

e. Court appointed experts;

f. Legal representatives and judges;

g. Anyone else named in a published judgment.”

11. The template TO does not overturn s 97 of the Children Act 1989 which provides, in relation to proceedings under that Act (which includes the present case),

(2) No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify—

(a) any child as being involved in any proceedings before the High Court, a county court or a magistrates’ court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or

(b) an address or school as being that of a child involved in any such proceedings.”

Contravention of these requirements is a criminal offence but by s 97(4):

“(4)The court or the Lord Chancellor may, if satisfied that the welfare of the child requires it and, in the case of the Lord Chancellor, if the Lord Chief Justice agrees, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.”

In Re Webster; Norfolk County Council v Webster [2006] EWHC 2733, [2007] 1 FLR 1146, Munby J held that s 97(4) Children Act 1989 should be read as permitting the court to dispense with the prohibition in s 97(2) if the Convention rights required it.

12. The TO will apply until the youngest child in the case is aged 18. It therefore has the effect of extending the protections against identification of children under s 97 Children Act 1989 which have been interpreted as applying only during the currency of the relevant Children Act proceedings.
13. The template TO also entitles pilot reporters to be provided, on request, with certain documents from the particular case, and to share documents and information to certain specified individuals who must also be provided with a copy of the TO.
14. Hence, under s 97 Children Act 1989, and the terms of the template TO, pilot reporters must not report material which is intended to or likely to identify children in the proceedings. Reporting that contravenes that requirement might include the publication of different pieces of information which, when put together, are likely to identify a child – so-called jigsaw identification. The responsibility on pilot reporters is the same as that on reporters in the Youth Court or the criminal courts. Under s 49 of the Children and Young Persons Act 1933,

“Youth Courts

Restrictions on reports of proceedings in which children or young persons are concerned.

(1) No matter relating to any child or young person concerned in proceedings to which this section applies shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as someone concerned in the proceedings.”

Section 49 (3A) expressly prohibits publication of the child or young person’s name, address, school or other educational establishment, and any still or moving pictures of him.

By s 45 of the Youth Justice and Criminal Evidence Act 1999,

“Power to restrict reporting of criminal proceedings involving persons under 18.

(1) This section applies (subject to subsection (2)) in relation to—

(a) any criminal proceedings in any court (other than a service court) in England and Wales or Northern Ireland; and

(b) any proceedings (whether in the United Kingdom or elsewhere) in any service court.

(2) This section does not apply in relation to any proceedings to which section 49 of the Children and Young Persons Act 1933 applies.

(3) The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.”

15. These provisions are in similar terms to s 97(2) of the Children Act 1989, albeit the s 49 provision is discretionary. For many years, reporters in the Youth Court and Criminal Courts have had to ensure they do not report material “likely” to identify subject children. The same responsibility will now rest on pilot reporters in family proceedings.

Application to the Present Case

16. There have been no new statutes, rules or practice directions to facilitate the Reporting Pilot but the President of the Family Division has made it clear that he regards it as important to begin to allow reporting of family proceedings with a view to enhancing public confidence in the family justice system. The RP is designed to begin a sea change in transparency in the family courts. It would soon become wholly ineffective if judges in the pilot courts routinely refused to make TO’s but the decision whether to permit reporting is one for the judge to make in each case where a pilot reporter attends.
17. When deciding whether to make a TO and, if so, on what terms, a pilot court judge must strike a balance between rights that favour publication and the rights of the child to respect for its private and family life, adopting the principles set out in by the House of Lords in *Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593 (“*Re S*”) and by the Court of Appeal in *Griffiths v Tickle* [2021] EWCA Civ 1882. The consequence of Munby J’s decision in *Webster* (above) is that s 97(2) Children Act 1989 does not prevent this balancing exercise in cases concerning children’s welfare – it requires it if the court is considering dispensing with s 97(2) to

any extent. The President's Guidance on the Transparency Reporting Pilot should also be taken into account by the pilot courts.

18. In *Griffiths v Tickle* (above) the Court of Appeal noted that Lieven J had "conducted a fact-sensitive scrutiny of the competing considerations" as required when applying the *Re S* principles. During the RP, judges in pilot courts will not have time to conduct the kind of detailed scrutiny that was undertaken in that case, let alone to give a written judgment explaining the reasons why they have, or have not, made a TO.
19. The template TO is therefore of considerable assistance to judges in the RP. It includes prohibitions on reporting a list of information which will be likely to identify the subject children in every case, for example, their date of birth and their address. It will be unusual to relax any of those restrictions, although, for the reasons explained below, I have done so in one respect in the present case. The more common question for judges in the RP is likely to be whether to add further specific information to the list of restrictions in the template TO.
20. Having decided to treat the present case as if it is in the RP, and pilot reporters having attended the hearing, the approach I have taken to the questions of whether to make a TO in order to permit reporting and, if so, what the terms of the TO should be, is as follows:
 - i) The court must seek to achieve a balance between the rights of publication and the rights of the child to anonymity, applying the principles in *Re S*.
 - ii) The children involved in these family proceedings would be likely to suffer harm if their anonymity were lost.
 - iii) There is a significant public interest in allowing reporting of family proceedings as explained in the President's Transparency Reporting Pilot Guidance and his publication, *Confidence and Confidentiality: Transparency in the Family Court*.
 - iv) Save in exceptional cases where it would be particularly difficult to achieve anonymity for the child, the terms of the template TO will strike the right balance as required by *Re S*.
 - v) A TO does not exclude s 97(2) Children Act 1989 which makes it a criminal offence to publish information likely to identify a child. That places a heavy burden on pilot reporters who are required not only to abide by the prohibitions on reporting the list of specific information set out in the TO, but also to avoid the likelihood of jigsaw identification. The template TO and s 97(2) in combination provide significant protections against subject children being identified.
 - vi) The court cannot dictate the detail of what reporters write or broadcast. However, the circumstances of the particular case may require that the reporting of specific information, not already included in paragraph 13 of the template TO, should be prohibited. Any such further prohibitions should be limited so as to avoid undue interference with Article 10 rights to freedom of expression.

- vii) In a particular case there may be other information which might not itself identify the child, but which the court might recognise in the TO as being likely to identify the child if reported in combination with reportable information (jigsaw identification).
 - viii) In a particular case it may be appropriate to allow reporting of information that would otherwise be prohibited within the template TO, if there is a particularly strong public interest in it being reported.
 - ix) A TO can properly be made even if there are or may be pending criminal investigations or proceedings, but the template TO will usually have to be revised to prevent reporting until the conclusion of those investigations or proceedings, so as to avoid causing prejudice to them.
21. Parties and pilot reports should, if at all possible, consider in advance of a hearing what limited variations to the template TO they seek, and to be able to justify those variations.
22. The TO that I made prior to the hearing, adopted the template TO but with two significant variations.
- i) Firstly, because each of the three mothers in the present proceedings has been arrested and criminal investigations have been instigated, I ordered that no reporting will be permitted until criminal proceedings against all three mothers have been concluded and/or the police or Crown Prosecution Service have determined that criminal proceedings will not be brought and no further action will be taken. It may therefore be many months before reporting of this case is permitted.
 - ii) Secondly, due to the very large number of parties involved in the present case, I added a confidential schedule to my order in which the real names of the family members, including the children, are provided. The purpose of doing so was to avoid inadvertent reporting of any members of the three families. If a pilot reporter has any doubts about whether an individual is subject to the prohibition on identification, they can check the confidential schedule.

These additions to the template TO will not be necessary in most cases in the RP.

23. I have now received very helpful submissions from the parties and from a number of pilot reporters who attended the hearing today. Only one party – the father in Family R – wholly opposes the making of a TO. He invites the court not to permit any reporting. He believes that reporting of any kind will be likely to lead identification of the subject children which would be harmful to them. The other parties, whilst not opposing the making of a TO, submit that it should restrict the reporting of a number of further matters that would not be covered by adoption of the template TO. Before I turn to those submissions, I shall address certain other matters raised by the parties and by pilot reporters.
24. One submission made was that pilot reporters should only be permitted to attend remotely because their presence in the courtroom would be distressing to some members of the families attending court and because there is insufficient space in the courtroom to accommodate them. I do not accept that submission. It may be

uncomfortable for family members to have reporters in the courtroom but the distress caused does not justify excluding reporters from observing the proceedings in person. A particularly large courtroom has been secured for this hearing and I am satisfied that there is space to accommodate pilot reporters. It is important that pilot reporters are able to observe a hearing in person. However, this is also a hybrid hearing, in that some legal representatives will sometimes attend remotely and many healthcare professionals will give evidence remotely. Therefore pilot reporters may, in this case, attend remotely if they wish to do so.

25. Responsibility for ensuring that a pilot reporter is duly accredited or is a legal blogger rests with the court. The court must also be satisfied that the pilot reporters attending have read and understood the TO. In the present case a TO was drafted prior to the hearing. For many hearings, that will not be possible. The need to consider making a TO will only arise if a pilot reporter attends a hearing and the court may be unaware of a pilot reporter's intended attendance until shortly before or even until the beginning of the hearing. However, it is the TO that *permits* reporting. Without a TO, s 12 Administration of Justice Act 1960 prevents any publication of a private hearing. So, unless or until the court has made a TO, even if that is after the conclusion of the hearing, no reporting of the hearing is permitted.
26. The court has to satisfy itself that the pilot reporter has received and understood the TO whenever that TO is made. If a new pilot reporter attends part way through this long hearing, they will be provided by the court with the TO that is then in force and asked to confirm that they have read and understood it. Those pilot reporters will be identified by the court to the parties.
27. The template TO entitles pilot reporters to access a range of documents upon request. In the present case, adoption of the template TO would lead to a very large volume of documentation being made available. In my view the quantity of such documentation in this case would be an unhelpful burden on reporters and the parties alike. I have therefore decided to restrict the documentation which pilot reporters are entitled to receive without seeking specific permission, to the opening and closing position statements or skeleton arguments, and the indices to the hearing bundles. The parties are not permitted to provide other documentation to pilot reporters without the express permission of the court. To reduce the administrative burden on all concerned, I have asked the Court Associate to compile an electronic folder - the pilot reporter folder - containing the documents to which I have referred, together with the TO, which can be provided on request to pilot reporters. If a pilot reporter requests any other documentation that is not included in the pilot reporter folder, the request must be referred to me to consider whether to give permission.
28. Paragraph 20 of the template TO allows a pilot reporter to share documents or information with their editorial team or legal advisor providing that those other people have been provided with a copy of the TO. A legal blogger from the Transparency Project attended on 17 January 2023 and asked for permission to share documentation and information on the same terms but with four named members of the Trust at the Transparency Project. I agreed to vary the TO accordingly. Furthermore, for the sake of clarity, I have ordered that any pilot reporter who attends the hearing may share documentation and information with another pilot reporter who attends the hearing, even if they do not attend at the same time. This would allow legal bloggers from the

Transparency Project who attend the hearing at different times, to share information and documents with each other.

29. The Transparency Project has also asked for permission to report on the fact that the RP has been adopted for this hearing and how arguments about the TO have been dealt with by the court. I have drafted a short summary of the adoption of the RP, akin to a Press Release, which can be used by pilot reporters and I give permission for them to publish and report on that now. Of course, the President's Guidance is published and can be incorporated in any reporting of the adoption of the PR in these proceedings. To that extent, commentary and reporting on the mechanics of how matters of transparency have been dealt with at the outset of this hearing may be published before the conclusion of the hearing. However, the TO applies to all reporting, and under the TO in the present case, no other reporting will be allowed until the conclusion of all criminal investigations or proceedings (if any).
30. All the parties have expressed anxiety about jigsaw identification. As the parties' submissions have highlighted, there are many features of any family's life that might lead to the identification of the children of those families, even if their names, schools, addresses, dates of birth and other information prohibited from being reported under the template TO, are kept confidential.
31. Judges in family proceedings are used to publishing anonymised judgments. When doing so, they will consider whether certain information should be omitted from the published judgment in order to protect the anonymity of the children. That might include some distinguishing feature of a child that is not directly relevant to the issues which the court has to determine. It is a simple decision to leave that irrelevant information out. Other identifying information might be relevant to the judgment and so the judge will anonymise it, for example by referring to the country of origin of a child as "a European country".
32. It strikes me that the judicial exercise of deciding what information may not be reported is potentially much more difficult than that of deciding what information to omit from a published judgment. Firstly, the exercise will usually be carried out at the outset of, or during, a hearing, not at its conclusion: the judge will not be as familiar with the information in the case as they would be when giving a judgment. Secondly, the judge will have to undertake the assessment swiftly in order to leave sufficient time to conduct the hearing itself. Thirdly, whilst only some of the information in a case may be relevant to a judgment, a pilot reporter might be interested in reporting a much wider range of information – the judge has to proceed on the basis that all the information in the case might potentially be reported unless its publication is prohibited by the TO. Fourthly, and most obviously, whilst judges write their judgments, they do not write reports. Judges cannot prescribe how the proceedings are reported.
33. It is therefore of great assistance to have the President's Guidance and the template TO. They will lighten the burden on judges making decisions about TO's during the pilot.
34. Nevertheless I have to consider the submissions made by various parties that the court should not permit the reporting of a wide variety of potentially identifying information about the families that is not already addressed in the template TO. I cannot list that information in this judgment because I have been persuaded to vary the TO to prevent some of it being reported. Those matters that may not be reported cannot appear in this

judgment. Nor do I wish to draw attention to any particular information that might be regarded as distinctive even if I do not expressly prohibit its publication. However, to concoct an example to illustrate the point, it might have been the case that a subject child lives with their family in Manchester and that their father is a professional footballer. The father's occupation might be a detail that is wholly irrelevant to the matters the court has to decide, but its publication would be likely to identify the child, in particular when reported in combination with other material in the case, and it is likely to be information that would be reported unless there were an order prohibiting its publication.

35. In the present case I am cautious about making anything but very limited additions to the information that may not be reported already listed in the template TO. Firstly, it is not feasible to create a list of all the information that might, by itself or in combination with other evidence, potentially identify a subject child. Secondly, it would be wrong in principle for the court to be unduly prescriptive about how pilot reporters report the cases they observe. Thirdly, pilot reporters are bound by s 97(2) Children Act 1989. The template TO expressly prohibits, "for the purposes of Section 97(2) of the Children Act 1989", publication of "any other information likely to identify the child as a subject child or former subject child." As has been the case in the Youth Court and the criminal courts for some years, the responsibility lies on reporters not to publish information likely to identify a child. Contravention of s 97 would be a criminal offence. Pilot reporters are bound to take that responsibility seriously and will naturally be cautious to avoid committing an offence.
36. I have decided that only minor variations to the protections set out in the template TO are required in this case. I have ordered that no person may publish any information likely to identify where any child or family lives or has lived save that the children and family members of families R and T may be referred to as living in West Yorkshire, and the children and family members of family S may be referred to as living in the East Riding of Yorkshire.
37. On the other hand, I have decided to permit the identification of a hospital at which some subject children were treated. Whilst I have ordered that other hospitals at which the subject children have been treated and cared for may not be identified, I have excluded from that prohibition Sheffield Children's Hospital. That hospital is a significant common feature to the three cases which are being heard together. There seems to me to be a strong public interest in allowing the identity of that hospital to be reported, such that it outweighs the degree of risk of harm to the subject children of being identified as a result of the hospital being named.
38. In addition, I have inserted a paragraph in the order that without prejudice to the express prohibition, "for the purposes of s 97(2) Children Act 1989", of "any information likely to identify the child as a subject child or former subject child" (which I have adopted from the template TO),
 - ... the publication of any of the information set out in the Schedule of Identifying Information attached is likely to identify the child as a subject child or former subject child."

The Schedule of Identifying Information is short and contains only seven pieces of information. This part of the order does not prohibit the publication of the information in that schedule, but will, I hope, help pilot reporters to avoid reporting information which will very obviously give rise to the likelihood of identification of the children through a jigsaw identification process. This is a short list of pieces of information which in themselves would not risk identifying the subject children, but which, in combination with each other or with information that may be reported, would be likely to identify them.

39. I would not expect the use of a Schedule of Identifying Information to be needed in many cases in the reporting pilot, but it may be a useful addition in a few cases such as the present one.
40. The template TO prohibits the reporting of the dates of birth of the subject children. I have been asked to consider restricting reporting of their ages and their parents' ages. That seems to me to be over-restrictive. Any meaningful report of this case would have to include the subject children's approximate ages (but not their dates of birth). I do not regard the parents' ages as information likely to identify them or the children even in combination with other information about them.
41. By adding those restrictions and indications, and by allowing the naming of a hospital at which subject children were treated, I have sought to achieve an appropriate balance of Article 8 and Article 10 Convention rights in accordance with the principles set out in *Re S* and *Griffiths v Tickle* (above). In considering the Article 8 rights of the children and families I have been very mindful of the serious distress and harm that could be caused to the subject children if their identities were to become known.
42. Inevitably, some people who already know these families, or know of them, may be able to find out more information about them from reports of the hearing. The same may occur when an anonymised judgment is published. That prospect will be uncomfortable for the children and families and may even cause a great deal of distress. However, the risk of harm and respect for their Art 8 rights has to be balanced against the principle of open justice and rights under Art 10. Having conducted that exercise I am satisfied that in this case I should make a TO that permits pilot reporters to report on the present hearing subject to specified prohibitions on reporting certain information. Pilot reporters remain bound by s 97 Children Act 1989 and would be committing a criminal offence were they to publish any material likely to identify the children who are the subject of these proceedings. The protections provided by s 97 and the TO in this case provide the court with sufficient confidence that reporting may be permitted without creating an unacceptable risk that the children will be harmed by being identified.
43. The reporting pilot places a heavy responsibility on pilot reporters. It would be over-burdensome on judges, and objectionable in principle, for the court to give detailed directions to pilot reporters about the content of their reports. Pilot reporters must use their own professional judgment to ensure that their reporting complies with the law.
44. The pilot reporters who attended today had not had the advantage of seeing any documentation in the case prior to making submissions to me about variation of the TO. No reporting may take place until, at the earliest, the conclusion of the hearing and perhaps, due to possible criminal proceedings, long after that. As pilot reporters become

more familiar with the case there may be applications to vary the restrictions in the TO. I shall consider such applications as and when they arise, but will manage the hearing so that they are heard and determined at suitable intervals.

45. I am very grateful to Counsel and the pilot reporters who attended today for assisting the court to reach decisions about the TO in this case. I have decided to publish this judgment because it may be helpful to other judges and parties in the pilot courts, although the approach taken in each case will depend on the specific circumstances of that case. For obvious reasons I cannot attach the TO I have made to this published judgment.