Neutral Citation Number: [2010] EWHC 1238 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/2/2010

Before :

Stephen Cobb QC
sitting as a Deputy High Court Judge

- -

Between :

London Borough of Lewisham **Applicant**

- and -

Respondents

D and others

- -
- -

Ms Lesley Tapson	for the Local Authority
Mr. Dorian Day	for the First Respondent
Mr. Neil Bullock	for the Fifth Respondent
Ms Samantha King	for the Seventh to Tenth Respondents (children by their Children's Guardian)
Mr. Tom Little	for the Commissioner of the Police for the Metropolis

Hearing dates: 16th and 18th February 2010

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Judgment

Introduction

1. On 10th September 2009, the London Borough of Lewisham ("the Local Authority") commenced care proceedings under Part IV CA 1989 in relation to four children; they are
   (a) R
   (b) A
   (c) B
   (d) J

2. Those proceedings were transferred from the Family Proceedings Court to the Principal Registry of the Family Division on the 25th September 2009; they were further transferred to the High Court by Order of the 22nd December 2009 principally for the determination of the issue which I have been required to adjudicate upon at this hearing.

3. It is now agreed that the proceedings will remain in the High Court for ultimate resolution.

4. The First Respondent to the proceedings is D. She claims to be the mother of the three older children and as the mother would be an automatic respondent to this application: see FPR rule 4.7 and Appendix 3), and the maternal aunt of the youngest, J.

5. The second, third and fourth Respondents are the putative fathers of R, A and B respectively. The fifth Respondent is said to be the mother of J; the sixth Respondent, his father. The first and fifth Respondents are said to be sisters. The children are the seventh to tenth Respondents to this application, and are represented in the proceedings by their Children's Guardian.

The background

6. It is unnecessary for me, for the purposes of this judgment, to do any more than sketch the background history to set a context for the decision which I have to make.

7. Safeguarding measures were taken in respect of the children on 9th September 2009 following the disclosure by R that the First Respondent had beaten her the previous evening with a flex from a mobile phone charger; R was said to have visible marks on her upper legs and back which appeared to be consistent with this assertion, and was reported to appear frightened of the First Respondent. It transpires that R had been the subject of social work concern earlier last year, when she had disclosed to school that she had been hit by the First Respondent with a wooden spoon. As the evidence has unfolded, A and B have emerged as further potential victims of the alleged physical abuse. It is no part of my task at this stage to form a view about the veracity of these allegations and I do not do so.

8. It is relevant however to note that the police commenced parallel / linked investigations in to the allegations of physical abuse. The First Respondent is now being prosecuted in relation to the alleged assaults to which I have just referred; on the 6th January 2010 she was charged with:

   (a) Three counts of assault (section 1 CYPA 1933);

   (b) One count of wilful ill-treatment (section 1 CYPA 1933);

   (c) One count of common assault.

9. At the time that the protective measures were taken, R informed the social worker and the child protection police officer that A and B were not her siblings but her cousins; subsequently A disclosed (also I believe in discussions with the social worker and the child protection police officer) that the First Respondent is not in fact her mother but her auntie; R has told the investigating authorities that A and B are her cousins. When in foster care, R allegedly referred to A and B as her 'pretend brother and sister'.

10. The First Respondent disputes the children's assertions as to her familial status. The First Respondent has produced birth certificates in relation to the children, which she maintains demonstrate with sufficient authority that she, the First Respondent, is indeed the mother of R, A and B, and that her sister, (the fifth Respondent) is the mother of J.

11. Given the children's comments about their parentage, and the conflicting comments of the First Respondent, the Local Authority resolved to commission DNA testing of the children. This is achievable under the provisions of section 20 of the Family Law Act 1969, subject to the issue of consent (section 21(1) ibid.), and is appropriately directed where the court considers it is in the best interests of the child so to do (see *inter alia* Re H (Paternity: Blood Test) [1996] 2 FLR 65).

12. By Order of DJ Cushing (16.10.09) the Local Authority obtained an order for the filing and service of the results of such testing of the children, undertaken explicitly (reference the order) "for the purposes of ascertaining whether the [First Respondent] is or is not excluded from being the mother of those children, and whether the said children are related, as siblings or otherwise". I understand that at that stage, the First Respondent was indicating her agreement to submitting to DNA testing and accordingly samples were taken from the children.

13. Indeed on the 22nd October 2009, I note that the mother attended at the GP surgery for the purposes of giving the DNA sample; in the end, it is reported, she declined to do so as, it is said, she complained that she did not have an interpreter to assist her to understand the consent form. I have not been able (nor has it been necessary for me) to investigate the precise circumstances surrounding the visit, but I mention it here for it appears to represent the 'turning point' in the First Respondent's attitude to the obtaining of her DNA within these proceedings.

14. On 6th November 2009, DJ Green gave further directions in relation to the obtaining of DNA samples, including notably granting an extension of time for the mother to provide her DNA sample. It was immediately following this hearing, says the social worker, that the mother explicitly indicated that she would not give her DNA sample.

15. It is to be noted that following that directions hearing, and before the next court hearing, R was interviewed (I believe for a second time) under the Achieving Best Evidence Guidance; in that interview (conducted on the 17th

November) she informed the investigating child protection workers that J was her 'brother', not (as the First Respondent would assert) her first cousin.

16. On the 17th December detailed directions were given for the obtaining of DNA samples from the putative fathers (some of whom it is believe reside abroad), and further directions were given for filing the results of the DNA samples taken from the subject children; once again, the mother was granted extended time to provide a DNA sample although on this occasion, DJ Green directed further as follows:

> "if [the first Respondent] declines to provide such sample, the [First Respondent] shall by 12 noon on the 24th December 2009 file and serve a position statement setting out her objections to providing a DNA sample."

17. The case was then timetabled up to final hearing.

18. At some point in this history, though it is not clear to me exactly when, it became apparent to those involved in the family proceedings that while under arrest a DNA sample had been taken from the mother as part of the criminal investigation. On the 22nd December, the Court of its own motion (per DJ Green), transferred the proceedings to the High Court, specifically for the High Court to consider whether the Children's Guardian should apply for an order that the Commissioner of the Metropolitan Police should "make available the DNA sample [of the First Respondent] held by his force … for the purposes of ascertaining her relationship to each of the children who are the subjects of these proceedings".

19. The parties appeared before The Honourable Mrs Justice Macur on 20th January 2010. The Commissioner for the Metropolitan Police was represented. Although the Children's Guardian was keen to pursue the obtaining of "hard and reliable" data about the genetic heritage of the children (see Position Statement: 16.1.10) it was, I believe, swiftly recognised by the parties that the step which had been contemplated by DJ Green could not be fulfilled as a matter of law. In short, the police could not disclose the DNA which they had obtained under section 64 of the Police and Criminal Evidence Act 1984 into the family proceedings. If there was any doubt about it, that doubt had been resolved by the decision of Ryder J in The London

Borough of Lambeth v S C V J & others [2006] EWHC 326 (Fam) [2007] 1 FLR 152, (the "Lambeth case") which I discuss below.

20. However, at the hearing on the 20th January, the Metropolitan Police Commissioner indicated to the Court his intention to apply for disclosure to the police of the children's DNA samples and/or the results of the DNA testing which had been commissioned (but not in fact yet obtained) in these proceedings.

21. It is apparent from the Order (and from what I have been advised in submissions) that Macur J considered that issues around disclosure of the DNA samples and the relevant reports concerning the DNA in and out of these family proceedings should in fact be dealt with in two stages:

    (a) In the 'first stage', the Court would consider whether the material already obtained in the family proceedings of the children's DNA should be disclosed to the police.

        If that application were granted, and the DNA samples and associated reports were indeed disclosed,

    (b) In a 'second stage' the Court would consider (if anyone should so apply) whether (after the police had brought the evidence of the DNA of the children and the DNA of the mother together) it would or should direct the police to disclose the resulting evidence of such a 'matching' exercise.

22. On 25th January 2010, Cellmark produced a report for the Local Authority setting out the DNA profile of the children, and its conclusions.

23. On 4th February 2010 the Metropolitan Police Commissioner made his application for disclosure of

    (a) A portion of the DNA evidence relevant to the older 3 children obtained within the family proceedings (at the hearing I gave leave to the MPC to amend the application to include J; Mr. Bullock for the Fifth Respondent, without instructions did not oppose the application to amend) sufficient to be able to make their own analysis;

(b) the resulting DNA profiles of the children;

(c) the DNA comparison report.

24. The application is supported by a statement from Trainee Detective Constable W.

25. It is to that application (i.e. the 'first stage' of the process) that this judgment is directed.

The law

26. It is right (particularly in light of the arguments advanced on behalf of the First Respondent) for me to start with section 64(1A) of Police and Criminal Evidence Act 1984 (as amended). This provides as follows:

> *'Where—*
>
> *(a) Fingerprints … or samples are taken from a person in connection with the investigation of an offence, and*
>
> *(b) subsection (3) below does not require them to be destroyed,*
>
> *the fingerprints … or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution…'*

27. Section 64(1B)(c) and (d) of PACE 1984 provides:

> *'Where—*
>
> *(c) the reference to crime includes a reference to any conduct which –*
> *i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or*
> *ii) is or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;*
> *and*
>
> *(d) the reference to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.'*

28. As mentioned above, there was agreement at court on the 20th January 2010 that the Court could not order the MPC to disclose or release any sample of the DNA taken from the First Respondent; Ryder J in the Lambeth decision made this clear; I include the relevant section in this Judgment, as it is relevant to the submissions made on the part of the First Respondent.

> ***[42]*** *Can a family court order that D's* [in fact the victim of criminal assault in that case] *blood sample or the DNA profile derived from it be used for a purpose not within the meaning of s 64(1A) of PACE 1984? The purposes to which samples may be put are described in ss 64(1A) and 64(1B)(c) of the Act. They are specific and narrow. They were considered by the House of Lords in R (S) v Chief Constable of the South Yorkshire Police; R (Marper) v Chief Constable of the South Yorkshire Police [2004] UKHL 39, [2004] 1 WLR 2196, [2004] UKHRR 967.*
>
> ***[43]*** *In Marper it was argued that the words 'for purposes relating to' were capable of permitting uses other than those stated (see para [30]). Marper involved the legality of taking and retaining DNA samples and profiles. The appellants appealed against a decision refusing an application for a declaration that s 64 of PACE 1984 as amended was incompatible with Arts 8 and 14 of the Convention. Lord Steyn rejected the argument and construed the words in issue as relating solely to each of the three defined uses in s 64(1A) rather than as an invitation to construct other uses not defined by Parliament.*
>
> ***[44]*** *Either Art 8 of the Convention is not engaged where a sample is retained for one or more of the three purposes set out in s 64(1A) of PACE 1984 or if it is, the three purposes fall within the qualifications permitted by Art 8(2). The House held that the Act's provisions were human rights compliant precisely because the purposes were strictly limited and in that context Lord Steyn emphasised that the purposes were to be strictly construed. Accordingly, the use of retained DNA samples for any purpose other than that related to the specified uses in the Act would be contrary to the clear wording of the Act and inconsistent with the public policy that underpins the Act. Furthermore, in my judgment, the prohibition on other uses is a proportionate interference having regard to that public policy.*
>
> ***[45]*** *If PACE 1984 is human rights compliant ie its provisions are a proportionate pursuit of a legitimate aim within the qualifications to the right and those purposes are to be strictly construed, then there is no question that the prohibition on use of retained samples must extend to their use in family proceedings which are not within the three purposes set out in s 64(1A) of PACE 1984.*
>
> ***[46]*** *Accordingly, it is not necessary to 'read down' the provisions of PACE 1984 to make them human rights compliant. The establishment of parentage by the use of samples seized and retained by the police is not a purpose authorised by Parliament. Each of the incompatibility arguments raised before this court is flawed. I hold that the provisions of PACE 1984 do apply to D's blood sample and the DNA profile derived from it and I decline to declare that the provisions of the Act are incompatible with Art 8 of the Convention. Accordingly, there is no power in this court to order disclosure of this sample and the application is dismissed."*

[my emphasis]

29. As to the disclosure of the children's DNA samples and/or profile and/or report to the MPC, the parties have been broadly agreed as to the relevant law and I am grateful to them for their helpful oral and written submissions.

30. My specific attention was drawn to the decision of the Court of Appeal in Re C (A Minor) (Care Proceedings: Disclosure) [1997] Fam 76, [1997] 2 WLR 322, sub nom Re EC (Disclosure of Material) [1996] 2 FLR 725 ("Re EC"), to the more recent decision of the Court of Appeal in Re H [2009] EWCA Civ 704 ("Re H"), and to the decision of Munby J (as he then was) in Re X [2007] EWHC 1719 (sub nom Re X Children [2007] EWHC 1719 (Fam) [2008] 1 FLR 589) ("Re X").

31. Rather than set out the relevant extracts from the authorities *in extenso* here, I refer to those judgments where relevant in considering the arguments which have been marshalled before me.

Arguments in favour of disclosure

32. Trainee Detective Constable W in her statement of evidence in support of the application outlines the history of the police investigation, and indicates specifically that "my suspicion that D may not be the biological mother of all of the children has led me to consider whether D may be involved in child trafficking"; she relies on four specific pieces of 'evidence' or inference (none of them, as Mr. Little on behalf of the Metropolitan Police Commissioner rightly conceded, being particularly probative in isolation) in support of her tentative belief.

33. Mr. Little, in presenting arguments to which Ms Tapson for the Local Authority and Ms King for the Children's Guardian extended their support, invited me to consider carefully the factors in Re EC. It was submitted that there were a number of key factors which pointed in favour of disclosure; some were neutral; some were irrelevant; none were against. He emphasised in particular the importance of collaborative working, and the vital nature of the DNA evidence if the investigation were to proceed much further. Ms King for the Children's Guardian went further in submitting that in applying

the test in Re EC, I would be "bound" to accede to the application made on behalf of the Commissioner; I interpret that submission not as indicating that I would robbed of discretion, but that I would be driven to exercise it in one way only.

34. As for the children's human rights, Mr. Little fairly acknowledged that the children's human rights (article 8(1)) would be "impinged" by the grant of this application, but claims that such impingement would be justified (article 8(2)).

35. It is emphasised that it is not the intention or application of the MPC for the children to have to give further DNA; the MPC simply wishes access to the DNA (and the report) already obtained.

Arguments against disclosure

36. Arguments against disclosure were presented by and on behalf of the First Respondent; her own position on the provision of DNA was set out in her witness statement of the 4th December 2009. She said this:

> "*I am the mother of R, A and B…*
>
> *I am not agree (sic) to the DNA testing. I believe that the Local Authority is going one step too far in insisting on this testing when they have all the necessary documentation to show maternity of these children. Moreover I do not fully trust the Local Authority in these proceedings … I am mistrusting as to what they will do with the DNA tests.*"

37. As I mentioned above, the First Respondent was specifically directed by the Court to file a further statement by the 24th December 2009 in the event that declined to provide a DNA sample (see para.10 Order of DJ Green of 17.12.09 referred to above); in the event she did not in fact do so. I do not count that against her but it is regrettable that she did not take that opportunity.

38. Her arguments on this application were presented by Mr. Day; they can, I hope, be fairly distilled as follows:

    (a) The primary submission was that I should really look at the 'first stage' and the 'second stage' together. Given that in due course an

application is likely to be made within the CA 1989 proceedings for the police to disclose the evidence relevant to the results of the 'marriage' of the DNA samples (I add here for the record that such an application is indeed intended), I should reject the MPC's application now. If I grant the application, it is likely to lead to this Court at the second stage ordering the disclosure of the Mother's DNA evidence into the family proceedings in a manner which would otherwise be prohibited by section 64;

(b) The mother does not trust the social services, who she says have wrongly taken her children into care; she does not trust anyone with the DNA

(c) It is not a necessary or proportionate exercise to disclose the DNA of the children to the police in this way;

(d) The Police's case in relation to potential child trafficking charges is weak.

39. Mr Day added that if I were to be persuaded by the application at all, then I should take the view that it is unnecessary for the police to have the DNA samples themselves; they should satisfy themselves with the report on the DNA of the children.

40. Significantly, Mr. Day conceded that most of the Re EC factors point in the direction of disclosure; he nonetheless emphasised the fact that the CA 1989 proceedings are private proceedings, and the information garnered there should remain so.

Discussion

41. I have considered with care the competing arguments which have been ably presented to me – in writing and orally – by all advocates.

42. I have considered the wide range of factors relevant to the issues in the case, and have sought to identify, evaluate and weigh those factors which point in favour of the disclosure sought against those factors which point in the other direction. There is, therefore, a balance to be struck between the various

competing interests. For the purposes of this review of the relevant factors a reasonable place to start is Re EC. It is vital that I should have regard to the various Human Rights considerations which require to be protected and I do so. I of course remind myself that the welfare of the children in this balancing exercise, although obviously important, are *not* paramount.

43. Of the ten factors listed in Re EC some are more important in my review than others (Swinton Thomas LJ was clear that the list of factors was not an exhaustive list, and that "It is impossible to place them in any order of importance, because the importance of each of the various factors will inevitably vary very much from case to case").

44. I identify below the seven relevant factors from Re EC and address them in the order in which I regard them as significant on the facts of this case.

45. (1) "The public interest in the administration of justice. Barriers should not be erected between one branch of the judicature and another because this may be inimical to the overall interests of justice". I entirely associate myself with the comments set out in the recent judgments to which I have already made reference about the importance of this issue, and – in my judgment – importance of this issue on the facts of this case.

46. Since the decision in Re EC there has been a wider recognition of the importance of sharing, and opportunity to share, information between relevant agencies (see generally Re H). As Bodey J said in Re H

> "*Awareness of the fact that disclosure can now be made to the police in prescribed circumstances without the permission of the court…" would have made a difference to the Judge's assessment in that case…*

47. Thorpe LJ in the same case underlined the importance of collaborative working:

> "[*21] …where the police apply, they are seeking a sharing of information between the two justice systems which are working side by side in cases involving the protection of children. The disclosure is to responsible professionals who will use the material for the purpose for which it is shared, namely criminal investigation and possible prosecution. The criminal justice system has its own responsibility and powers to protect the vulnerable*"

48. Munby J. in Re X said:

> "*it is important in this kind of situation that the family court and the Crown Court work together in co-operation to achieve the proper administration of justice in both jurisdictions*" (para.43)

49. (2) "The public interest in the prosecution of serious crime and the punishment of offenders, including the public interest in convicting those who have been guilty of violent or sexual offences against children. There is a strong public interest in making available material to the police which is relevant to a criminal trial. In many cases, this is likely to be a very important factor." This point was re-inforced by Munby J. in Re X when he said at para.35:

> "…*there is the powerful public interest in ensuring the proper administration of criminal justice, the public interest in ensuring, so far as possible (and, I would add, without unnecessary let or hindrance by the family court), that the innocent are not wrongly convicted and, more to the point in the present case, that the guilty are rightly convicted and appropriately sentenced.*"

On the issues arising in this case, I am entirely satisfied that this public interest is engaged.

50. (3) "The gravity of the alleged offence and the relevance of the evidence to it. If the evidence has little or no bearing on the investigation or the trial, this will militate against a disclosure order." This is plainly linked to the issue above. Child Trafficking is a serious criminal offence; it concerns the business of removing children from their homes and families, transporting them elsewhere, whether elsewhere within the country or overseas, to be put to use by others, usually to make money. The purpose of this exploitation is usually child labour, or child sexual exploitation. Besides the harm inflicted by the exploitation, the separation of the children from its family and its environment aggravates the harm inflicted. These offences are difficult to investigate and difficult to prosecute. The evidence sought here is fundamental to the investigation; it may be said to be the foundation stone of such prosecution. In the circumstances, the importance of the evidence gravitates strongly in favour of disclosure

51. (4) "The desirability of co-operation between various agencies concerned with the welfare of children, including the social services departments, the police service, medical practitioners, health visitors, schools, etc. This is

particularly important in cases concerning children." Already in this case the police have co-operated with the Local Authority and the family court in providing information and evidence which will be valuable for the family court; it is relevant for me to consider and weigh in the balance a reciprocity of attitude / co-operation.

52. (5) "The welfare and interests of the child or children concerned in the care proceedings. If the child is likely to be adversely affected by the order in any serious way, this will be a very important factor." I have in mind that if the children with whom I am concerned *have* been brought into this country as a result of trafficking, then this is likely to have serious implications for their welfare.

53. Because the Commissioner of Police of the Metropolis does not seek any further testing of the children, I am satisfied that the children will not be directly adversely affected by the order I make.

54. (6) "The welfare and interests of other children generally". It is plain that if the First Respondent has indeed been involved in trafficking children, then this should be exposed in order to protect the welfare of other children.

55. (7) "The maintenance of confidentiality in children cases". I am conscious of the confidentiality of the proceedings, and I recognise the importance of preserving appropriate confidentiality. However, this point does not in my judgment weigh heavily in the scales given the nature of the disclosure sought (i.e. this is not an application for disclosure of a vital free-standing piece of evidence such as an admission or confession).

56. As indicated above, I have brought carefully into my review the Human Rights of the mother and of the children, and have had particular regard to Article 8 of the ECHR:

> *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.

57. In my judgment, the disclosure of the DNA samples of the children *does* interfere with the children's article 8 human rights. However I regard it as

(a) necessary for the prevention of crime, or for the protection of the rights and freedoms of others

and

(b) proportionate

for the disclosure to take place.

58. A by-product of the opportunity to match the DNA samples would be that the children may learn more about their own parentage. Although it does not weigh in the balance, either heavily or at all, I am satisfied that this is a right which may be served by the grant of this application – the right for children to understand and determine their identity is also a fundamental part of private life (see Lord Lester of Herne Hill QC and David Pannick QC of *Human Rights Law and Practice* (Lexis Nexis, 2nd edn, 2004), at paras 4.8.26 and 4.8.28 cited in the Lambeth case), and also following the dissenting opinion of Baroness Hale of Richmond in *R (S) v Chief Constable of the South Yorkshire Police; R (Marper) v Chief Constable of the South Yorkshire Police* [2004] UKHL 39, [2004] 1 WLR 2196, [2004] UKHRR 967, at para [71]: 'there can be little, if anything more private to the individual than the knowledge of his genetic make-up'.

59. Of Mr. Day's arguments, I found his first the most interesting and potentially challenging. In the end, I am not persuaded that by granting the application I would be – as he would have it – licensing the disclosure of evidence of the mother's DNA (through the evidence of the 'match' or 'non-match' with the children's DNA) from the criminal investigation back into the family proceedings by the 'backdoor'. This submission is likely to be better directed at the 'second stage' when the court is considering whether the local authority should succeed in its application (which has been signalled by Ms Tapson and included in the directions order which I am invited to approve at this hearing) not at this 'first stage'. It is a point which will need to be argued then, not

now. I make no comment at this stage about the efficacy of the argument, but I resist Mr Day's endeavour to persuade me to look at the 'first stage' and 'second stage' together. In my judgment it is right that I should consider them separately. Different considerations are likely to arise at each stage.

60. Mr. Day's contention that the basis of the police suspicion for offences of child trafficking look 'flimsy' at this stage overlooks the point that the investigation is at an early stage and at this stage, the evidence may well be undeveloped. As it happens, I do not agree that the inconsistencies between the First Respondent and the children's account of their family relationship (point 1 of Trainee Detective Constable W's points) is a 'weak' point; it is in my judgment far from it.

61. Mr Day further submits that if I am minded to order disclosure, I should limit the disclosure to the report but not the samples themselves. I am clearly of the view that I should not limit the extent of the disclosure (as invited) to the DNA report but not the DNA sample; I do not accept Mr. Day's submission that the infringement to the children's human rights would be less significant if the sample itself were not disclosed; it seems to me that in these circumstances (and where there is no question at this stage of further samples being taken from the children) there is no material difference in the disclosures; either way there is an infringement (albeit a lawful one in my judgment) of the children's rights. In any event, as Mr. Little points out, a DNA report is most unlikely to satisfy the 'continuity' requirements of any possible prosecution, and a further application would then need to be made for further disclosure at which, doubtless, the same arguments which have been raised before me would be marshalled. It is not in anyone's interests that the MPC be required to restore the application for further argument on the further disclosure in order to use the material effectively.

<u>Safeguarding the information</u>

62. During submissions, I invited assistance in relation to the safeguards which could/would be put in place around the storage and ultimate destruction of the DNA. I am pleased to say that safeguards were offered which I find to

be satisfactory, and the order which I will make reflects the protections discussed.

Conclusion

63. In the circumstances, and for the reasons set out and discussed in this Judgement, I am of the clear view that I should grant this application.