

A delicate balance — children's privacy vs public interest in the family courts

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Part one of this blog dealt with the decision in *Re J*, a very difficult case concerning a 7 year old boy ('J') whose mother had alleged that he was gender dysphoric and wanted to live as a girl. At a final hearing in July (2016), a judge found that the mother had imposed this belief upon J and, in doing so, had caused significant emotional harm to J, and that J's interests were better served by living with his father.

The judge then had to decide the extent to which details of the case should be made public. He decided that a version of the judgment could be made public, though with certain details removed to protect J's identity. How he reached this decision is an important reminder of how the courts will make trade-offs between privacy and the public interest in significant cases

The legal framework

In court proceedings about children, the welfare of the child is the court's paramount consideration. But when it comes to the reporting of those proceedings, the law requires a delicate balancing exercise to be conducted between two rights protected by the European Convention on Human Rights: Article 8, protecting individual privacy and Article 10, protecting freedom of expression (which includes the need to report matters of genuine public interest).

As the judge noted: 'If I were here exercising a welfare jurisdiction, that is to say one in which J's interests were the paramount consideration, then I should wish to construct an impregnable fortress around him to guarantee the peace and privacy which he undoubtedly requires to recover from his extraordinary experiences. I do not operate here...I am required to balance rights and freedoms of "titanic proportions" '.

The judge recognized that the case concerned matters of public interest, not least how concerns brought to the local authority's attention had been inadequately considered. It also included the importance that professionals in this line of work should conduct an independent and thorough investigation even in cases where, at face value, one parent's account of the situation may appear to be well-reasoned and articulate.

Should we be allowed to know who 'J' and the others involved are?

The local authority applied for a 'Reporting Restriction Order' suggesting that, for the protection of J, there should be widespread anonymization in any reporting of the case (to include J, his mother, his father, the local authority, the local authority's social workers, the CAFCASS officer and the experts who gave evidence).

Everybody involved agreed that J should not be named. The judge decided that the local authority should also not be named because this would lead to the identification of the geographical area in which J lived and therefore also the indirect identification of J because the facts of the case were so striking.

He decided, however, that the individual local authority social workers and the CAFCASS officers involved could be identified. He recognized the 'obvious contemporary reality' that, through this, someone who really wanted to could discover the area of the UK within which J lives because such professionals tend to work predominantly in one area. But he said that this should not lead to the identification of J because his details and location cannot, in any event, be published.

With regards to experts who gave evidence during the proceedings, for example, the clinical psychologist who offered her assessment of both parties, the judge decided that such experts should be named. This is because they should only offer evidence to the court realizing that 'their conclusions and analysis will be held to public scrutiny...not least because those conclusions may be relied on by judges who are required to make some of the most draconian orders in any jurisdiction, [including] the separation of families...and the revocation of parental rights and

responsibilities'.

Lose-lose?

The balancing exercise facing the judge is a very uncomfortable one. On the one hand, there is the need for justice to be conducted openly and in a way that allows lessons to be learned from past mistakes. On the other hand, the courts must try to prevent further damage to the individuals and families involved in particular cases through publication of the details of their lives. Where there are the most serious lessons to be learned, the facts of the case are likely to be the most striking and therefore the possible damage to the families involved is likely to be greatest, which only serves to compound the difficulty of the balancing exercise.

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