

6th October, 2022

Application Re Witness Anonymity and Special Measures

Thursday, 6th October, 2022

MR JUSTICE GOSS: Yes, Mr Johnson.

MR JOHNSON: May it please my Lord. Can I deal with the three things that appear to be on the agenda for today.

MR JUSTICE GOSS: Yes.

MR JOHNSON: The first is custody time limits, which is a pressing issue. The second is the proposed reporting orders which relate to eight separate witnesses. The third is what I will call the Twitter issue as a shorthand. Perhaps we can dispose of the third issue first, because I think there is a misapprehension that there is some sort of application here from the Crown or the defence. The position is that there is none. The court has invited us to raise issues that we foresaw, which we have done, and no issue has yet arisen. Therefore, there cannot be any application and none is made.

MR JUSTICE GOSS: The media -- an authorised media organisation will be entitled, subject to any order I am invited to make and I do make, were I to make one, to live tweet. Anyone else who wants to tweet anything to do with these proceedings will have to obtain my permission. That is the rule. Mr Bunting, you can assist in relation to this. You will be an expert in this field, but that is my understanding.

MR BUNTING: Yes, I think that is what the criminal practice direction suggests.

MR JUSTICE GOSS: That is what the direction says and there is the very recent update, September update to reporting issued by the Lord Chief Justice. That is my understanding. It does not alter anything or my reading of it. I have not gone through it line by line.

MR BUNTING: If I can try and reassure my Lord on this point, the media group, the media organisations and the experienced journalists who sit in court understand the limit of what they can and cannot say.

MR JUSTICE GOSS: Exactly. They are subject to whatever reporting restrictions are in existence and they, as has been emphasised in the documents, are responsible reporters. That is why they do not need my permission, because they will know the reporting restrictions and what they can and cannot report. There is

certainly, as far as I am concerned, no reason for their not being able to live tweet.

MR BUNTING: I am very grateful. I can only apologise for troubling the court with further dense legal analysis last night. I am grateful to Mr O'Leary for bringing it.

MR JUSTICE GOSS: Not at all. I did not actually -- all I got was Mr Skeeting's statement.

MR BUNTING: I am sorry. There was an earlier email as well. If it has escaped my Lord, then so much the better.

MR JUSTICE GOSS: I got Mr Skeeting's, I think, at about 11.30 pm last night. I read it and have read it again this morning.

MR BUNTING: Thank you.

MR JUSTICE GOSS: It confirms what I understood to be the position in relation to Twitter. We can deal with that; we can put that to one side. I have seen the representatives of the media present in court. They know what the rules are.

MR JOHNSON: Yes, of course. Next then, please, the custody time limits.

MR JUSTICE GOSS: Yes.

MR JOHNSON: At present, they expire pursuant to an order your Lordship made some time ago on Monday, Monday the 10th. Of course, the start of the trial calls a halt to the effect of the custody time limit, but the trial does not start until the jury are sworn. We have given notice very recently both to the court and to the defence of our intention to apply for an extension. Your Lordship knows the applicable statutory provisions are set out in section 22 of the Prosecution of Offences Act. The court must be satisfied that the need for any extension is due to some good or sufficient cause and that the prosecution has acted with all due diligence and expedition. The need for this extension has arisen out of the presentation of the defendant this week. In no way has any delay been contributed to by any failure by the prosecution to act with due diligence and expedition.

MR JUSTICE GOSS: Nor, let it be said, by defence representatives either, not that that is relevant; far from it.

MR JOHNSON: No, absolutely. While the authorities clearly establish that the defence cannot consent to the extension of custody time limits, we understand there are no principal objections and, therefore, we invite your Lordship to extend the custody time limit to next Friday, please, the 14th.

MR JUSTICE GOSS: Thank you very much. Mr Myers, do you wish to make any representations in relation to this application?

MR MYERS: My Lord, no. There is no objection.

MR JUSTICE GOSS: Thank you very much, indeed. It is right, of course, the defence cannot formally consent but, for the reasons which are apparent to all who have been present during the proceedings, in relation to this case thus far, there is a good and sufficient cause for the custody time limits to be extended. That is through no fault of the prosecution or the defence, I add, not that that is a relevant consideration. I am quite satisfied the prosecution have acted with all due diligence and expedition. I, therefore, extend the custody time limit in this case until Friday, 14th October 2022. Thank you very much. That is two of the three issues.

MR JOHNSON: Yes. The third, of course, is the more meaty issue.

MR JUSTICE GOSS: Just before we come onto that, because I have -- although, as you are both aware and I do not know whether Mr Bunting is aware but it does not directly concern him so far as the mechanics of the trial hereafter when it may be able to proceed and what can be done to facilitate the commencement of the trial. I do not know whether there is any information that either of you wanted to bring to my attention at this stage, or should we just leave that until after we have dealt with the -- I know. Is what was proposed this afternoon going to take place?

MR JOHNSON: Yes. It is a public court and the public knows that the proceedings have been postponed slightly. The position is that, as a result of information that was communicated to both sides by separate psychologists, it was suggested that a psychiatrist should see the defendant. That has been arranged and it will happen this afternoon at this court. The psychiatrist in question is an eminent psychiatrist in this part of the world. She is the Medical Director at Ashworth Hospital, Dr Melanie Higgins. She is, in effect, a joint nomination by both sides to produce what, in effect, is a non-partisan report.

MR JUSTICE GOSS: As I proposed when we last were assembled in this case. I am very pleased about that. As you also know, I have, insofar as I have any power in relation to ameliorate the situation I have been doing my best -- and I do not know whether it has borne any fruit or not, Mr Myers, but we will wait and see.

MR MYERS: We are grateful for the assistance of the prosecution in undertaking this afternoon's assessment. We are grateful to

your Lordship and the court for all assistance in ensuring matters can proceed. I should say it is a matter for the expert, of course, but there is a settling in Ms Letby's condition at the moment as, perhaps, is to be expected. She remains keen to press on when she can but we need that assessment to take place.

MR JUSTICE GOSS: Certainly that assessment must take place. The other matters which are, sort of, ancillary matters, I hope they have...

MR MYERS: Yes.

MR JUSTICE GOSS: Namely you raised it in the public domain the fact that she was transferred from where she had been in custody to a nearer location and none of her property went with her.

MR MYERS: No.

MR JUSTICE GOSS: Including medication.

MR MYERS: We are grateful for the court's communications in that regard and her property is with her now and is getting to her. The situation is, as I put it this way, settling down now there and that is a great help. We will see how matters proceed from there.

MR JUSTICE GOSS: Exactly. Thank you very much; well, thank you.

MR JOHNSON: My Lord, can I turn then, please, to the eight applications. We are, of course, well aware that your Lordship has received our submissions in writing.

MR JUSTICE GOSS: Yes.

MR JOHNSON: And does not need us to articulate them. But, of course, it is a public court and it is right that those who are here know what the application is and the reasons for it. If you bear with me, please, I will just run through what we have submitted in writing.

MR JUSTICE GOSS: I would be grateful if you would.

MR JOHNSON: Thank you. As I have said, it is an application that relates to eight separate prosecution witnesses. What your Lordship has received by way of material are eight pro forma applications, together with statements from the witnesses concerned and, in one case, at least, some other supporting material.

MR JUSTICE GOSS: Two cases.

MR JOHNSON: Yes, sorry; in two cases. What we are seeking is what is termed as a reporting direction in section 46 of the Youth Justice and Criminal Evidence Act. It is sometimes referred to by the shorthand reporting restriction. What it amounts to is, in effect, an injunction against publishing details of the witness in question that is likely -- and I underline the word "likely" -- to lead to their identification as a witness in these proceedings.

I emphasise that straightaway because the pro forma applications that have been submitted replicate a mistake that was made at an earlier stage of the proceedings in relation to other witnesses, primarily the parents of the children who it is alleged are the victims of these offences.

MR JUSTICE GOSS: That was unfortunate and has obviously led to points being taken which, in fact, fall away, as I understand it.

MR JOHNSON: Exactly. That is why I am, in effect, emphasising that at a very early stage because -- well, I will come to my learned friend's response because I can, perhaps, deal with pretty much on a wrapped-up basis.

So far as our submissions are concerned, we respectfully suggest that really there are a number of separate considerations that are engaged in this application or these applications. First of all, the defendant's right to a fair trial, the Article 6 and the considerations. Secondly, the wider interests of the community at large in seeing a fair trial and the trial being fair to both sides, to the prosecution and to the defence and, in particular, taking into account the overriding objective in the Criminal Procedure Rules. That process, of course, involves individual witnesses being in a position to give their best evidence, thus ensuring a just outcome.

The second subheading of the rights that are engaged here: of course, the Article 10 rights, freedom of expression, the right of the press to report, the important principle of open justice which we hope maintains public confidence in the wider administration of justice.

The third heading, of course, is the private Article 8 right of the witnesses in question. That, in effect, we submit brings us full circle back to the right of the general expectation of the community at large that justice is done because, of course, the witness' Article 8 rights impact on their ability to do their best in giving evidence; in other words, to maximise the quality of their evidence which, of course, is the phrase, or something like the phrase, that is used in section 46 of the Act.

This case, like so many others involving similar issues, involves the conflict between the individual rights of the witness and the Article 10 rights of the news media.

As background, because we submit it is relevant, it seems, from material that has been submitted to the court over the months and is particularly submitted to the court in connection with the submissions made as to venue, this is a case which is putting a significant strain on the Countess of Chester Hospital, because so many members of its staff have been required to attend here on a repeated basis over an extended period of time.

That is relevant in the context of these applications, we submit, because one of the fears that is repeated time and time again by individual witnesses is that if their details are published, it is likely to have an effect on their mental health which, in turn, may impact on their ability to do their job. That, of course, is an act of consideration, so far as the hospital is concerned, and so there is, on the wider public interest, but also more particularly, so far as section 46 is concerned, bears on their capacity to give their best evidence.

It is certainly a case, of course, which is going to generate an exceptional level of publicity and that is important because it is against that certain knowledge or expectation that the witnesses, in respect of whom these applications are made, fear that their lives will suffer an unbearable degree of intrusion if the news media can publish their names. In that respect, my Lord, we invite your Lordship to look at the ruling of Steyn J, which is helpfully reproduced by Mr Bunting in the media's bundle at section 4. It is pages 77 to 78 of that nature. Indeed, the quote "sensational" nature of the case was a factor relied on by the news media in their opposition to the applications that we made before Steyn J. Your Lordship will find a reference to that fact at paragraph 4.2 of the learned Judge's ruling.

The principles that apply to these types of applications are well known. The relevant statutory scheme is set out in the Justice and Criminal Evidence Act, primarily in sections 46 and 52. They are also reproduced in Archbold at sections 4.33 and 4.36 and, of course, rule 6.21(b) of the Criminal Procedure Rules. Again, Steyn J produced a very comprehensive review of the legislative and directory provisions at section 2 of her previous ruling, which starts at page 67 of Mr Bunting's bundle.

MR JUSTICE GOSS: Mr Bunting, of course, represented the media organisations at that hearing as well.

MR JOHNSON: Both hearings, yes. We invited the court also to have regard to, in particular, paragraphs 16 to 22 of the decision of the Court of Appeal in *ITN News & Ors (Willis & Ors intervening)* [2014] 1WLR 199. We recognise, of course, that the effect of any of restrictions in reporting should be limited to those which are reasonable and bearing in mind the context of the public interest in the reporting of these proceedings. That is something that is underlined at paragraph 22 of the *ITN* case.

I am not sure whether it is necessary for me to rehearse what the court's powers are in terms of what the court can do. The factors set out in section 46.4 are, we submit, of particular relevance. In order to make the type of order that we are inviting the court to make, the court must be satisfied that, in giving a reporting direction, it is likely to improve the quality of the witness' evidence or his co-operation with any party to the proceedings in connection with that party's preparation of the case. Your Lordship is bound by the statute to take into account any views expressed by the witness. In exercising the discretion created by the statute, the interests of justice have to be balanced against the wider public interest in not imposing a substantial and unreasonable restriction on the reporting of the proceedings, taking into account the factors in section 52.

Of course, the court can dispense with or vary any order that is made on satisfaction that certain preconditions are established. So, it is not necessarily an immovable position, if your Lordship accedes to our applications.

Dealing with the applications in turn, please, first [Witness 1]. [REDACTED]

Moving on to [Witness 2], he was a registrar at the Countess of Chester during the 12 or so months under consideration in this trial. He is now a consultant paediatrician at a different hospital. There is also a concurrent application in his case for screens. The supporting material, in his case, is at pages 1 to 13. I think I have actually just cut and paste --

MR JUSTICE GOSS: No, that is not right.

MR JOHNSON: No, it is not right. It is page 14.

MR JUSTICE GOSS: Page 14.

MR JOHNSON: So, 14 to 18 is the application. Page 19, I think, is [Witness 2]'s statement, which is the single witness statement in support.

MR JUSTICE GOSS: It is 18 to 20, yes.

MR JOHNSON: I beg your pardon. [Witness 2] has suffered with severe anxiety for the past four years, which of course coincides with the period of time since these events came to a head, since the investigation started at the hospital. These have included sleep issues. He feels that, as a result, he will have problems giving clear and accurate answers in court. He suffers with an underlying medical condition, which is exacerbated by stress. Of course, the case itself is likely to be stressful for him, particularly as it appears from some material that was uplifted from Lucy Letby's home that he was the object of some unrequited affection from her.

It is inevitable, we submit, that if his name is not made the object of a reporting condition, the press interest in him will be relentless. He has two children at high school, who are not aware of his connection to the case. Both are at critical times in their schooling. His son is in his GCSE year and his daughter is in her A level year. The evidence, some of which your Lordship is aware of, shows that not only was [Witness 2] the subject of unrequited affection from Lucy Letby, but his wife was also the subject of intense social media interest at the hands of Lucy Letby.

[Witness 3] is the third witness. [REDACTED] Her general apprehension is influenced by what she describes as previous bad experiences with the press, which centred round the death of a premature baby in 2014 to 2015. That had an effect on her mental and physical health: [REDACTED]. She has experience, she says in her witness statement, of people googling her name and retrieving what proved to be unsubstantiated allegations. [REDACTED] She says that case was dug up when the investigations into these cases started and resulted in adverse consequences for her.

She connects that bad experience with giving evidence and sees it as likely to repeat itself if her name is published in the news media in connection with this case. She feels particularly vulnerable because, if her name is published and then people make an unjustified connection to the past case, she will not be in a position either to explain or defend herself because of her ongoing professional duty of competence in connection with the circumstances of that case. As she sees it, that is all likely to undermine her capacity to give rational and considered evidence.

[Witness 4] [REDACTED]

As with all these cases, my Lord, these are not simply witnesses who are going to come to court to give evidence and go, things will be published and will never have to give evidence again.

These are witnesses, all of whom are going to be coming back repeatedly over a period of months. So, the stress of that is highly unusual in the context of any criminal case but particularly if, following early appearances, there is widespread publicity of a witness' identity. This is a case, we would submit, that falls far outside the normal experience of any criminal case. It is a dangerous thing to say that any case is unique, but perhaps this case can be at least put in the very, very unusual category from that point of view.

MR JUSTICE GOSS: It will be but those witnesses who have to come back more than once or even to give evidence more than once -- in other words, two, three, four, five, six times -- they are going to be under the stress of knowing that (a) they have given evidence and they will be coming back to give more evidence, in some cases, and more evidence and more evidence over a prolonged period. That is what you are essentially emphasising.

MR JOHNSON: Yes, so the shock of seeing their name, the shock of having people talking to them about the evidence they have given. That, in turn, increasing the anxiety of having to give evidence again, the cumulative effect of that. [REDACTED] and exceptionally unusual because of the repeated nature of having to come back and give evidence, all against the background that, as prayed in aid by the news media in relation to the applications made before Steyn J, that this is a sensational -- to use their word -- case. So, an exceptionally unusual situation.

[Witness 5] [REDACTED].

Next is [Witness 6], [REDACTED].

It appears from the way [Witness 6] expresses herself that she is deeply concerned about intrusion. [REDACTED], we would submit that is a reasonable fear and that a press reporting direction will, in effect, negate the problem because if there is no motive to chase her, in the sense of the press cannot get a story for her because of the reporting direction, then that is likely to incur a substantial degree of protection.

My Lord, penultimately [Witness 7], [REDACTED].

Finally, my Lord, [Witness 8], [REDACTED].

Rather than waiting for my learned friend Mr Bunting to make his submissions and then replying, can I deal in advance with some of the points that he makes that are foreshadowed in his note.

We submit that the submissions made on behalf of the media organisation exaggerate the consequences of the making of reporting directions in these eight cases. It may be that that is because of the mistake that we made in the applications, which I addressed, first of all, in making these submissions to your Lordship, in which the applications suggest that there should be a ban on the publication "of any other detail which might tend to identify them as witnesses in these proceedings". Of course, the test is "would be likely" to lead members of the public to identify them. So, we hope, my Lord, that making that concession at this stage will focus the respondent's submissions where they need to go.

It was suggested or it has been suggested in writing that the proposed orders would "render the evidence given by each of these witnesses effectively unreportable". That is at paragraph 2. In paragraph 3, it is suggested that the threshold for making these orders is not met. I will return to those, if I may, after I have addressed the submissions made on the case law that is relied on.

We submit that really the law in this area is pretty uncontroversial. The principles relied on by the respondent, in opposition to these applications, have been mis-contextualised in paragraph 8 of the news media's response. In particular, the new media organisations rely on the words of Kerr J in *Lu* and the words of Lord Reid in *Guardian News and Media*. We submit they overlook the context of those decisions.

We submit the following features of those cases rely deprived them of any persuasive authority in support of the opposition to these applications for the following reasons. First, neither of those cases, and indeed many of the other cases relied on in opposition to these applications, concern the statutory regime in the Youth Justice and Criminal Evidence Act. That was a submission that was made to Steyn J, which her Ladyship accepted in the ruling that she gave in relation to the other witnesses. Your Lordship will find those particular references at page 76 of the bundle, paragraph 3.5, and page 81 at paragraph 6.8.

In the case of *Lu*, the High Court was considering an appeal by Ms Lu, who was a solicitor, who had been acquitted in disciplinary proceedings brought by the Solicitors Regulation Authority. In the context of that hearing, the Tribunal, of its own motion, had anonymised many participants in the proceedings and refused to anonymise Ms Lu. Thus, on appeal, the High Court was considering whether a party to the proceedings deserved anonymity. We make the obvious point, and it is a point that runs through pretty much most, if not all of the authorities that have been quoted, that this is a case involving anonymising

a party but anonymising a witness. There is clearly, we respectfully submit, a world of difference between the two.

Third, as a matter of fact, the anonymity of some of the people mentioned in the Lu proceedings was preserved by the High Court on the basis of what the learned Judge doubted were their contractual rights. We have given your Lordship the references in the judgment there at paragraphs 4 and 133. That was a case in which those individuals had not sought to enforce their rights.

In the case of the participants who had been granted anonymity by the Tribunal, which was there a decision reversed by the High Court, that was because:

"There was no reason not to apply the default position of open justice. They had no particular private or family life issues to protect."

That is most certainly not the position in this case with these witnesses, where their specific issues are well-defined.

In the Guardian News and Media case, first of all that concerned the naming of people against whom directions had been made under the Terrorism (United Nations Measures) Order 2006. Whilst the quotation of Lord Reid in the news media's response at their paragraph 8 is relied on as some sort of authority for naming people involved in proceedings, we submit that it too has been quoted out of context.

Lord Reid's reference at paragraphs -- Lord Rodger, I am sorry. Thank you; Lord Rodger. The reference at paragraph 63 concerned the subject of the story; that is the people against whom the freezing orders had been made, not a witness in the proceedings. So, an obvious distinction between the present case and the case relied on. One only needs to refer to the reference to "stories about particular individuals are simply much more attractive" to see that. Two paragraphs further on, at paragraph 65, we submit the point is reinforced by saying that granting anonymity to people against whom orders are made negates the stimulation of discussion and casts a shadow over entire communities.

That leads into the final point, my Lord, which is that the purpose of the orders that have been made in the Guardian case was a public purpose. Therefore, the effect of any interference with the individual's Article 10 rights was incidental.

My Lord, returning to the suggestion that the proposed directions would render the evidence given by each of these witnesses effectively unreportable, we submit, first, that it is not correct to approach the directions sought on an all or

nothing basis. First, the news media's catastrophic prediction is based on the mistake that I have already acknowledged. Second, it is suggested at paragraph 13A of the response that these directions would prevent the reporting of the witness' evidence completely. It would not, we submit.

Taking them one by one, [Witness 1] does not work at the Countess of Chester, describing her as a colleague, a nurse who worked at the Countess of Chester at the time and then reporting her evidence would not be details that would tend to identify her specifically as a witness in these proceedings. Her name, her address or a picture of her, on the other hand, would but the absence of these details from a story, we submit, would not compromise its impact.

The same comments, we submit, apply to [Witness 2]. So far as the other two consultants are concerned, [Witness 3] and [Witness 8], while both work still at the hospital, describing them either as a colleague or a doctor who worked there at the time would not offend the directions sought and would not compromise the impact of the report.

So far as the four nurses are concerned, [Witness 5], [Witness 4], [Witness 6] and [Witness 7], while, of course, they still work at the Countess of Chester, describing them in similar terms to those I have already set out, we submit, would not offend the terms of the directions sought.

In paragraph 13C, the response engages in an understandable defence of the probity of the news media organisations. But, we submit, it misses the point because section 46 directs the court to consider whether it can be satisfied that, giving a reporting direction, is "likely to improve the quality of the witness' evidence". Therefore, it is the effect of the proposed direction on the performance or co-operation of the witness that is key, not whether the fears expressed by the witness are reasonable or justified. Of course, if they are reasonable or justified, so much the better from our point of view.

We respectfully submit that the clear and considered terms of the statements made by the witnesses clearly establish the qualifying condition is met. The question is, therefore, my Lord, we submit, whether the proposed restriction would be unreasonable, taking into account the provisions of section 52 and wider issues of principle. This is where, we submit, Article 6 and the overriding objective in the Criminal Procedure Rules come into play. We submit that it is in both the defendant's interests and in the interests of the wider community and in the interests of justice to have the witnesses, who have been required to give evidence, in a fit state to give evidence.

Granting the directions in the terms sought provides the best chance of getting the most reliable evidence from these witnesses. We submit that the idea that if these directions are made there will be less public scrutiny of the case is misguided.

My Lord, unless there are any specific issues you would like me to develop, those are our principal submissions.

MR JUSTICE GOSS: No, thank you.

MR JOHNSON: Thank you, my Lord.

MR JUSTICE GOSS: Mr Bunting and Mr Myers, have you discussed between you? Are you content, Mr Bunting

MR MYERS: Yes. I can be very brief -- because Mr Bunting, I anticipate, will deal with the matters in detail -- simply to set out the defence position in summary, my Lord. It is important we recognise, as we do, that we appreciate the stress and the anxiety associated with these proceedings for all those appearing in them in the courtroom.

We do not concern ourselves at this point with any factual assertions that have been made in the statements that your Lordship has been taken to. In not concerning ourselves with those, and by that I refer to factual assertions relating to the defendant or any matters relating to her, we make no concessions as to what has been said about her in some instances, but we do not deal with that now, not for the purpose of this hearing.

Just for the assistance of reference, the points that we have made, but I am not going to repeat them all, given that Mr Bunting, KC will make a detailed application on behalf of the media, are set out at pages 16 and 17 of the agenda bundle, my Lord.

MR JUSTICE GOSS: Yes, I have them.

MR MYERS: They are summarised there. It does not require me to go into the detail here.

We recognise it is entirely a matter for your Lordship but we just say this: we are generally supportive of the application made on behalf of the media organisations by Mr Bunting on this particular issue, recognising it is a matter for your Lordship to determine. The objection that we make to a reporting direction is only insofar as it relates to the name of a given witness. It is not as extensive as saying there should be freedom to give photographs or details like that. It is simply

that the names should not be the subject of a reporting direction; that is the point that we make.

We recognise the concerns about multiple appearances of witnesses, of course we do. Although we observe that if that is the case, it must follow, therefore, that reporting with concerns as to the propriety of the trial would have to take that into account if a witness is continuing to give evidence in the trial. It is not as if their evidence had concluded by the time they leave court to then return, so far as we know, for another witness. I just make that observation. It may ameliorate that concern for the course of the trial.

The final observation we make, purely by way of assistance to your Lordship, is with regard to the terms of section 52 of the Youth Justice and Criminal Evidence Act 1999, which assists the court by identifying matters to be taken into account when weighing the interest in proceedings, the wider public interest. We note included in that, at section 52(2)(a), are matters relating to the open reporting of matters relating to human health or safety. It is one of the features of this case that it relates very specifically to that and the nature of the matters that these witnesses are concerned with. For that reason, we observe that may carry enhanced weight in the interest in knowing who those involved with this are.

That is as far as I go with the submissions we make, because I appreciate it will be dealt with in more detail now by Mr Bunting. Thank you very much.

MR JUSTICE GOSS: Thank you very much. I should have said, when Mr Johnson was addressing the court, that in respect of some of these witnesses, in respect of whom the reporting restriction is sought, there are also applications for some other special measures. I am going to deal with those separately.

MR MYERS: We understand, my Lord. Thank you.

MR JUSTICE GOSS: We are just now dealing with the reporting restrictions. This does not concern Mr Bunting, but just so you can be reassured that we will come on to deal with that separately.

MR MYERS: Thank you, my Lord.

MR JUSTICE GOSS: Yes, Mr Bunting.

MR BUNTING: Thank you, my Lord. As your Lordship will see from our written submissions, I appear on behalf of nine media organisations: the BBC, Sky News, ITN, Reach plc who publish national newspapers such as the Mirror and the Express, but also

local newspapers, Associated Newspapers Limited, Guardian News and Media, Times Newspapers Ltd, News Group Newspaper and the Telegraph Media Group. Together, those nine media organisations make up all of the main national and local press and broadcast media.

The reason we are here today is to seek to try and assist my Lord and also because of their deepening concerns at what they see as their practical ability to convey the reality of this case and the detail of this important case to the public. The reason for that concern is the proliferation of reporting restriction orders which are already in place and those which are now sought. They are not alone in having a degree of confusion as to what can and cannot be published on Tuesday, when they appeared before my Lord. The online court list anonymised even the defendant's name, perhaps because of some concern that there were reporting restrictions in place.

The background to my submissions and the starting point is that Steyn J has already made a series of reporting restriction orders. As a result of those, significant obstacles have been put in the way of the press as if they were going to report these proceedings. So, the press cannot report the identity of the surviving alleged victims. They cannot report the identity of the parents of any of the alleged victims. They cannot even publish the surname of the sadly deceased alleged victims.

That means that, in order to report these proceedings as we go along, each and every one of those individuals is going to have to be given an acronym or a code or a way of referring to them so as to assist the public. That also means taking into account what is already in the public domain about some of those individuals and also about the relationship between those individuals and in taking difficult editorial calls about what can and cannot be published. That has required a significant amount of work to get into a position where journalists are trial-ready and able to report these proceedings. The addition of these eight further applications would make that process considerably more difficult. It would lead to precisely the type of concern that Kerr J alerted to in the Lu case.

Just so we are clear about the proposition that I rely on from that case, what Kerr J says is:

"The justice system thrives on the fearless naming of people, whether bit part players or protagonists. Open reporting is discouraged by what George Orwell called a plague of an initials. Clarity and a sense of purpose are lost. Reading and writing reports about nameless people is tedious."

That is Kerr J, tab 6, page 88, paragraph 6 of the judgment. That is the point. It is not that Kerr J's submissions or judgment was linked to the reporting of defendants; it is even bit part players.

MR JUSTICE GOSS: What is a bit part player? It may mean different things to different people.

MR BUNTING: Indeed.

MR JUSTICE GOSS: What we are concerned with here, we know, are just witnesses in the case.

MR BUNTING: Yes.

MR JUSTICE GOSS: It is not people who may have been associated with the protagonist, adopting the other word that Kerr J uses. Here, we are dealing with a very discrete number of witnesses. How many witnesses are going to be giving live evidence in this case?

MR BUNTING: I understand it is in the hundreds, my Lord.

MR JUSTICE GOSS: It is hundreds, is it not?

MR BUNTING: Yes.

MR JOHNSON: Ninety-six is our estimate.

MR BUNTING: Nevertheless, and I will come to this, my Lord, when I address the detail of the submissions. We are dealing with a significant proportion of witnesses, eight, and we are dealing with witnesses who have a particular relationship to the protagonist, namely the defendant, as we will see in a moment or two. The result of this application would, in my respectful submission, go too far. It would be unjustified in the course of justice.

How I am going to structure my submissions to make that point is, firstly, by homing in on exactly what practical problems would be caused by these orders. Secondly, by trying to assist the court with what the standard is for granting these applications. Thirdly, to look at the evidence and see the extent to which it meets that standard. Like Mr Johnson, it will be necessary, when I come to address the witness statements, to refer to some of those witnesses by name, but we understand the restrictions in so doing.

MR JUSTICE GOSS: Exactly. You will have to, otherwise it cannot be done.

MR BUNTING: My first point is that there are significant practical problems posed by this application. The starting point here is, of course, that this is a high-profile public interest trial. On a number of occasions, Mr Johnson, KC suggested that it was our position that this was a sensational trial. The media organisations who I act for would not use that epithet and have not used that epithet. Indeed, the quote from Steyn J's judgment was from Lord Steyn in *Re S* and from an email from a member of the PA Media, rather than from any of our clients.

The way we would put it, my Lord, is that this is an important case. It is an important case that raises public interest issues. It is an important case that is likely to lead to an emotional reaction from members of the public. All of that heightens the need for responsible reporting for avoiding the proliferation of speculation. All of that are points in favour of open justice, not against it.

Then to address further what we are looking at. Here the application relates to eight witnesses. Secondly, those witnesses are witnesses of direct legal and editorial importance, if I can put it that way. They are witnesses who worked side by side with the defendant, who witnessed her work, who can assist the jury with her character, her quality of work and commitment to the children she was caring for. These are important witnesses for the jury.

Next, these are witnesses whose place of work is important. The reason they are giving evidence is precisely because of where they worked and what they witnessed there. Next, these are witnesses whose relationship to the defendant is important and it is squarely relevant that the defendant may have been obsessive about one of them, the unrequited suggestion in respect of [Witness 2]. It is also relevant that she was mentored by another of them, [Witness 1]. The closeness of the relationship goes to the credibility of the evidence they give.

Next, it is relevant that these witnesses are senior, experienced medical professionals. [Witness 8], [Witness 3], consultant paediatricians. [Witness 2], a nationally recognised expert. [Witness 4], [Witness 5], [Witness 6], [Witness 1] and [Witness 7], all very experienced neonatal nurses. Their jobs, their seniority, their expertise assist the jury in contextualising the evidence that they give. It enables the public to understand the evidence they give. It enables the jury to choose what weight to give to it. It enables the public to understand why the jury may have reached one verdict or may have reached another verdict. All of that detail goes, in my respectful submission, if the Crown succeeds in its application. They are seeking an application under section 46 and under section 46(7), which prevents the reporting of anything which is

likely to identify the witness as a person involved in these proceedings. Of course, that involves reporting any place of work. "Any place of work" being not just the place where they currently work but any place of work.

Looking at, for example, the first one in my Lord's bundle. Significant biographical detail will go. We will not be able to report any place of work of [Witness 1], even if she no longer works at the Countess of Chester Hospital. It may be possible to enable the press to report that she works in the Countess of Chester Hospital but, in my respectful submission, it would require my Lord to first make the order and then to make an accepting direction to the order under section 46(8) to permit the reporting of that specific detail. That is not the proposition that my learned friend adopts.

Then even if we could report that the witness did work at the hospital, as soon as we go any further and start to include further detail of the evidence, such as the relationship with the defendant, the shifts the witness worked, the families they interacted with, then reporting rapidly becomes difficult because the reporting is likely to identify them as individuals involved in these proceedings. That is even though we can see that some of these witnesses are mentors, confidants, close colleagues to the defendant.

So, the submission which we make is not a catastrophic one. It is just recognising the reality of what these orders would represent. It would mean reporting the detail of their witness evidence will become very difficult. It would mean more alphabet soup. The fact and the proposition that these witnesses will come back to give evidence on a number of further occasions makes that practical problem worse. Say, for example, we say Nurse A gave evidence on one occasion. Then, three or four weeks later, Nurse A comes back. How will a member of the public know that is the same Nurse A who gave evidence on the last occasion. It just becomes very difficult. Whereas a name, an identification enables the public to understand who is giving evidence when.

Realistically, what we are looking at are serious practical problems if these orders are granted. Not just practical problems but also problems of principle. To make this point, if I could ask my Lord to turn up the judgment of the Lord Chief Justice in the Sarker case, which is at tab 3 of the first bundle of authorities. In that case, an experienced panel of the Court of Appeal Criminal Division sought to give guidance as to reporting restrictions in general. If my Lord turns up page 27 of the authorities bundle, we see the purpose of open justice and what it is there to guarantee. Just between B and C at (iii), "Full contemporaneous reporting promotes public

confidence in the administration of justice". Then practically here at (iv), "The public nature of court hearings" and I would, respectfully, add naming witnesses "fulfil several objectives. It enables the public to know that justice is being administered impartially".

Pausing there, why does one nurse have anonymity but another does not? Why does the defendant not have anonymity when these nurses do? Why is one category of nurse being treated differently to another.

Then number 2:

"It can lead to evidence becoming available which would not have been forthcoming if reports were not published until after the trial has completed or not at all."

We are all familiar, as members of the media with new evidence coming to light about individual witnesses because they had been named in proceedings.

Number 3, "It reduces the likelihood of uninformed or inaccurate comments about the proceedings". Pausing there, say it is reported that the defendant was obsessive about a consultant with whom she worked without the name of that consultant being given. There is likely to be considerable, unhelpful, uninformed, inaccurate speculation about who that consultant is. Not just one witness' life being made more difficult, but many. This is precisely why it is important to name people so that we get reports right.

Then number 4, "It deters inappropriate behaviour on the part of the courts and others participating in the proceedings". Of course, there is a line of authority which makes it clear that witnesses are more likely to give honest and truthful evidence where they are being held accountable in their own name, than with the benefit of anonymity.

So, when one looks at the practical purpose of open justice, each of those four points made by the Lord Chief Justice in the Sarker case would be undermined by the applications that my learned friend makes. Therefore, the starting point and the first submission which I make is that these orders would, indeed, be a substantial and unreasonable interference with open justice.

That brings me to my second point. Because the interference with open justice is so significant, we have to look for extreme evidence to justify that. Exceptional evidence is how the authorities put it. That is because the statutory regime requires the court to balance the extent to which the

eligibility criteria in section 46 are met with the extent to which open justice is interfered with. Your Lordship sees that from how section 46 is structured and my learned friend has taken you through that.

There are, of course, in subsection 8 and in subsection 9 specific emphasis being placed on open justice and, as my learned friend Mr Myers, KC has said, in section 52(2), specific reliance being placed on the public interest in open justice, both in terms of reporting in courts and in terms, as my learned friend has said, of reporting healthcare areas. That is why, in the Re ITN case -- and the reference here for my Lord's notes is tab 2, page 14, paragraph 22 -- is that the effect of any restriction should be limited to those which are reasonable, bearing in mind the context of the public interest in the reporting of proceedings. My learned friend Mr Johnson was quite right, in my respectful submission, to say that this is a balancing test, the balance between open justice and the points weighed against open justice.

My learned friend Mr Johnson goes on to add a further proposition, which is that Article 6 is, in some way, relevant to this application. I think what he had in mind was, number one, the defendant's fair trial rights. You have heard from Mr Myers, KC about the extent to which the defendant supports this application. Secondly, Mr Johnson seemed to be saying that Article 6 requires witnesses to give evidence and that is simply another way of putting the same point that he makes under Article 8. It is the same factual premise. The third point, which is against Mr Johnson on this, is that none of these witnesses actually say they will not give evidence, if they are required to do so, through their own names.

What I would invite the court to do is to focus on the statutory language and to weigh the extent to which this application is an unreasonable restriction with open justice. That reflects then the wider balance of the authorities. Looking back at the Sarker case, which we have just been looking at, that is guidance being given by the Lord Chief Justice about reporting restrictions in general. The introduction to the passage that we were looking at, at page 26, paragraph 29:

"When dealing with applications for reporting restrictions, the default position is the general principle that all proceedings in courts and tribunals are conducted in public." That is the principle of open justice. Then we see, right at the end of that paragraph, just below where we were looking at before at (vi) and (vii):

"Reporting restriction orders are, therefore, are derogations from the general principle of open justice. They are

exceptional, require clear justification and should only be made when they are strictly necessary to secure the proper administration of justice. They are measures of last resort. They must be established by clear and cogent evidence."

Then we can see how that test is being met in a series of other cases. If I could ask my Lord to turn up the next authority, which is the Khuja case. Khuja was a case in which a member of the public was wrongly named as the suspect in a child sex offence conspiracy during proceedings in open court. He sought an anonymity order in respect of that. That required the Supreme Court -- and the judgment of the majority was given by Lord Sumption -- to look back through all of the authorities on open justice.

My Lord will see at paragraph 13 on page 43 of the bundle of authorities, Lord Sumption starts with the fact that open justice is "the inveterate rule". Indeed, he starts by saying, at paragraph 13, "The significance of open justice has, if anything, increased in an age which attaches growing importance to the public accountability to institutions". He said that, of course, relying on the celebrated judgment of the House of Lords back in 1913 in *Scott v Scott*. He recognised, at paragraph 12, the consequence of that for witnesses.

If I can invite the court to look at Lord Atkinson's dicta from *Scott v Scott*, which is just above that paragraph:

"The hearing of the case in public may be and often is, no doubt, painful, humiliating or deterrent both to parties and to witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all of this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial... administration of justice."

In other words, simply saying that you are going to be deterred from giving evidence is not enough. If it were, it would lead to anonymity orders proliferating and being the norm, rather than the exception.

At page 49 of Lord Sumption's judgment in *Re S*. *Re S* was a case about a child seeking anonymity for his mother who was accused of murdering his brother. My Lord will see, at page 49, just next to D, the test that was applied by the House of Lords in that case. It was a balancing test between Article 8 and Article 10. In other words, it was the same balancing test that my learned friend invites the court to follow in this case.

We can see how that balancing test was resolved in Re S at the bottom of page 49.

MR JUSTICE GOSS: Just going back to that point, I am on page 49. You are inviting my attention to C, is it.

MR BUNTING: It is D, my Lord.

MR JUSTICE GOSS: In Re S.

MR BUNTING: D, yes.

MR JUSTICE GOSS: Where Lord Steyn adopted Lord Hoffman's approach. He summarised the principles in four points at paragraph 17.

MR BUNTING: Yes, exactly. What my Lord will see in that quote is neither Article, that is Articles 8 and 10, has such precedence over the other where the values are in conflict and intense focus on the comparative importance of the specific rights is necessary. It is a fact-sensitive balancing test, similar to the one my Lord is carrying out in this case.

At the bottom of page 49, we can see how that fact-sensitive balancing point was resolved in Re S. In Re S was a child aged five. The child's guardian had brought proceedings seeking anonymity of the child. As Lord Sumption says, at the very bottom of page 49:

"It was a strong case on the facts for there was psychiatric evidence that persistent publicity surrounding the trial would be significantly harmful to the child. Nonetheless, the courts below held that the proviso must be included and the House of Lords affirmed their decision."

In Re S, notwithstanding expert independent psychiatric evidence of significant harm to the child, no anonymity order granted, nor was anonymity in fact granted in the Khuja case. We see again, at paragraph 34(2), the reference being made to the collateral impact on members of the public, witnesses, those involved in criminal trials. Right at the end of sub-paragraph 2, just next to G, "The Lord's conviction that the collateral impact that this process has on those affected is part of the price to be paid for open justice". The mere fact of a collateral impact is not enough to justify an interference of the kind sought by my learned friend.

Mr Johnson says that Steyn J distinguished each of those cases. With respect to my learned friend, he is not quite right about that. If I could just take the court quickly to Steyn J's judgment. The relevant passage begins at paragraph 3.5 on page

76 of the bundle of authorities. She sets out a long citation from *In Re S* at pages 75 and 76. She says at paragraph 3.5, "The approach which the House of Lords adopted is applicable". In other words, far from saying that the *Re S* balancing test did not apply, she applied it. What she did do was say that it turns on an intense focus on the facts and that is right.

Next, at paragraph 3.6, my Lord will recall Mr Johnson repeatedly referring to the dicta of Lord Rodger in the *Guardian News and Media* case. Of course, at paragraph 3.6, Steyn J cited that case and she applied it. She added, at the end of paragraph 3.8, "The importance to the media of being able to write human stories about identified individuals is a significant factor to be weighed in the balance".

Then my learned friend relies on at page 81, paragraph 6.8 of Steyn's judgment. There, of course, she was dealing with a different submission, which is that in other notorious criminal and non-criminal cases no anonymity order was made. Steyn J says some of those cases were not cases where section 46 would have applied. The examples that were cited there were examples such as *Thompson and Venables*, the *Hillsborough Inquest*, the *Manchester Arena Inquiry*. They were not propositions of law which I am putting to my Lord now and which my learned friend is seeking to distinguish. If and insofar as submissions maintain that these propositions of law were somehow diluted by the judgment of Steyn J, that submission is wrong.

Where that leaves us, my Lord, is that you have to look, as a matter of fact, at the severity of the impact that these orders would have on the media as against the reality of the applicant's evidence. Whichever way we look at it, whether through the facts, through the law, through the principles, the test is the same and that is you have to reach a high threshold to justify an order of this nature.

Can I turn then to my third and final submissions. That is analysing the evidence. I have sought to analyse the applications by theme in the media's skeleton argument at paragraph 13. Of course, that analysis was done on the basis of the application forms, which was all that we had at that time. We have now been given the underlying witness statements. It is proper, in my respectful submission, to focus on what they actually say, rather than what the applications say that they say. Sometimes there is a degree of elision between different points in the witness statements. Those witness statements gave rise to a number of themes, if I can put it that way, which I will first address and then I will turn to the details of what the witnesses actually do say.

The first theme is that which is set out in the skeleton argument at paragraphs 13B and C:

"These are all experienced professionals, who should be expected to be able to give evidence in a robust manner. Medical professionals frequently have to justify their own conduct in Trust investigations and inquests, when dealing with distressed family members."

A number of these witnesses have, in fact, previous experience of giving evidence in courts. These are important considerations. Section 46(4)(c) of the Act requires the court to have regard to the cultural background of the witness and, indeed, the profession of the witness. The fact that these are all experienced professionals is a fact against the application.

Second, and this is an important point, because of what my Lord just put to Mr Myers before I stood up. Each of the witnesses has provided one witness statement to deal with two different things. One, press restrictions and, secondly, special measures. When one looks forensically at what these witnesses are actually saying, their evidence of fear and distress for many of them actually relates to the fear and distress of giving evidence within the sight of the defendant, rather than by reference to the actual reality of giving evidence in their own name. I will take my Lord through the witnesses in a moment to make that point good.

My Lord may consider that granting special measures of that kind, protecting the witness from the defendant, is a significant lesser interference with open justice than granting the witness full anonymity. That is another point to weigh in the balance. There is, in fact, no witness statement, in my respectful submission, that analyses those two points separately. It says, "Even if when granted special measures, I still need anonymity".

The third point thematically, and this is a point made in the skeleton at paragraph 13D, many of these witnesses are concerned with the impact of press reporting on their families or, as Mr Johnson KC repeatedly emphasised, the press contacting vulnerable family members or, for example, the press reporting inaccuracies. I have dealt with that point in the skeleton argument at paragraphs 11 to 12.

As my Lord had said, when we were looking at the Twitter point, the court will proceed on the basis that the press will report this trial fairly, responsibly and accurately. That is the right test. The court should not be beguiled into saying if this trial is reported inaccurately or sensationally, then the impact will be the same. My Lord has to look at what the results of impact

of fair, accurate and responsible reports are, not these types of extreme assertions about what the press may or may not do. My Lord will see from the skeleton argument that there are particular measures in place to protect members of the public from journalists at difficult points in their life. They can contact IPSO, the relevant editorial guide for the press, media, or Ofcom, for the broadcasting and they can say, "Please don't contact my father. Please don't contact my son". That is how concerns about press approaches are dealt with. That is the standard way of doing it and it does not require an anonymity order to make it good.

The fourth thematic point is that many of these witnesses give evidence of anxiety and distress without any actual evidence of that anxiety and distress. By that, I mean without any actual expert evidence. We have looked at Re S, in which there was expert evidence of significant harm and still no anonymity order was justified. In these cases, with one exception, the eight witnesses do not have any independent medical evidence of the medical conditions that they assert. The court is invited to weigh that in the balance. Indeed, the court is reminded that at many serious criminal trials, witnesses coming to give evidence will be vulnerable. I think recently of examples like the Manchester Arena bomb trial, the Hillsborough trial, other cases involving child death. These will frequently be cases in which vulnerable members of the public are having to come into the publicity and give evidence. That is the price that has to be paid for injustice. It is difficult and we recognise that and we will manage it by being fair, accurate and responsible. But the precedent impact of granting anonymity on the basis of assertions about medical impact, which is unsupported by independent evidence, would be profound.

Just to make that point good, my Lord, in the skeleton argument at paragraph 13E, I have brought the court's attention to a case called Rai, the Babita Rai case. If my Lord needs that judgment, it is actually appended to the end of the Twitter authorities bundle, which I am sure Mr O'Leary would have forwarded through to the court this morning, while we were on our feet. To give my Lord the reference, if my Lord is going to look at it, it is in the second bundle of authorities, page 146, paragraphs 54 to 55.

Just to read that out, that was a case in which the defendant was not seeking anonymity but what she was seeking was a prohibition on the publication of her address. Her address was not actually an issue in the trial. What she had was her own evidence and her own evidence that referred to her condition of post-traumatic stress disorder. At the Divisional Court, Nicol J and Stuart-Smith LJ said this:

"With further evidence provided by the claimant is, in very general and in several areas, particularly the suggestion the provision of her address might lead to unwanted visits from third parties, highly speculative. Much of the evidence could be advanced credibly by any defendant facing a serious criminal charge as the basis for prohibiting publication of his or her address. There is no medical reports and the evidence of the claimant, that she has been diagnosed with PTSD does not link that with a threat that her home address will be published. On the contrary, the PTSD appears to be the product of other incidents that have happened to the claimant. Put shortly, the claimant's evidence does not come close to demonstrating convincingly an interference with her Article 8 rights of a sufficient weight or seriousness that displaces the Article 10 interests in open justice."

In other words, that balance falls clearly on the side of publication rather than restraint. Even in that case, where one had similar assertions of PTSD, the balance fell far against the type of prohibition and protection that the claimant sought.

With that thematic introduction, can I turn then to the detail of the witness statements. Here, I am not seeking to challenge the details of the witness statements. Here, I am not seeking to challenge the honesty of these witnesses. I am not seeking to challenge their their assertion that giving evidence will be difficult. Nevertheless, it is necessary for the court to identify (1) are the threshold criteria in section 46 actually met; (2) to analyse the extent to which those threshold criteria are met so as to see whether or not any interference with open justice would be reasonable or unreasonable.

Mr Johnson seemed to suggest that even an unreasonably held belief that evidence would be impacted would be sufficient to justify an interference with open justice and that must be wrong in law. As we know, section 46(8)(b) requires any restriction on open justice to be reasonable.

So, if I can look, first of all, at [Witness 1] and her witness statement begins at page 5. [REDACTED]

I do not mean to sound dismissive in saying that but it is significantly less strong than the evidence which we saw in Rai. It is significantly less strong than the evidence which we saw in Re S in which there was independent psychiatric evidence. [REDACTED]

So, [Witness 1]'s evidence, looked at forensically, does not justify the severity of the interference with open justice that her application individually or cumulatively would represent. I make that point. It is important not just to look at these

applications en masse, en bulk but rather to look at them individually. [REDACTED]. Rather than granting all of them, I want the court -- and I am sure the court will -- to look at these applications individually.

[Witness 2] is the next witness. His witness statement begins at page 18. His witness statement starts at the top of page 19 with reference to severe anxiety through the investigation and that may be right, but there is no medical evidence to explain or contextualise it. He then says that he considered himself to be a friend of the defendant and he feels that seeing her in court will make it extremely difficult:

"I am anxious that the quality and deliverance of my evidence may be greatly affected by this without being screened from her."

Again, we see this emphasis on special measures rather than actually on press reporting. The underlying medication condition which my learned friend referred to in his oral and written submissions is halfway down that page. Again, that is a screen point primarily. He is concerned that "The screen and press reporting would help me to feel calmer". He does not say press reporting on its own. Then we see propositions of generality, such as the fact, at the bottom of page 19, that he has important roles. That is going to be the case with many senior members of the medical profession and, indeed, with members of other professions.

Then we see the fact that his two children, who are in the advanced teen years, may be impacted and that is something that can be managed in the usual way, because many witnesses will have children. Saying he is concerned about his wife who works locally within the church and she will be subjected to enquiries and scrutiny from members of the public. That is the type of indirect impact which we see in every case.

Pausing here, what is the exceptional nature of his evidence that justifies anonymity. With respect to [Witness 2], there is no such exceptional evidence in his witness statement.

[Witness 3] -- the witness statement begins at page 24 -- again the primary focus of her evidence is on screens. She starts by saying, "I'd like to apply for a screen to shield me from the defendant and other media representatives". Then she explains why at the bottom of page 24, [REDACTED]. She wants to avoid the feeling of being overwhelmed by the defendant. All of that is the evidence that she gives in respect of screens. That is irrelevant to the point of reporting restrictions.

On the next page then, we see the real force, the real thrust of her evidence, which is that she was involved in an inquest into the death of a premature baby in 2014/15 and she is concerned with the inquest not addressing her concerns that she had with the transport team from Liverpool Women's Hospital. We can infer what happened at the inquest is that doctor was criticised. She is concerned that criticism was then reported in the press. She says:

"The emphasis during the inquest was on failings on my part. This was picked up by the media and was in the papers after the inquest with just my name and the poor registrar's."

In other words, she is making complaints here about what appears failures of accurate reporting at an inquest in which she was criticised. I want to be very clear about this, my Lord. We have checked. It does not appear that any editorial or legal complaints were made by the doctor about the reporting of that inquest. We have also checked that it does not appear that there is any press reporting about that inquest available online. Certainly when one searches the doctor's name, the doctor's name plus inquest, the doctor's name plus the name of the hospital, it does not come up.

It is also far from clear that there would be any reference to that inquest in this trial. It seems that it is likely to be entirely irrelevant to the legal issues. Mr Myers is saying it may or may not be.

MR MYERS: I apologise, I do not mean to interrupt but I would not wish the proceedings to continue on any basis that may prove to be erroneous. I do not stand to say there will be reference made to that, but I certainly could not say that reference would not be made to it or application, in due course, would not be made to make reference to it.

MR JUSTICE GOSS: Yes.

MR MYERS: Therefore, it is important I do not let that pass without saying those things, my Lord.

MR JUSTICE GOSS: Thank you, Mr Myers. That helps me.

MR BUNTING: That was the submission I made, but it is far from saying that it will be in there, my Lord. In order to get it in there, my learned friend will need to make an application and meet the high threshold for getting it in. So, we should not work necessarily on the basis that this inquest will feature in the trial at all. Even if it is, what we can work on the basis is that the court will approach these applications on the basis that the press will report this trial fairly, accurately and

responsibly. The doctor's concerns, [Witness 3]'s concerns are with links being made to the inquest; it is not with giving evidence in this trial. That is the evidence that she gives. [REDACTED]

She says:

"[REDACTED] when I start giving evidence in court, it maybe will pick up on the inquest outcome and would start all over again. It might be used to undermine my practice and capabilities and hence undermine my evidence."

Again, final page:

"Thinking ahead, that if the press were to bring the article up again, I would not only have to appear as a witness in court but also face patients and families at work."

To tease that out a little bit, my Lord, first of all, it would only come out in this case if my learned friend makes an application and that application succeeds. If that does not happen, the press will not report it and they will not report it because it may be prejudicial and it would breach the strict liability rule in section 1 of the Contempt of Court Act. The entire structure of [Witness 3]'s statement is based on a proposition that may never eventuate, in fact is unlikely to eventuate; namely linking of the inquest to this trial. For that reason, and the other reasons I have given, her application does not reach the level of exceptionality required to justify an anonymity order.

Next, [Witness 4], [REDACTED].

[REDACTED] and, of course, all witnesses would prefer not to be gossiped about. All witnesses would prefer not to be the focus of attention in the community. But that is not enough to justify this application. Then every witness would be anonymous.

[Witness 5], my Lord, her witness statement begins at page 37. She is, in fact, one of the only applicants not to seek screens. Nevertheless, her evidence is again at a high level of generality that is likely to apply to almost every witness, both in this trial and in any other high-profile trial. Firstly, on the second page of her witness statement, at page 38 in the bundle, she says that she would like the CPS to apply for reporting restrictions -- sorry, I think it is the first page of the witness statement.

MR JUSTICE GOSS: It is. It is page 37.

MR BUNTING: Yes. She refers there to colleagues discussing the case. Of course, that is going to happen to everyone in this case. She talks about the additional strain that this will put on the team and, of course, that is likely to apply to many of the 96 witnesses in this case.

[REDACTED]

She is not being judged in this case; the defendant is. The press are going to report the allegations of the defendant fairly, lawfully and responsibly. The propositions that [Witness 5] makes in this paragraph are propositions that would apply to every medical witness in this case.

[REDACTED]

[Witness 6], [REDACTED]

Again, nothing exceptional in [Witness 6]'s evidence.

Finally, there are two more to go, my Lord, [Witness 7] at page 48. This is a very short witness statement. [REDACTED] But there is very little here to explain why lifelong anonymity, specifically, is justified.

She will give evidence in this court. My Lord will control the way in which she gives evidence. If the questions are inappropriate or oppressive, my Lord will stop that. She will be supported by the CPS and the court staff in giving evidence. There is not really any analysis here about the real question, which is how would fair, lawful and accurate reporting cause any exacerbation of the anxiety and distress the witness feels.

The final witness, [Witness 8]. [REDACTED]

Again, that is a proposition of generality which is unsupported by independent evidence and which is likely to result in many cases, indeed almost all cases before this court.

It seems somewhat insensitive to go through witness statements in that way, my Lord, but that is the exercise which is necessary here. We are looking to see the extent to which those threshold criteria are actually met. Then to balance that against the impact. Where we end up with is that the media organisations who I act for are each committed to reporting this trial responsibly and sensitively. They have engaged responsibly with the Crown Prosecution Service, who invited members of the press to a briefing on Monday. They will listen to suggestions as to how they should interact with witnesses. They will know the difficulties that arise where members of the press seek to

make contact with witnesses, particularly during a long trial like this.

They are experienced. They are experts. They have reported other high-profile trials involving bereavements and loss. They are, in many cases, specifically trained in how to report those issues. For all of those reasons, the orders sought by the Crown are disproportionate. I would respectfully invite my Lord to reject them and to reject them on the basis of that forensic analysis. Can I assist my Lord any further.

MR JUSTICE GOSS: No, thank you very much.

MR MYERS: Just a few bullet points in response, if I may, please, my Lord.

MR JUSTICE GOSS: Yes.

MR MYERS: Taking the issues that have been raised in the order in which they were raised, the court list was not anonymised on Tuesday. I do not know where that --

MR JUSTICE GOSS: There is disagreement.

MR MYERS: We have a copy of it.

MR JUSTICE GOSS: Online it was. Online it was anonymised.

MR MYERS: I see.

MR JUSTICE GOSS: As far as the online listing was concerned, it was online. Anyway, I am not going to decide these applications on that.

MR MYERS: I just saw the factual -- well, when I looked online it was there, but anyway.

MR JUSTICE GOSS: Anyway, that is going to be clarified for the future in relation to this trial. I am not trivialising it. Something has happened. But it is not of relevance to my determination in these applications.

MR MYERS: Dealing with places of work and the reporting of the place of work in the context that the assertion that not being able to report that the witness, in particular, was at their place of work at the time they saw events, making the evidence of the witness unreportable, so in that context, we would submit that is an overly and deliberately restrictive interpretation of section 46(6) and (7). If I can refer your Lordship to that, please, it is in the bundle of authorities at page 3.

MR JUSTICE GOSS: Yes.

MR MYERS: So, subsection (6):

"For the purposes of this section, a reporting direction in relation to a witness is a direction that no matter relating to the witness shall, during the witness' lifetime, be included in any publication [and these are the critical words] if it is likely to lead members of the public to identify him as being a witness in the proceedings.

"(7) The matters relating to a witness in relation to which the restrictions imposed by a reporting direction apply (if they are included in any publication) is likely to have the result mentioned in subsection (6) [in other words likely to lead members of the public to identify them as being a witness in the proceedings] include, in particular [then at]... (d) the identity of any place of work."

One has to read section 46(7)(d) in conjunction with section 46(6). Reporting the fact that the witness was at work when they saw the events that they recount in their evidence would not, we would submit, tend or -- I am falling into the same trap -- would not be likely to lead members of the public to identify a specific individual. So, we submit that assertion that a reporting order makes the evidence of a witness unreportable is misconceived.

MR JUSTICE GOSS: Were I to make any order in respect of any of these witnesses, do you have any suggestion as to the terms of the order?

MR MYERS: Well, I could certainly -- I think it is probably best, rather than doing it verbally and orally -- I would submit that it would be fairly straightforward to craft an order that would cover this eventuality and remove any possible misinterpretation.

MR JUSTICE GOSS: What I understand Mr Bunting to be saying -- and if I am misunderstanding it, he will have the opportunity to correct my misunderstanding -- is that you are effectively saying that you, contrary to Mr Johnson's suggestion that he made in his opening remarks, would not -- the members of the media would not report the fact that the witness in question was working at the hospital at the material time.

MR BUNTING: They would have to tread very carefully before reporting any such order, if a general order were made. It is not just that but then it is the combination of that and all of the other details that are evidenced which would become very

difficult to report, because it links the witness to the individuals.

MR JUSTICE GOSS: Their evidence would, if I am following your thought processes and submissions -- what is to be reported in their evidence is what their role was at the time, in particular their status within the hospital. It would lead to anyone, who undertook a certain amount of work, to be able to identify them.

MR BUNTING: That is the concern.

MR JUSTICE GOSS: That is what the concern of the media is.

MR MYERS: We understand the concern but, we respectfully submit, making the reporting order does not result or not necessarily result in the extreme consequences and catastrophic consequences that are suggested in the response.

MR JUSTICE GOSS: In relation to what? That it would simply be unreportable if they were referred to as Nurse A, for argument's sake, or Nurse A, B or C, whatever it is.

MR MYERS: Yes.

MR JUSTICE GOSS: Very well.

MR MYERS: For the simple reason that there are so many doctors and so many nurses that you are not making it likely --

MR JUSTICE GOSS: Likely.

MR MYERS: -- that an individual will be identified.

MR JUSTICE GOSS: What you are saying is that if a reporting restriction is made, there can be no guarantee that the witness will not, in fact, be identified.

MR MYERS: No, of course not. That is not the test. That is not what 46(6) says. That is the first point I would like to make in response. The second, my Lord, is my learned friend, with the greatest of respect, says one thing and says exactly the opposite in respect of making the point repeatedly that, in many of the cases where professional medical witnesses are saying they have been diagnosed with depression, PTSD or the like, there is no supporting evidence, no independent medical evidence. In the next breath he says he is not seeking to challenge the honesty of the witness. He cannot have it both ways, with the greatest of respect.

MR BUNTING: The point is I am not exactly saying the court cannot judge the reality of that diagnosis without evidence of

what it actually is. But this would seem general reference to diagnoses in other cases where it was not sufficient. In this case, the court does not have any specific explanation of the nature of that condition, its severity and how it will interact with anonymity. That is the point that I make. That is not a challenge there about honesty.

MR MYERS: There we are. That feeds in to the Khuja point, my Lord, which was, I think, page 49 of the bundle and precisely the point that my learned friend has just articulated. The effect of the application to anonymise the child in that case was the anonymisation of the defendant in criminal proceedings. We are a long way away from that in this case. I do not think it needs any further articulation.

The fourth point, my Lord, relates to the interpretation of the witness statements. I deliberately gave a very, very short summary of what we suggest the witnesses say. What they say has to be looked at as a whole. That ultimately has to be a matter for your Lordship's judgment; we accept that. But we do not accept that one can pick individual sentences out or draw lines in any specific place in witness statements. What we submit is your Lordship has to look at each individual's position as a whole.

MR JUSTICE GOSS: There is in a number of statements, as Mr Bunting has rightly pointed out, a conflation of the requests and cross-referencing, essentially, but it is not entirely clear. As he went through and pointed out, some witnesses, first of all, are very anxious about being screened. Then they say, "Well, I've got these medical conditions and also I'd like a reporting restriction as well on the back of that because of the consequences". There we are. The evidence is what it is.

MR MYERS: Finally, my Lord, my fifth and final point relates to [Witness 8]. [REDACTED]. Like some of the points I phrased, it may not be a point that actually has any influence on the ultimate decision, but we would submit that your Lordship should not proceed on the basis that that is a feature that will not come out in the evidence.

MR BUNTING: I am sorry to interrupt. If that is what happens and that is the reality, then that is a detail that can be sensibly managed within the case management powers of the courts. It may be that the court considers it does not need to be said publicly why the doctor made that decision on that day.

MR JUSTICE GOSS: It may well emerge during the course of the evidence. It would have to be given in open court.

MR BUNTING: For example, all I am saying is there maybe ways of managing that detail, which falls far short of complete anonymity for the witness. I will leave it to Mr Johnson.

MR JUSTICE GOSS: Very well. Mr Johnson.

MR JOHNSON: I promise to keep it short.

MR JUSTICE GOSS: Obviously, I proceed, of course, on the premise that all reporting will be fair and accurate, in any event. To what extent should I, if at all, take into account the fact that, once reported, the identity of a particular individual, that is then in the public domain. Account could be taken of what others might do or say who are not members of the media organisations.

MR JOHNSON: These features all bear on the witness' perception. That is why section 46(4) -- if I can just find the right... that is why section 46(5) is in the terms it is:

"In determining that question [in other words the qualifying condition] the court must consider any views expressed by the witness."

MR JUSTICE GOSS: Yes. You say that extends.

MR JOHNSON: Exactly. So, the witness' perception of what the consequences are going to be of the reports has to be taken into account. It is a matter of weight, taking into account the submissions that have been made on behalf of the press, that it is inevitably, we would submit, your Lordship's task is to look at it in an holistic, overall sense.

MR JUSTICE GOSS: Thank you very much. I am just going to ask Mr Bunting if there is anything you want to say by way of correcting anything Mr Johnson has said.

MR BUNTING: No, I think I have probably annoyed Mr Johnson enough during his submissions, but if I could just address that final question, my Lord.

MR JUSTICE GOSS: Yes.

MR BUNTING: The question, as I understood it, was to what extent can the court have regard to effectively speculative concerns.

MR JUSTICE GOSS: It is speculative but we all live in the same world.

MR BUNTING: Yes.

MR JUSTICE GOSS: We know what happens.

MR BUNTING: My Lord may have seen -- well, my Lord may not have seen because the further submissions do not seem to have made their way to the court -- there is a lot of case law about the extent to which parasitic damage caused by lawful reporting is a relevant consideration. In this case, I would say it is not a relevant consideration because, realistically, you have to judge this as a matter of evidence. There is no evidence that fair, lawful and accurate reporting of these proceedings will give rise to the extreme suggestions which is made by some of the witnesses.

Just then finally, in respect of that, it is one thing that members of the public may gossip. It is one thing that members of the public may ask questions. That, of course, is the reality of criminal trials.

MR JUSTICE GOSS: That is the reality of human nature.

MR BUNTING: Yes, and it is not enough to justify anonymity. Can I assist the court any further?

MR JUSTICE GOSS: No, thank you very much. I shall consider all these submissions and, in due course, I will hand down my decision. That will be done tomorrow. There is no need for you to be here, Mr Bunting. Obviously, I will ensure that the decision is sent to you and those who instruct you, so they will have a copy of it. That will be sufficient time, will it not, Mr Johnson tomorrow?

MR JOHNSON: Yes.

MR JUSTICE GOSS: You need to know before we proceed to further stages in the case.

Thank you all very much in relation to that. The special measures applications, there are a number and you have listed them. I think I picked up an error in one of --

MR JOHNSON: Yes, there is a table.

MR JUSTICE GOSS: It is immaterial. The point is I am raising this now just to ascertain when you want those to be dealt with.

MR JOHNSON: At a convenient point before we start the evidence.

MR JUSTICE GOSS: From the witness' point of view, the sooner it is determined the better, because they will always have the anxiety hanging over them of not knowing whether they are going to be afforded these special measures or not.

MR JOHNSON: My Lord, the issue is not so much whether, subject to the court's conclusions, special measures are justified. We have not sought to argue that they are not.

MR JUSTICE GOSS: No, it is the nature of the special measures.

MR JOHNSON: It is just the nature of them, yes. There certainly will be special measures, subject to your Lordship granting leave for that. I only say that because I understand, of course, as anyone would, the anxiety of witnesses waiting to give evidence, but this is not a case where that anxiety need be heightened because, as any application, if they do not have some form of assistance to meet their concerns.

MR JUSTICE GOSS: When do you want to do this?

MR JOHNSON: We can deal with it whenever would be convenient for your Lordship. At this point, I see we are heading towards the next adjournment and, this afternoon, Ms Letby is to be assessed.

MR JUSTICE GOSS: Exactly.

MR JOHNSON: It is something we could deal with on the next occasion the court is properly assembled, if that is convenient for your Lordship, and, of course, my learned friend.

MR JUSTICE GOSS: So, tomorrow.

MR JOHNSON: Yes.

MR JUSTICE GOSS: Whatever the outcome of this afternoon and whatever follows with that, we could deal with that.

MR MYERS: We could also deal with the back-to-back argument as well. I have forgotten when your Lordship had summoned the jury back. Was it Monday?

MR JUSTICE GOSS: No.

MR MYERS: No, tomorrow.

MR JUSTICE GOSS: It is just tomorrow, yes.

MR JOHNSON: With regard to both of those matters, my Lord, with the back-to-back argument, which relates to when the defence experts should be called..

MR JUSTICE GOSS: Yes, I know and I have the written argument.

MR JOHNSON: That could certainly be dealt with tomorrow if that is convenient for the court.

MR JUSTICE GOSS: As well, yes.

MR JOHNSON: As well. With regard to the jury, we do not know, of course, what the expert will say this afternoon.

MR JUSTICE GOSS: No.

MR JOHNSON: It may be the expert concludes that --

MR JUSTICE GOSS: Let us not speculate.

MR JOHNSON: Yes.

MR JUSTICE GOSS: The point is we will know by tomorrow morning to what extent we can proceed tomorrow. I will articulate my thoughts. If we are in a position to, at least, identify a more limited number of potential jurors tomorrow, I would like to do that. I would have in mind, say, 25, who could then be preserved for next week. I will not take it necessarily any further tomorrow, with almost the worst case scenario in terms of progress.

MR JOHNSON: That is what we were going to raise and your Lordship has dealt with the point. We can see no harm in getting to that point.

MR JUSTICE GOSS: Very well, Mr Johnson. Thank you very much, indeed. The court will rise now. I do not anticipate -- we are not going to have the court formally closed today. I shall be available, should I be needed, later today at any time during normal court sitting hours. Otherwise, the case will be listed for 10.30 am tomorrow morning with the defendant to attend. Thank you very much.

(The court adjourned until 10.30 am on Friday, 7th October, 2022)