

Neutral Citation Number: [2026] EWHC 510 (Fam) Case No: [redacted]

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 17/02/2026

Before :

MS JUSTICE HARRIS

Between :

Shropshire Council

Applicant

- and -

Mother

1st Respondent

- and -

Paternal Aunt

2nd Respondent

- and -

Foster Carers

3rd to 4th
Respondents

- and -

Michael (not his real name) 5th Respondent (a child, acting
through his Children's Guardian)

Kathryn Anslow (instructed by Shropshire Council Legal Services) for the **Applicant Local Authority**

The **First Respondent mother** was not in attendance

Lucy Reed KC and Malvika Jaganmohan acting *pro bono* (instructed by **Adam Ansari of Rees Page Solicitors**) for the **Second Respondent paternal aunt ('PA')**

The **Third and Fourth Respondent foster carers** were not in attendance

Sarah Tierney (instructed by **Sarah Phillips of WMB Law**) for the **Fifth Respondent child** through
his Children's Guardian

Hearing dates: 12th February 2026

Approved Judgment

This judgment was handed down remotely at 9.30am on 4th March 2026 by circulation to the parties or their representatives by e-mail.

.....

MS JUSTICE HARRIS

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

Ms Justice Harris DBE :

1. The issue which falls for consideration in this judgment is whether a judge sitting in the Family Court has jurisdiction to make an order dealing with publication of information from private Children Act 1989 proceedings heard in the family court in circumstances where publication is not provided for by the current rules on publication of information as contained within the Family Procedure Rules 2010 ('FPR 2010') rules 12.73, 12.73A (enabling PD12R) and 12.75. The Court shall refer to such an order as a 'transparency order', such a term not being restricted to the circumstances in which an order is made permitting publication in accordance with PD12R.
2. By way of background to this application, PA, who is the applicant but the second respondent in the substantive proceedings, is the paternal aunt of a child placed with foster carers and subsequently made subject of a special guardianship order to the foster carers. PA contested those proceedings (the final welfare judgment in those proceedings was reported as *Re Michael (Foster Carers versus Paternal Aunt)* [2025] EWFC 472 (B)) and now wishes to raise awareness through the media and by sharing information with her MP of the impact of s 14A(5)(d) of the Children Act 1989, which permits a local authority foster parent to apply for a special guardianship order without leave of the court when a child has lived with them for a period of at least one year. The issue of particular concern to PA is the impact on family members who could provide good enough care for a child who has become settled in alternative care due to general delays in the family justice system.
3. No formal application to permit publication of information from the family proceedings has ever been made by PA. The issue of whether a transparency order should be made was initially raised by HHJ Arthur who heard the substantive proceedings in the Family Court. Pursuant to directions made by HHJ Arthur, PA subsequently confirmed that she did seek a transparency order permitting her to discuss the case appropriately with reporters, as well as permission to discuss the case and to share certain documents with her local MP. A concern was then raised by counsel for the child (acting via his Children's Guardian) as to whether HHJ Arthur had jurisdiction to make such an order, the order falling outside the provisions of PD12R as no accredited members of the media or legal bloggers had attended the substantive hearings. The matter was thus referred to me. A transparency order which would permit such publication is now agreed by all parties and there is no dispute that, as a High Court judge, I can and should make that order. The question which remains is whether HHJ Arthur sitting in the Family Court could have made the order.
4. Although now somewhat academic in this case, the question of whether the Family Court has jurisdiction to make transparency orders outside the circumstances currently permitted by the Family Procedure Rules 2010, is of some general importance in ensuring any order which permits what would otherwise be a contempt of court under s 12 of the Administration of Justice Act 1960 ('AJA 1960') is soundly based. It also has important practical implications, in that if the Family Court has jurisdiction to make transparency orders outside the specific provisions of the FPR 2010, it opens the possibility of many more

transparency orders being made without the need for reference to a High Court judge. I have therefore been invited by counsel for the applicant to determine the question.

5. The applicant has been represented before me by Ms Reed KC, leading Ms Jaganmohan. The local authority was represented by Ms Anslow and the guardian by Ms Tierney. The remaining parties to the substantive proceedings have not participated in the hearing before me. I am grateful to all counsel for their assistance.

The decision in *M v F & Anor* [2025] EWHC 801 (Fam)

6. *M v F & Anor* was a decision of this Court as to whether parties should be permitted to speak directly in public about their experiences of Children Act 1989 proceedings, outside the circumstances envisaged by FPR 2010 rule 12.73 and 12.73A. I held that no power to permit such publication could be found within the FPR 2010 but could be found in the Court's inherent jurisdiction. I did not hear any legal argument on the point, but observed at paragraph 56 that as an exercise of the inherent jurisdiction:

56... I recognise that I have reached what may be viewed as a less than satisfactory conclusion on the law. Any exercise of the inherent jurisdiction to permit publication requires an application to a High Court judge and is thus not a readily accessible remedy in family proceedings being heard in the family court.

It is this point as to the jurisdiction of a judge sitting in the Family Court, and with the benefit of full legal argument, that the Court is now invited to determine.

Jurisdiction to make a 'transparency order'.

7. The Court observes at the outset that this is a complex and technical area of the law. The starting point must be the *source* of the Court's jurisdiction to make a transparency order permitting publication of information from Children Act 1989 proceedings heard in private. It is helpful to rehearse the legal framework governing this difficult area of law.
8. At the heart of the law on the publication of information from private family law proceedings is s 12 of the AJA 1960, which provides:

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.
- (2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.
- (3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.
- (4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).

9. Ms Reed KC argues that the effect of s 12(4) must be that s 12 of the AJA 1960 does not preclude publication of information that would otherwise not constitute a contempt of court. That means that information published in accordance with and as authorised by rules of court (currently FPR 2010 rr 12.73, 12.73A and 12.75) or, alternatively, permitted by court order, would not constitute a contempt of court and do not fall foul of s 12(1)(a). She argues that s 12 has not removed the inherent power of judges to make such orders, either increasing or reducing restrictions on publication. In other words, she says that through s 12 of the AJA 1960, Parliament has not sought to limit the court's jurisdiction in these matters. The Court

accepts that position as held by Munby J in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), and a number of subsequent High Court and Court of Appeal authorities. Furthermore, it is not contentious that following implementation of the Human Rights Act 1998, the Court must exercise its powers in accordance with Convention rights (s 6 of the HRA 1998, *Re S (a child)* [2004] UKHL 47). The important question remains, however, as to the *source* of the Court's *jurisdiction* to make such orders outside the rules of court.

10. It was agreed before me that the Court's jurisdiction to make such orders is found in the Court's inherent jurisdiction. That must be right; no source of the Court's jurisdiction to permit or restrict publication being identified in statute outside of the AJA 1960. In *M v F & Anor*, the Court spent some time considering the origins of the Court's inherent jurisdiction to permit publication when operating outside what might properly be considered its *parens patriae* jurisdiction. That is an important question that is not necessarily straight forward to resolve, as the Supreme Court's decision in *Abbasi and another v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2025]

UKSC 15, makes plain. An order *permitting* as opposed to restricting publication is difficult to locate within the Court's *parens patriae* jurisdiction, such an order not generally being protective of the child's interests. However, as helpfully identified by Ms Reed KC, an alternative source of the Court's inherent jurisdiction to permit publication may be found in the principle of open justice.

11. The Supreme Court decision of *Cape Intermediate Holdings Ltd v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK)* [2019] UKSC 38, is helpful. *Dring* was concerned with a non-party's access to the documents contained within the court bundle in civil litigation. In her judgment, Baroness Hale very firmly rooted the courts' inherent jurisdiction to permit access to information in civil court proceedings in the constitutional principle of open justice. She identified three issues for determination: i) the scope of CPR rule 5.4C(2) in giving non-parties access to documents; ii) whether access to documents is governed solely by the Civil Procedure Rules, or the court has an inherent power to order access outside the rules; iii) if there is such a power how far it extends and how it should be exercised. It is the second question which is of particular importance for determining the source of the Court's jurisdiction to permit publication in family proceedings.
12. The Supreme Court held, albeit in the context of civil proceedings, that there can be "no doubt at all" that the court rules are not exhaustive of the circumstances in which non-parties may be given access to court documents. Baroness Hale identified the rules as providing a "minimum", albeit that it is for a person seeking to persuade the court to allow access outside the rules to show a good reason for doing so. She continued:

34...case after case has recognised that the guiding principle is the need for justice to be done in the open and that courts at all levels

have an inherent jurisdiction to allow access in accordance with that principle. Furthermore, the open justice principle is applicable throughout the United Kingdom, even though the court rules may be different...

41. The constitutional principle of open justice applies to all courts and tribunals exercising the judicial power of the state. It follows that, unless inconsistent with statute or the rules of court, all courts and tribunals have an inherent jurisdiction to determine what that principle requires in terms of access to documents or other information placed before the court or tribunal in question. The extent of any access permitted by the court's rules is not determinative (save to the extent that they may contain a valid prohibition). It is not correct to talk in terms of limits to the court's jurisdiction when what is in fact in question is how that jurisdiction should be exercised in the particular case.

42. The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases – to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing the job properly....

43. But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases.

13. The application of *Dring* to children's proceedings held in private requires careful navigation, particularly given that the Family Court is a creature of statute. However, in working through the relevant legal framework, it suggests the following key principles:
 - 1) that the courts' inherent jurisdiction to determine access to information regarding court proceedings is found in the constitutional principle of open justice; and
 - 2) unless inconsistent with statute or the rules of court, all courts and tribunals have an inherent jurisdiction to determine what the principle of open justice requires in terms of access to documents or other information.

Applying the Supreme Court’s reasoning in *Dring* to family proceedings, unless inconsistent with statute or the rules of court, the Family Court would have an inherent jurisdiction founded in the principle of open justice to permit or restrict publication of information.

Is the exercise of the inherent jurisdiction to permit publication of information in family proceedings restricted by statute or the rules of court to the High Court?

14. Determining this question requires the Court to grapple with the primary and secondary legislation establishing the Family Court, alongside the President’s Guidance on allocation and distribution of business between the Family Court and the Family Division of the High Court. The key provisions are very helpfully set out in the judgment of the President in *Re K (Children) (Powers of the Family Court)* [2024] EWCA Civ 2.
15. The Family Court was created on 22 April 2014 by section 17(3) of the Crime and Courts Act 2013, which, together with Part 1 of Schedule 10, inserted a new Part 4A, sections 31A-31P, in the Matrimonial and Family Proceedings Act 1984 (‘MFPA 1984’). Section 31A(1) defines the jurisdiction of the Family Court as:

the jurisdiction and powers conferred on it – (a) by or under this or any other Act, or (b) by or under any Act, or Measure, of the National Assembly for Wales.

Part 1 of Schedule 11 of the Crime and Courts Act 2013 contains a long list of statutes that have been amended to vest jurisdiction in the Family Court by substituting the Family Court for previous references to the High Court and county court. It is to be noted that some important statutes have not been so amended to vest jurisdiction in the Family Court, including, for example, the Child Abduction and Custody Act 1985. The jurisdiction of the Family Court is thus limited in some respects.

16. The potential implications of s 31E of the MFPA 1984 formed an important plank of PA’s argument. This section provides:

31E Family court has High Court and county court powers

- (1) In any proceedings in the family court, the court may make any order— (a) which could be made by the High Court if the proceedings were in the High Court, or
- (b) which could be made by the county court if the proceedings were in the county court.

(2) ...

(3) Subsection (1) is subject to section 38(3) of the County Courts Act 1984.

On its face and taken in isolation, s 31E might appear to vest within the Family Court full and unlimited jurisdiction to make any order that could previously have been made in the High Court or County Court. It follows that this would include an order made under the inherent jurisdiction. However, section 31E has to be read alongside the other provisions contained within s 31A-P, including s 31A(1) which limits jurisdiction to those matters set out in Part 1 of Schedule 11 of the Crime and Courts Act 2013. The effect of s 31E must thus be read so as to provide the Family Court with the full scope of powers previously exercised by the county court or High Court where jurisdiction is vested in the Family Court by virtue of s 31A(1). Otherwise, s 31A(1) and Schedule 11, Part 1 would be redundant. That interpretation is consistent with the 2018 Guidance on s 31E considered further below.

17. The primary legislation has been supplemented by rules (The Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014/840), and Guidance issued by the President of the Family Division under those rules.
18. Guidance was issued by the then President Sir James Munby on 22 April 2014, to accompany the creation of the Family Court: *President's Guidance on Allocation and Gatekeeping for Care, Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law)*. Guidance was also issued with respect to private law proceedings (*President's Guidance on Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 (Private Law)*). The Public Law Guidance contains its own Schedule, updated in 2020, and contains a list of matters within paragraph H that are reserved to the High Court. These include:
 - i) 'injunctions invoking the inherent jurisdiction of the court' and 'interim or substantive relief which requires the inherent jurisdiction of the High Court to be invoked'; and
 - ii) issues as to publicity (identification of a child or restriction on publication or injunctions seeking to restrict the freedom of the media).

The 2014 allocation Guidance thus appears to provide in clear terms that an application for permission to publish information regarding Children Act 1989 proceedings heard in private, being a matter invoking the inherent jurisdiction, is a matter reserved to the High Court.

19. On 28th February 2018, the then President, Sir James Munby, issued further Guidance: President's Guidance: Jurisdiction of the Family Court: Allocation of Cases within the Family Court to High Court Judge Level and Transfer of Cases from the Family Court to the High Court (also reissued in substantially the same form in 2021 by the current President, Sir Andrew MacFarlane). That Guidance contains a number of relevant points. It does not replace or amend the 2014 Guidance:
- The High Court, of which the Family Division is part, is a superior court of record. It has unlimited jurisdiction. The family court, in contrast, is a creature of statute, with its jurisdiction defined by statute. The jurisdiction of the family court, although very extensive, is not unlimited (para. 4).
 - It is very important for the family court, which has now been in existence for nearly four years, to gain the respect it deserves as the sole, specialist, court to deal with virtually all family litigation. Except as specified in the Schedule to the Guidance, cases should only need to be heard in the High Court in very limited and exceptional circumstances (para.30).
 - Part A of the Schedule to the President's Guidance lists those matters which are not within the jurisdiction of the family court: see paragraph H of column 2 of the schedule to President's Guidance of 22 April 2014, Allocation and Gatekeeping for Care, Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law) and Part 3 of the Schedule to President's Guidance of 22 April 2014, Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 (Private Law). (para. 14).
 - The following matters must be commenced in the Family Division of the High Court rather than in the family court: (a) those matters listed in Part A of the Schedule to the Guidance: matters in respect of which the family court does not have jurisdiction and which therefore must be commenced in the Family Division; and (b) Part B of the Schedule to the Guidance: matters which must be commenced in the Family Division even though the family court has jurisdiction but may at any time be transferred by the High Court to the family court in accordance with section 38 of the 1984 Act (para 17).
 - Where a matter listed in either Part A or Part B of the Schedule to the Guidance has been received in the family court: (a) The matter must immediately be transferred by the family court to the Family Division; (b) Failing such transfer,

the matter will be transferred by order of the Family Division in accordance with section 31 of the 1984 Act (para 19).
 - Section 31E(1)(a) of the 1984 Act does not permit the family court to exercise original or substantive jurisdiction in respect of those exceptional matters, including applications

under the inherent jurisdiction of the High Court, that must be commenced and heard in the High Court. It does, however, permit the use of the High Court's inherent jurisdiction to make **incidental or supplemental** orders to give effect to decisions within the jurisdiction of the family court (para 15).

20. Included within the list of matters which fall outside the jurisdiction of the Family Court (Part A of the Schedule) is:

The inherent jurisdiction of the court relating to children (including applications for interim relief and injunctions invoking the inherent jurisdiction of the court and applications to make a child a ward of court or to bring such an order to an end).

Included within the list of matters where the family court has jurisdiction, but they must be commenced in the Family Division (Part B of the Schedule) is:

Issues as to publicity (identification of a child or restriction on publication or injunctions seeking to restrict the freedom of the media) where this is the principal relief sought.

The Court notes that although the 2018 guidance refers back to the 2014 allocation guidance and does not purport to amend it, there are subtle differences between them. Unlike the 2014 guidance, in the 2018 guidance the exercise of the inherent jurisdiction reserved to the High Court is specifically restricted to "that relating to children." Interestingly, issues of publicity are also dealt with somewhat differently in that in the 2014 Guidance they are simply restricted to the High Court, whereas the 2018 Guidance provides they must be issued in the High Court but can thereafter be transferred to, and be determined in, the Family Court.

Application of the rules and Guidance to this case:

21. Three questions arise:

- i) Does an application for permission to publish information about Children Act 1989 proceedings fall within paragraph H of column 2 of the schedule to President's Guidance of 22 April 2014, Allocation and Gatekeeping for Care, Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law) and/or Schedule A of the *President's Guidance: Jurisdiction of the Family Court: Allocation of Cases within the Family Court to High Court Judge Level and Transfer of Cases from the Family Court to the High Court*, such that such applications are reserved to the High Court?

- ii) Does an application for permission to publish information about Children Act 1989 proceedings fall within Part B of the Schedule to the *President's Guidance: Jurisdiction of the Family Court: Allocation of Cases within the Family Court to High Court Judge Level and Transfer of Cases from the Family Court to the High Court*, such that any application must be commenced in the High Court, albeit it may be transferred to be heard in the Family Court.
- iii) Notwithstanding i) and ii), does an application for permission to publish information about Children Act 1989 proceedings heard in private constitute an "incidental or supplemental order" to give effect to a decision within the jurisdiction of the family court, as set out within paragraph 15 of the 2018 Guidance.

Does an application for permission to publish information about Children Act 1989 proceedings fall within paragraph H of column 2 of the schedule to President's Guidance of 22 April 2014, Allocation and Gatekeeping for Care, Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law) and/or Schedule A of the *President's Guidance: Jurisdiction of the Family Court: Allocation of Cases within the Family Court to High Court Judge Level and Transfer of Cases from the Family Court to the High Court*, such that such applications are reserved to the High Court?

- 22. In the Court's judgment the answer to this first question must be, yes. The 2014 Guidance refers broadly to any 'injunctions invoking the inherent jurisdiction of the court' and 'interim or substantive relief which requires the inherent jurisdiction of the High Court to be invoked'; and 'issues as to publicity (identification of a child or restriction on publication or injunctions seeking to restrict the freedom of the media).' An application to permit publication of information clearly falls within those terms. Furthermore, although the 2018 Guidance may be read so as to narrow the reservation of matters involving the inherent jurisdiction to those 'relating to children', there is clearly considerable force in the argument that any application to publish information from Children Act 1989 proceedings is a matter 'relating to children.' This is reinforced by the fact the wording in Part A of the Schedule in the 2018 Guidance is not further narrowed – as it could have been – to reserve to the High Court only matters invoking 'the inherent jurisdiction of the court relating to *the upbringing of children*' (which would not encapsulate a matter of publication, see *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4).
- 23. The Court is therefore satisfied that both the 2014 and 2018 Guidance *prima facie* reserves an application to permit publication of information relating to Children Act 1989 proceedings heard in private, to the High Court.

Does an application for permission to publish information about Children Act 1989 proceedings fall within Part B of the Schedule to the President’s Guidance: Jurisdiction of the Family Court: Allocation of Cases within the Family Court to High Court Judge Level and Transfer of Cases from the Family Court to the High Court, such that any application must be commenced in the High Court, albeit it may be transferred to be heard in the Family Court.

24. If the Court is wrong about the answer to the first question, the Court is satisfied an application to permit publication of information relating to Children Act 1989 proceedings heard in private, would nevertheless fall within Part B of the Schedule to the 2018 Guidance as an issue as to publicity, *provided it is the principal relief*

sought. This last caveat clearly relates to the exception provided for within paragraph 15 of the 2018 Guidance, to which the Court will turn next. However, for present purposes, Part B of the Schedule to the 2018 Guidance would require such applications to be commenced in the High Court.

25. The Court thus turns to the third question.

Does an application for permission to publish information about Children Act 1989 proceedings heard in private constitute an “incidental or supplemental order” to give effect to a decision within the jurisdiction of the family court, as set out within paragraph 15 of the 2018 Guidance.

26. It follows from the answers to the first two questions that an application for permission to publish information about private Children Act 1989 proceedings involves the exercise of original or substantive jurisdiction in respect of those exceptional matters, including applications under the inherent jurisdiction of the High Court, that must be commenced and heard in the High Court. That conclusion remains, however, subject to the qualification contained within paragraph 15 of the 2018 Guidance: whether the order constitutes an ‘incidental or supplemental order’ to give effect to decisions within the jurisdiction of the family court.
27. It was argued on behalf of PA that a transparency order should be regarded as part of the ‘every-day business of the Family Court’, such that it is properly categorised as an incidental or supplementary order, being part of the suite of considerations to which the Court must address its mind at the conclusion of the substantive welfare proceedings. In support of that contention, the applicant relied upon Wall LJ’s approach to s 97 of the CA 1989 in *Clayton v Clayton* [2006] EWCA Civ 878. The guardian and the local authority opposed such a categorisation of a transparency order.
28. The meaning of paragraph 15 of the President’s Guidance was considered in detail by the President, Sir Andrew McFarlane, in *Re K (Children) (Powers of the Family Court)* [2024]

EWCA Civ 2. The issue in that case was whether a Circuit Judge had jurisdiction to grant injunctive relief addressing the father's parental controls over the children's iPhones, the circuit judge having declined to grant the injunction on the basis she did not have the power to do so. The President, giving the judgment of the Court of Appeal, held she did have the necessary power, the order sought being with respect to the father's exercise of parental responsibility and incidental to the substantive matters (the making of a care order in favour of the local authority) before the court. The Court of Appeal provided a helpful stepped approach to dealing with such questions:

35. Drawing matters together, we would summarise the position in this way:

- (1) The family court is a single, unified court within which almost all family proceedings are conducted.
- (2) The legislation shows that Parliament intended the family court to have full and flexible powers to achieve its aims, and for family business to be conducted by the court unless there are specific reasons for the High Court to be engaged.
- (3) Family business is distributed within the family court to the levels of judge ordained by the Rules, the 2014 Guidance and the 2018 Guidance.
- (4) Once a family case has been allocated, there is parity among judges and magistrates of the family court in relation to the orders that can be made, subject only to the limits on remedies that appear in the Schedule 2 to the Rules.
- (5) Family proceedings that cannot or should not be commenced in the family court, but must instead be commenced in the High Court, are most conveniently listed in the Schedule to the 2018 Guidance.
- (6) When family proceedings have been properly issued in the family court, it is open to the court to make incidental and supplemental orders to give effect to its decisions.

36. The practical consequence is that where judges of the family court are considering whether they have the power to make a particular order, they should ask these questions:

- (1) Are these properly issued family proceedings?

- (2) Is the order sought one that is incidental or supplemental to the substantive orders that are sought in the proceedings?
- (3) Is the remedy one that is reserved to a higher level of judge by the Schedule to the Rules or by the 2014 Guidance?
- (4) Is the application one that is reserved to the High Court by the Rules or by the 2018 Guidance?

If the answer to the first two questions is 'yes' and to the other questions 'no', the power to make the order exists....

37. The conclusion to be drawn is that judges of the family court should not be deterred from making incidental and supplemental orders that are beneficial and fair. They should approach the matter on the basis that they have the power to make such orders unless it is shown by reference to the Rules and Guidance that they do not. In this way, effective orders can be made in appropriate cases and delay, expense and duplication of effort can be minimised.

- 29. In answering the four questions identified in para 36 of the judgment with respect to the making of a transparency order, the Court discerns no difficulty with judges of the Family Court being able to grant the *remedy* sought by the applicant which is essentially injunctive relief (question (3)). There is nothing within Schedule 2 of the Composition and Distribution of Business Rules 2014 that reserves the granting of injunctive relief as sought within these proceedings to the High Court. The issue remains one of *jurisdiction*: whether the Family Court has the *power* to grant such relief, which turns on question (2) and (4).
- 30. Turning then to the second question identified in para 36, *Re K* was a much more straightforward case of injunctive relief being sought in support of and to give effect to the care orders. Orders dealing with publicity are much less obviously *incidental* to the substantive welfare matters before the court. The Court can certainly see the advantages of an application for a transparency order being dealt with by the same judge who heard the substantive welfare matters given their familiarity with the case and the parties. However, whilst a transparency order clearly has a connection to the underpinning welfare decision, the two matters are not dependent upon one another. A transparency order does not impact upon the welfare decision, support it or give effect to it. The merits of making a transparency order are not causally related to the outcome of the substantive welfare proceedings and vice versa. Publication may or may not be a live issue upon conclusion of the proceedings.

Permission to publish will usually require distinct consideration, with a separate application, setting out in clear terms the order sought, and who should be notified of the application. It is significant that in many cases the rights and interests of non-parties may be engaged – the media, health and social welfare professionals and court instructed experts – who may have relevant Article 10 and Article 8 rights to be considered in the balance. Their interests cannot be properly captured as part of the wrapping up of the substantive welfare proceedings to which they are not a party. Different legal tests apply. Publication is not a matter with respect to the upbringing of children. Welfare is not paramount. It is not without significance that in *Clayton v Clayton*, Wall LJ was specifically directing the mind of parties to whether there were any outstanding *welfare* matters that required the protection of s 97 to be continued.

31. The significance and separate consideration to be given to all of these factors is particularly clear if an application with respect to publication is made once the substantive proceedings have closed. In such circumstances it is difficult to categorise the application to publish as anything other than distinct from and separate to the substantive proceedings, with permission to publish and a transparency order being the principal relief sought. The Court observes that it would be a surprising position for the question of the Family Court's jurisdiction to make a transparency order to turn on whether an application is made within or outside of extant proceedings.
32. I am therefore satisfied that an application seeking permission to publish information about Children Act 1989 proceedings heard in private is not properly categorised as incidental or supplementary to the substantive welfare proceedings.

Conclusion:

33. Navigating through the relevant statutory provisions, rules and Guidance is a thorny exercise. I am however satisfied that applying the current 2014 and 2018 President's Guidance, an application for permission to publish information about Children Act 1989 proceedings heard in private, is a matter invoking the inherent jurisdiction and reserved to the High Court. As I recognised in *M v F & Anor*, that is a conclusion that some may regard as less than satisfactory because it makes a transparency order less readily obtainable outside the parameters of the current rules.
34. Is that conclusion a troubling one? Views can clearly differ. The landscape within which a transparency order may now be made in the Family Court has clearly changed very significantly since the 2014 and 2018 Guidance were issued. However, as I noted in *M v F & anor*, there has been a careful process of piloting, scrutiny and now implementation of new statutory rules that facilitate within the Family Court reporting by accredited members of the media and legal bloggers who were in attendance at the hearing. There may be a strong argument founded in the principle of open justice for further changes to the rules and

Guidance to facilitate the making of transparency orders in the Family Court in a much wider range of circumstances. Those changes may however more properly be made by the Family Procedure Rule Committee following thorough consultation with all interested stakeholders.

35. Finally, even if I am wrong about the conclusion reached in respect of the 2014 and 2018 guidance and the application of *Re K*, and the Family Court does have jurisdiction to make such orders, there would be a good argument as a matter of allocation for such applications to continue to be allocated to a High Court judge given the emerging nature of this jurisprudence and the potential complexity, depending on the nature of the order sought, of extending the scope of transparency orders outside the current provisions of the FPR 2010. Such allocation guidance would again however be a matter for the Family Procedure Rule Committee.

Ms Justice Harris

17th February 2026