



LA v XYZ [Restriction on Father's Role in Proceedings]

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Neutral Citation No [2019] EWHC 2166 (Fam)

Case No: ZE18C00762

Courtroom No. 35

Monday, 18th February 2019

Before:

THE HONOURABLE MRS JUSTICE THEIS DBE

B E T W E E N:

A Local Authority

and

X

Y

Z

In the interests of maintaining anonymity the names of counsel have been omitted

JUDGMENT
(Approved)

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

Introduction

1. This matter concerns applications relating to Z. The applicant is the Local Authority. Z is represented by her Children's Guardian, X is her Special Guardian represented by counsel. Z's father, Y is a party to these proceedings and is represented by counsel. Z's mother was killed by the father. Following a trial, he was convicted of her murder and is serving a term of life imprisonment with a minimum term of 22 years.
2. The Local Authority have made a number of applications. Firstly, for a care order in relation to Z. Secondly, for an order pursuant to Section 34(4) of the Children Act 1989 seeking permission to be able to refuse contact with the father. Thirdly, for an order under the court's inherent jurisdiction, seeking a declaration that the Local Authority are relieved of any duties under the Children Act to consult, or give the father notice in relation to any decisions relating to Z. Finally, an application to discharge the father as a party to the applications for a care order and a Section 34 (4) order.
3. Following an initial case management hearing, after the issue of the care proceedings the applications were allocated to this court. I made directions on 18 December, 1 February and 8 February, the effect of which were to give the father notice of the various applications. I directed that redacted documents were served on him; sufficient to enable him to understand the applications that were being made and the orders being sought.
4. In fact, due to an error at the Family Court, the father was sent a copy of an earlier order. As a consequence of receiving that document the father contacted his previous solicitors at the same time this court was considering how to notify the father of these proceedings. His solicitors contacted the Local Authority, thereby avoiding the need for any other directions to be made regarding service on him.
5. The redacted material was served on the father's solicitors, and a further directions hearing was listed in February 2019. The father was represented by counsel, who represented the father in the criminal proceedings and in the previous care proceedings. Directions were made which enabled the issue of the father's continued participation in these proceedings to be considered as a preliminary issue.
6. I have had the enormous benefit of skeleton arguments or position statements from all parties, supplemented by oral submissions this morning, which have enabled me to be in a position to give this *extempore* judgment this afternoon. This will enable the parties to know what their respective positions are in relation to the ongoing proceedings.
7. The positions of the parties can be summarised as follows; the Local Authority's applications, not only for orders under the inherent jurisdiction, but also to discharge the father as a party from the applications under Section 31 and Section 34(4), are supported by X and the Guardian. They support orders that remove the father as a party to the care and contact proceedings and they invite the court to make a declaration under the inherent jurisdiction.
8. The father seeks to participate in these proceedings. In his first position statement in February 2019, he sets out that he does not agree to the orders being sought. He did not

agree to a care order being made, did not agree to an order that sought to give the Local Authority permission to be able to refuse contact, and he positively sought disclosure of documents to him, other than redaction which he accepted should be limited to contact details.

9. In his second position statement filed in advance of this hearing, his position moderated stating as follows in the final paragraph:

“The father is not in any way trying to hurt Z, he is simply relying on his rights under Article 6 and 8 and his parental responsibility rights, and he respectfully asks the court to allow him to participate in these proceedings. It is difficult to see how he can interfere in his daughter's life when he does not even know where and with whom she now lives. He accepts redacted documents if they protect Z in that version”.

10. In answer to a direct question from the court, his counsel accepted that she did not seek any further disclosure of material, other than the documents that were already in her possession.
11. For the reasons set out below I am going to grant the applications sought in this case. I am satisfied, having balanced the relevant considerations, that Y's continued involvement in these proceedings is deeply harmful to Z and that such orders are exceptional but in this case they are necessary to protect Z's emotional and psychological well-being.
12. This case raises wider issues concerning applications to restrict disclosure and/or discharge a party in family proceedings. This is generally an exceptional step however the circumstances of some cases, of which this is one, may justify such an application. The following general points are made:

- (1) It is important that early consideration is given to this issue. In care proceedings this responsibility invariably falls on the local authority. Part 12 FPR 2010 provides who should be an automatic party to proceedings and who should be given notice of any application. It is an issue that should be considered in each case, particularly where the involvement of that other party in some, or all, of the proceedings causes the child continuing significant emotional or psychological harm. Such situations are unusual and highly fact specific.
- (2) If it is such a case consideration should be given as to what steps can or should be taken, such as applying for an order limiting or managing disclosure of documents, or even discharging a party from proceedings. These situations are, by definition, complex and require a careful balancing of the competing Article 6 and 8 rights of the parties, including the child.
- (3) If an order is sought an application should be issued setting out the terms of order sought and evidence must be filed to provide the evidential foundation for why such an order is necessary which, by definition, will interfere with the right to a fair trial and family life.

- (4) Depending on the nature of the application and the order sought, consideration should be given as to whether it should be re-allocated in the Family Court to High Court Judge level, possibly limited to consideration of the specific application.

Relevant Background

13. Turning to the background in this matter, it can be taken relatively shortly. Tragically Z's mother was killed by the father when she was young. It is accepted Z was present in the home when her mother was killed and has spoken subsequently about the events that took place.
14. Z was placed with X, pursuant to orders made in 2015 when a number of other orders were made, including a family assistance order and an order pursuant to Section 91(14) CA 1989, preventing the father from making any applications in respect of Z without the permission of the court and that that restriction was to last until 20 April 2021.
15. During those proceedings (pursuant to an order made in 2014) the judge directed that any papers served on the father during the currency of the proceedings should be redacted to remove references to Z's school, address, area where she lived, or any other information which might identify her placement.
16. The 2015 order also provided as follows in the preamble set out in paragraph 5 of the order,

“Upon X agreeing the following in respect of contact; firstly, the father can send a one-off apology letter on the lines of that proposed by Dr B”,
I pause to say he was the expert who was instructed within those proceedings. Going back to the order:

“...which provided it is of appropriate content will be provided to Z in the next few months, and while Local Authority support and counselling remains in place. Father can send annual birthday cards to Z and a card each September via the Local Authority letter box scheme, which will be provided to Z if their content is appropriate, and X judges it at that time in her best interest to receive them; thirdly, in the event that Z asks for direct contact or further indirect contact, X will consider this and will, if she feels it necessary, approach the Local Authority, even once the family assistance order has lapsed, for support and advice; fourthly, the paternal grandmother can write to Z via the letterbox scheme; and fifthly, X will send redacted end of year school reports to the father each year and upon the Local Authority indicating that notes have been made on their electronic system in respect of this case, that will ensure future social workers are aware of the background and the Local Authority's ongoing commitment to support X and Z, in the even they seek support after the family assistance order has lapsed”.

17. Following the making of this order, the Local Authority say (as set out in the statement from the current allocated social worker in February 2019) that the father has breached the provisions of the January 2015 order. In particular, in April 2015, X's sister was approached by a work colleague and the father sought to get letters to Z via this route. He also asked for X's address, but that was not given. The letter at that stage contained, it was said, no apology.
18. In September 2015 the father, with the help of the professionals, composed a short letter with an apology to be shared with Z. Z noted after she had read it that he had said sorry for what happened, but not for his actions. In May 2017 the social worker passed a selection of cards and a letter to X; the letter was not given to Z by X because it invited her to call or visit the father in prison.
19. In late 2017, early 2018 there is a report that the father's work colleague followed Z in the street trying to take photographs of her, and to try and persuade X to take Z to visit the father in prison. In January 2018, it is suggested that associates of the father arrived at X's new address and tried to force their way in, causing Z such distress that she was not able to attend school for a period of time. As a result of this behaviour panic alarms had to be fitted to the home and the children's school were alerted. The social worker says it is quite clear from the records and her involvement, these events caused Z high levels of anxiety and distress.
20. At the hearing in February, counsel for the father attended with the position statement by the father in which he contested the various applications that had been made by the Local Authority and sought for X's sister to be put forward as a potential carer for Z and set out what he said about the contact since January 2015. At paragraph 11 of that document, he accepted he had given the letters via a relation to X. He says he received a letter from the Local Authority, as described in paragraph 15, saying he should make his own arrangements regarding indirect contact with Z and it was not to be via the Local Authority and it was only after that he made arrangements for letters to be sent via X's sister, with the father's relative becoming involved in this as well. He denies any suggestion that he tried to find the whereabouts of Z.
21. In relation to the attendance at X's home, in January 2018, he says as follows at paragraph 17:

“In relation to the allegation that his cousin and his friend attended X's house; he said that his relative had been to [Area A], and he was aware a maternal relative D, was in [Area B]. The maternal relative and father's relative both live in [Area G], and he offered a lift to the maternal relative from [Area B]. Maternal relative provided a postcode to the father's relative for him to be picked. He was not aware that he was going to X's house until he was asked to leave. The father does not believe that his relative went to the house, but as far as he is aware, he left when he was asked to do so. Once again, he believes this has been taken out of context when there is a simple explanation for it”.

22. I read that paragraph as effectively accepting the fact that there was an attendance at X's home, giving some alternative explanation, but perhaps what is notable is the absence in that part of the position statement, as in any other part of the position statement filed by the father, of any recognition or understanding about the impact any such attendance like that would have had on Z.
23. There was a statement filed by the social worker in response to this position statement filed on behalf of the father. It sets out that having conducted a search of the records of the Local Authority, throughout the relevant period since 2015 there has been either a named social worker, or an allocated social worker, who have been available to deal with any issues relating to Z, and in particular, any matters relating to indirect contact.
24. She confirms in that statement, there is no record of any letter being sent to the father, informing him to make his own arrangements in relation to indirect contact with Z. What she does say is that there was a letter in August 2015, which gave details about how to make contact with her and stated:

“Please only send any correspondence you wish to reach Z through these contact details. The letters will be read by me to ensure their contents are in the best interests of Z. I will contact you to discuss the letters if I am concerned by their content. If you would like more clarity about what is and is not appropriate to include, in keeping with the recommendations from court and Dr G, the letters will be shared with Z if X and I believe she is in a stable enough emotional state to receive them”.
25. That is entirely consistent with the preamble that I have just set out in the order in 2015.
26. In relation to the suggestion of further assessment of X's relative, the social worker sets out her dealings with her and when she last had direct contact with her. However, there has been no attempt to contact the social worker since, and she sets out her very real concerns as to whether the relative would be able to keep the relevant detachment from the father that would be commensurate with Z's interests, and her real concern that she has been used by the father as a conduit, in the past, for messages from the father to Z. The Local Authority evidence demonstrates they have kept under active consideration her ability to be able to be further assessed as a potential carer for Z, but they are clear that that is not something that would meet Z's welfare needs.
27. The social worker notes at paragraph 10 of the father's first position statement that he states he understands and respects Z's wishes not to have contact with him and yet, she says, surprisingly, he produces and attaches to that position statement, a letter addressed to Z. The social worker sets out in her second statement her professional view in relation to the contents of that letter, in particular, whilst recognising that he says he is sorry for the mother's death, she says that by using the mother's name rather than her role in relation to Z, he detaches himself from responsibility for what took place with the mother and Z's relationship with her. Although he accepts, in the second part of the letter, full responsibility for his actions, it is clouded by other comments made by him in that letter. For example, the opening statement asking her whether she is fine. The social worker

concludes that in her judgment the letter shows no empathy or compassion to Z's circumstances which she said is supported by the father's actions in the past.

28. Counsel for the father has seen, as part of the disclosures that have taken place since the last hearing, the redacted report by the Guardian, the skeleton arguments that have been filed by all the parties in support of their various positions, and the second statement from the social worker. The father's position in his second position statement is as outlined above, in that he wanted to rely on what he sees are his Article 6 and 8 rights and his parental responsibility, at paragraph 11, he states as follows:

“He, the father, strongly denies that his participation in the proceedings is so grave as to prevail over any convention rights held by him. He has already decided not to be produced at court when it would have been difficult to prevent him finding out a number of details regarding Z, which he is currently unaware of. He is a married father with parental responsibility, which is currently being diminished if not ignored”.

Legal Framework

29. Turning to the legal framework, there is limited dispute between the parties as to the relevant legal framework. Although, counsel for the Local Authority raised the issue, in her initial skeleton argument, as to whether the father, in fact, has parental responsibility all parties have proceeded on the basis that he does have parental responsibility for Z, through his marriage to Z's mother and being on Z's birth certificate; I agree with that conclusion.
30. As a father with parental responsibility, he is an automatic respondent under Part 12 Family Procedure Rules 2010 ('FPR 2010') to an application for a care order and an application under Section 34(4) (see Rule 12.3 FPR 2010) as well as a party to an application for a declaration and to the separate application to discharge him as a party to the care proceedings and the application under Section 34(4).
31. These applications need to be considered against the convention rights of the father and Z enshrined in domestic law by the Human Rights Act 1998. Although, counsel on behalf of the Guardian, raised the issue as to whether the father currently had any Article 8 rights, she did not pursue that and accepted the position taken by the Local Authority, that the father's Article 8 rights were engaged in this case and as a result the court was required to balance his Article 6 rights with the Article 8 and 6 rights of Z.
32. It is accepted by all parties that the court has case management powers under rule 4.1 and 12.2 FPR 2010 as articulated by Knowles J in *Re X and Y (Children)* [2018] EWHC 451 (Fam) as follows at [27]:

“Rule 4.1 of the Family Procedure Rules 2010 [“the Rules”] sets out the court’s general powers of case management amongst which is provision for the making of orders for disclosure as it thinks fit [Rule 4.1(3)(b)]. When exercising its case management powers, the court must take into account the overriding objective to deal with cases justly, having regard to any welfare issues involved [Rule 1.1(1)]. Dealing with a case justly includes, amongst other matters, ensuring that the parties are on an equal footing [Rule 1.1(2)(c)]. The general case management powers in Rule 4.1 are supplemented by those applicable to children proceedings set out in Rule 12.12 which permit the court at any stage to give directions about the conduct of proceedings, including the service of documents [Rule 12.12(2)(g)] and the filing of evidence [Rule 12.12(2)(h)]. Thus, the Rules permit the court to restrict a party’s access to material filed within the proceedings, for example, by directing that a document not be served on a party or that a document or part of a document not be disclosed to a party”.

33. In that decision Knowles J made direction in a case where the Local Authority sought orders to revoke a placement order and orders under Section 34(4), and also made an application for the father to be discharged as a party. The circumstances in that case were the father had been convicted of serious sexual offences against his two children, aged 15 and 14 years, and as a result of his convictions was sentenced to term of imprisonment of 22 years. When faced with a similar application as I am here, she referred in paragraph 28 to the decision of Munby J, as he then was, in *Re B (Disclosure to Other Parties)* [2001] 2 FLR 1017. At paragraph 89 of that decision, he set out the approach the court should take to non-disclosure in litigation concerning children and their families where he said as follows:

“Although, as I have acknowledged, the class of cases in which it may be appropriate to restrict a litigant’s access to documents is somewhat wider than has hitherto been recognised, it remains the fact, in my judgment, that such cases will remain very much the exception and not the rule. It remains the fact that all such cases require the most anxious, rigorous and vigilant scrutiny. It is for those who seek to restrain the disclosure of papers to a litigant to make good their claim and to demonstrate with precision exactly which documents or classes of documents require to be withheld. The burden on them is a heavy one. Only if the case for non-disclosure is convincingly and compellingly demonstrated will an order be made. No such order should be made unless the situation imperatively demands it. No such order should extend any further than is necessary. The test, at the end of the day, is one of strict necessity. In most cases the need for a fair trial will demand that there be no restrictions on disclosure. Even if a case for restrictions is made out, the restrictions must go no further than is strictly necessary”.

34. Now whilst it is right that that is dealt with in the context of disclosure similar principles

apply in relation to the issues that I am considering today. Therefore, what the court is required to do when faced with an application such as this, is to identify, evaluate and weigh up the competing convention rights that are engaged; here, Article 6 for a fair hearing and Article 8, respect for private and family life in respect of both Z and the father.

35. Turning now just to consider the legal position in relation to the inherent jurisdiction application. Again, most of this is non-controversial between the parties, relying on the extremely helpful analysis by Knowles J in the *Re X and Y (Children)* [2018]. First, what the court is required to do is to consider whether under Section 100(3) CA 1989 the court should give permission for leave for such an application to be made. Section 100(3) reads as follows, “*No application for any exercise of the court’s inherent jurisdiction with respect to children may be made by a Local Authority, unless the Local Authority have obtained the leave of the court*”.
36. Section 100 (4) reads as follows:

“The court may only grant leave if it is satisfied that; (a) the result that the Authority wish to achieved could not be achieved through the making of any order of the kind to which Subsection 5 applies; and (b) there is reasonable cause to believe that if the court’s inherent jurisdiction is not exercised with respect to the child, the child is likely to suffer significant harm”.
37. In this case, what the Local Authority seek is a declaration under the inherent jurisdiction that Z’s welfare is inconsistent with any of the obligations set out under the CA 1989 to consult with, refer to, and/or inform Z’s father in relation to any aspect of her progress, development, and/or wellbeing whilst Z remained in the care of the Local Authority.
38. Section 22 CA 1989 sets out the relevant duties of a Local Authority in relation to children looked after by them. Section 22(4) provides as follows:

“Before making any decision with respect to a child whom they are looking after or proposing to look after, a Local Authority, shall so far as is reasonably practicable, ascertain the wishes and feelings of; (a) the child; (b) the child’s parents” there is thus a statutory duty on the Local Authority to ascertain the wishes and feelings of the father, regarding any matter to be decided in relation to Z.
39. The breadth of the obligations under Section 22 of the Children Act 1989 was described by Hayden J in *Re O (A Child)* [2015] EWCA Civ 1169 at paragraph 27 as follows:

“The objective of the process here is to ensure not only that there is proper planning but the plan for the child continues to be the correct one, developing and evolving as the child’s needs change. It is to fortify the rigour of review that the section imposes a wide-ranging duty to consult, not least with the parents. Even a parent who has behaved egregiously may nonetheless have some important contribution to make in the future. The requirement to solicit the views of a parent is not contingent upon a moral judgment of parental behaviour; it is there to promote the paramount objective of the statute as a whole, i.e. the welfare of the child. These duties are a statutory recognition of the need appropriately to fetter the corporate parent”.

40. In *Re C (Care: Consultation with Parents not in the Child’s Best Interests)* [2005] EWHC 3390; [2006] 1 FLR 787, similar declaratory relief was sought. Coleridge J granted the relief sought in a case where the father had raped and indecently assaulted the child, aged nearly 13 years, where the father was serving a sentence of 11 years imprisonment for those offences. The child concerned did not want the father to be informed or consulted at all in relation to her future and obtained an order discharging the father’s parental responsibility. Nevertheless, the local authority was obliged to consult and inform parents about their plans for a child in care, even after parental responsibility had been discharged. Coleridge J held as follows [30 -35]:

“30. The conclusions that I have come to are really these: the considerations which govern the dismissal of this father from further involvement in the proceedings, and the granting of the declarations seem to me to be the same. Indeed, there is little point in him remaining a party if he is not going to be given any information; indeed, it would be impractical for him to remain a party if he was not going to be given information.

31. The second pivotal point, of course, is that this application is decided, first and foremost, on the basis of s 1 of the Children Act 1989 – that is to say, what is in S’s best interests. Of course, hers are not the only interests, but they are the ones which are of paramount concern to the court.

32. The third factor, self-evidently, is that it is a very exceptional case only which would attract this kind of relief. Self-evidently – and it hardly needs the human rights legislation to remind one – a parent is entitled to be fully involved, normally, in the decision-making process relating to his, or her, child, and if not to be involved, then at least informed about it. However, insofar as that engages the father’s rights to family life, then by the same token it engages S’s right to privacy and a family life.

33. In my judgment, in this situation, her rights come very much further up the queue than the father’s. I have to balance the rights

as between the two of them. I am afraid to say that S's must overwhelm all others. It seems to me that if S was an adult now, who had been subjected to the behaviour which led to her father's imprisonment, and that as an adult she was to say, in circumstances where she needed, for instance, treatment that she did not want the perpetrator of those actions to be consulted, even if it was a parent, no one, for one moment, would suggest that such a person should be consulted. It so happens that this individual is not an adult, but should different considerations apply to this child when I am told she is intelligent and articulate; when her decisions and views seem to me to be entirely understandable and rational and objectively sensible? Thirdly, she has a mother who is fully involved in her life, albeit that she is not in this country, and a guardian, so long as these proceedings are underway, who is more than able to protect her interests, and indeed has been doing so.

34. The next matter which I have to place in the balance is that there is no question, as there is in the adoption cases, of any very significant decision being made by the local authority. This is not a case where it is being suggested the child should be adopted, or moved out of the country, for instance. It is merely a question of the details of this child's life being worked out by the local authority under the umbrella of a care order.

35. At the end of the day, standing back I have come to the conclusion in similar circumstances and for similar reasons, as I did in relation to the application to discharge the father's parental responsibility, that this father has, as matters stand, forfeited consideration of his rights in relation to making decisions about this child's future. I cannot think that he can usefully participate in discussions about what is in S's best interests in circumstances where he has in the past wholly disregarded them, and in circumstances where the child desperately wants him not to be involved".

Submissions

41. In her eloquent written and oral submissions, counsel on behalf of the Local Authority sets out her position with admirable clarity. Whilst she accepts Article 6 would, all other matters being equal, favour disclosure to the father of information about Z, when looking at the competing rights, in particular the Article 8 rights in relation to Z, the Local Authority submit that Z's rights to privacy are weighty justification for compromise of the father's Article 6 and 8 rights. They rely on the following matters; firstly, the background circumstances to this case; the father murdered Z's mother when Z was present in the home. By those very actions, he not only removed Z's mother from Z's life permanently and irrevocably, but he has prevented Z from having any Article 8 family life with her own mother. His actions, put simply and clearly, showed a complete and total disregard for Z's welfare needs. Secondly, Z has reported, initially to Dr G and since, harsh treatment to her by the father. Thirdly, there is very clear evidence that Z is fearful of the father having any information about her and does not wish that to happen.

42. The most recent information about that is set out in the Guardian's report, which is based on her very recent contact and communication with Z. At paragraph 29 of the report, she said:

“Z was clear in relation to discussions of questions she wanted to ask the father, that it was a response to her questions that she wanted and nothing else; no further indirect or direct contact, and also that he has no further knowledge about her. She told us how she worried about him having information whereby he could get others to hurt her, or X, or her family”.
43. Fourthly, counsel for the Local Authority submits the evidence demonstrates it is likely that Z will be caused additional significant emotional harm by the father's continued involvement in these proceedings. For example, at paragraph 41 of the Guardian's report, she describes the position as follows, “As set out above, I believe that the knowledge that her father was to be provided with information about her would cause Z considerable anxiety and distress and would be emotionally harmful to her.” The Local Authority submits when the court is weighing up the competing rights between Z and her father, that because of these features the evidence demonstrably supports the balance coming down in favour of protecting Z's rights and that such interference with the father's rights is proportionate and lawful.
44. Counsel on behalf of X supports the Local Authority's submissions.
45. Counsel on behalf of the father, did not seek any further delay in this preliminary point being dealt with. As she mentioned on a number of occasions, she is someone who is extremely knowledgeable about this case, the background and is well known to the father. She has been involved in both sets of proceedings.
46. She made it clear that the father does not seek any further disclosure of documents. He accepts he is not in a position to offer any positive placement help. She submits all he seeks is the opportunity to send cards twice a year, so two items of indirect contact a year. Counsel for the father submits that he is not a stranger, he is Z's father and that is a status that should be recognised by him continuing to be involved in these proceedings. At one point she seemed to suggest that by discharging him as a party, in some way amounts to removing him as a father, in that he would be denied any information about his child during her minority. She submits, for Z's sake, the door should be, as she described, left open. It is a concern that if he is not given the opportunity to send these cards, Z may never, as she describes, “know the full truth of what happened”. She submits that it would not be fair, and/or appropriate for Z to be cut off from all contact with her father at this stage.
47. Counsel on behalf of the Guardian, supports the Local Authority's position.
48. Counsel on behalf of the Local Authority made two powerful points in response to the submissions on behalf of the father. Firstly, she drew the court's attention to the various parts of the father's position statement, dated 7 February 2019, where he set out that he did not agree to a care order being made, he sought positive contact, he did not agree to the order under the inherent jurisdiction, and he sought disclosure of all documents save

possibly in relation to the location of where Z was. As she said, the main focus of that position statement was entirely from his viewpoint and demonstrated no understanding or empathy in relation to Z's fragile and difficult position.

49. Secondly, she demonstrated that this application by the Local Authority does not seek to change the father's status as Z's father; that remains a reality for her to manage. Nothing is preventing her seeking information from her father or contacting him; that will be a matter for her in due course, to be able to do if she so wishes, with such support as she considers she will need from X or from anybody else.

Discussions and Decision

50. Turning now to consideration of the submissions and the court's decision. As has been set out, applications such as this require careful consideration by the court. The court needs to consider in particular, whether there are exceptional circumstances that exist in this case to take the course that is proposed. As Knowles J said in *Re X and Y (Children)* at paragraph [40]:

"I approach the question of the father's involvement in both sets of proceedings by acknowledging that he has been accorded by the Rules a status within the proceedings commensurate not only with fatherhood but also with the fact that he has parental responsibility for both girls. Thus, any application to end his involvement in the proceedings would require particular justification. The father would be entitled to respect for his family life under Article 8 and therefore, also the right to have a fair trial under Article 6. It will be rare that his Article 6 right to participate in the proceedings would be displaced by another person's Article 8 rights. Conversely, both girls have Article 6 and Article 8 rights which diverge from those of the father, and those circumstances necessitate the type of balancing exercise which takes account of and respects all the rights engaged".

51. Then at paragraph [45] she continues:

"As the father has Article 8 rights, then Article 6 is engaged by these proceedings. Where a parent is entitled to respect of his family life under Article 8 and, therefore, also the right to a fair trial under Article 6, it will only be in exceptional circumstances that the Article 6 right will be displaced by another person's Article 8 rights".

52. It is important, in my judgment, that applications that seek to restrict party status should be considered at the earliest opportunity by any party making them. In public law proceedings, that is generally going to be by the local authority and should be considered in each case prior to proceedings being issued. If such an order is required it requires a separate application seeking, for example, an order to discharge a party or to restrict in any way documents that that party would be entitled to under the rules.
53. Such an application should be supported by evidence that specifically addresses that issue,

and the grounds for the application. It is of note in this case the position of the Local Authority was originally framed as an application to restrict the father's parental responsibility. It is now accepted that if the court does, in due course, make a care order, sections 33(3) and (4) make it clear that while a care order is in force with respect to a child, the local authority designated by the order, shall; (a) have parental responsibility for the child; and (b) have the power, subject to the following provisions of this section to determine the extent to which; (i) a parent, guardian, or special guardian of the child; or (ii) a person who, by virtue of Section 4(a) has parental responsibility of the child may meet his parental responsibility for him. Section 33(4) provides the Authority may not exercise the power in Subsection 3(b), unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare. Therefore, the Local Authority, by virtue of those provisions, providing they act in a way that safeguards or promotes Z's welfare, can manage the exercise of parental responsibility the father has and also, as they have recognised, the position of X.

54. It was only when the matter came before this court on 18 December and the decision in *Re X and Y (Children)* was drawn to the attention of the parties, did the Local Authority recalibrate the way it put its case to the way that it is framed now.
55. The second matter is after issuing such an application there is an obligation on all parties to make sure that any order that seeks to restrict disclosure of the order or the existence of documents on any party to the proceedings, is clearly marked as such. It is a matter of enormous regret in this case, that the case management order made on 5 December, appears on the face of it through no fault of the court office, to have been sent to the father. If that was not what was intended by the order, the order should have been very clearly marked in that way on the front page and the case file marked accordingly.
56. Turning to this case the father has been found guilty of the murder of Z's mother. He has not had any direct contact with Z for a number of years. Despite what I regard as the very clear terms of the order in 2015, he has shown a disregard for the structure set out there and has sought to take steps of his own through third parties to contact Z. This is despite him participating in the previous proceedings, being legally represented as well as seeing the report of Dr G, which outlined the enormous difficulties Z had as a result of his actions in killing her mother.
57. The court is aware of his position, that he seeks for indirect contact to continue, but other than that there is little he can usefully contribute to decisions about Z's future placement and other aspects of her care. The evidence, in my judgment, very clearly points to the fact that anything associated with the father triggers an adverse and strong response in Z and leads to a significant deterioration in her emotional and psychological health. The impact on her of the unplanned and unauthorised visit to X's home is but one example. It is clear from the Guardian's report that the high level of anxiety, even about the prospect of the father having any involvement in Z's life, results in increased harmful levels of anxiety, which is supported by the evidence of the allocated social worker.
58. Balancing these considerations, I find that the emotional and psychological harm that would occur to Z arising from the father's participation in these proceedings is so grave that her right to privacy and family life should prevail over any convention right held by the father.

The circumstances of this case are exceptional and fall within the category of cases where the court should discharge the father as a party to the care and section 34(4) application. Such a step is not only justified in the context of the convention rights in play, but it pays proper regard to the difficult and complex welfare issues in this case. The outcome of the section 34(4) proceedings is likely to be an order that authorises the Local Authority to refuse contact with the father; such an outcome is not unforeseen by the father, having regard to recent events.

59. Turning to the application under the inherent jurisdiction, I am satisfied I should grant permission to the Local Authority to apply for such a declaration. The grounds set out in Section 100(4) of the CA 1989 are made out as the declaration sought can only be made under the inherent jurisdiction, and I am satisfied on the evidence I have, that if such an order was not made, Z is likely to suffer significant psychological and emotional harm knowing that details about her are likely to be disclosed to and shared with the father.
60. Z has remained clear she does not want the father to have any information about her or be involved in Local Authority decision making about her welfare. That is entirely consistent with what she has said to X, to her allocated Social Worker and her Guardian in these proceedings, all who have known and worked with her for some considerable time. I am entirely satisfied I should grant this relief. Like Coleridge J in *Re C (Care: Consultation with Parents not in the Child's Best Interests)*, I conclude, as recommended by her Guardian, that while she is still a minor, the father should be given information about any life-threatening medical emergency while she is subject to a care order. Save for that limited exception, I will grant the declaration that is sought.
61. Therefore, having determined those applications, I will now consider what further directions need to be made in relation to the main proceedings.