Neutral Citation Number: [2005] EWHC 958 (QB)

Case No: IHQ/05/0327

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 May 2005

Before :

MR JUSTICE TUGENDHAT

- -

Between :

GREEN CORNS LTD	**Claimant**
- and -	
CLAVERLEY GROUP LTD & ANR	**Defendant**

- -

- -

Mr R Spearman QC and **Mr D Casement** (instructed by **Halliwells**) for the **Claimant**
Mr A Caldecott QC and Mr Eardley (instructed by **Foot Anstey Solicitors**) for the **Defendants**

Hearing dates: Friday 6th May

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. The issue in this application is whether an injunction should be granted to restrain a local newspaper from publishing the addresses of the homes provided for troubled children. The addresses have been included in reports of a campaign by neighbours to have the plans for such homes abandoned. The newspaper has claimed that the result of the publications has been that the scheme has had to be dropped in relation to more than one home. The claimant and applicant provides the homes, and it too contends that that is the effect of such publications, and that further publications should be prohibited. The case for the Applicant is essentially based on the needs of the children. The case for the newspaper is largely based on the neighbours' concerns for the welfare of their own families and the character of their neighbourhood, and the undoubted role of the press in a democracy to report upon matters of public concern.

2. The Second Defendant is the publisher of the Express and Star, which circulates in the Wolverhampton area. The First Defendant was joined on a misunderstanding and has taken no part in the proceedings. The terms of the injunction sought are, in substance that:

> "Until trial or further order the Defendants shall not … cause or permit the publication of the address or location of any house of which the Claimant is or may become the … owner or … licensee or which the Claimant is in the process of acquiring for occupation."

3. An undertaking was given in those terms on 22 April pending the outcome of this application. Publication is defined in the order, and there are arguments about the scope of the order. But the gist of what the Applicant is seeking is a prohibition on publication in the media.

4. On 1st February 2005 the Defendants published an article under the heading "Sex Offenders are set to be housed near city school". The article is illustrated by photographs of the house and the school it refers to. It included the following (initials in square brackets replace the addresses identified in the articles):

> "Sex offenders and disturbed teenagers from all over Britain are set to be housed near a Black Country primary school, the Express and Star can reveal today. Children's home operator Green Corns, which caters for some of society`s most troubled young people, has bought the three bedroom semi-detached property in [BA], Wolverhampton – just streets away from several schools.
>
> The private firm, based in Wolverhampton and Rochdale Greater Manchester, looks after problem children aged 11 – 17 including single parents, those with extreme and challenging behaviour or mental health problems, and those who harm others sexually.

> It is understood two carers will be employed to look after just one youngster around the clock, costing taxpayers around £8,000 a week.
>
> The previous tenants moved out at the end of November and work is now underway to extend the bedroom in preparation for the first arrival, expected around the end of February.
>
> Furious parents with children at Clargate Primary School in nearby Chester Avenue are concerned that many pupils walk past the property every day. They have organised an emergency public meeting at the school at 7pm on Thursday due to be attended by councillors and Green Corns regional manager Alan Butler.
>
> Lavinia Fereday, who has three children at Clargate aged 8,7 and 5 said: "Its completely irresponsible if sex offenders are moving next to a school the children could be just like candy in a sweet shop".
>
> Clargate mother of two Louise Evans said housing problem children so close to a school was putting pupils at risk.
>
> "Even if they have mental health issues look at what happened in St Luke's Infant School in 1996 when nursery nurse Lisa Potts saved the children from being attacked by a maniac," she said.
>
> Childminder Charlotte O'Connor says the garden at [BA] overlooks her garden and sex offenders would be able to watch the children out playing.
>
> "This could seriously affect my business- who wants to send their child to a house where a sex attacker could be watching them".
>
> Clargate primary school head teacher Mr David Lee said he was aware of the plan although he had not been formerly informed by the local education authority.
>
> Alan Butler, who is based at Green Corns` Ettingshall office, admitted the children were "unlikely to be local" and could come from all over the country "depending on need". "

5. The following day 2nd February 2005 the Defendants published an article headed "Company Drops Scheme for Teenagers Following Public Outcry: Sex offender home plan is abandoned." The article states that the Applicant has revealed that after a report appeared in the Defendant's newspaper they would not be going ahead with their plans. That report is correct. The article also included quotations from neighbours expressing their delight and relief at this outcome. It included a quotation from the Applicant explaining that it is a leading provider of quality individual care

for young people with complex needs. The statement also explains that the Applicant is a fully regulated and well-established professional organisation whose aim is to provide child focussed individual, support and innovative care programmes within an everyday community environment that reflects unconditional positive regard for young people.

6. Two days later on 4th February 2005 the Defendant published an article headed "Neighbours speak out at plans to house disturbed teenagers: Fears as homes are bought for offenders". The article includes:

> "Dozens of houses have been bought up in the Black Country to house sex offenders and disturbed teenagers, the Express and Star can reveal… we can reveal a house in [FS] has already been bought by the firm. And a youngster is already living in the house in the Bradmore area. … The [FS] home is yards from St Luke's Infant School where in 1996 nursery nurse Lisa Potts saved children from being harmed by machete maniac Horret Campbell. Neighbour Victoria Denson said [FS], a three bedroom detached home, has been bought by Green Corns. They have told local families that young sex offenders, child abusers and teenagers with extreme and challenging behaviour could be housed there…"

7. On 9th February 2005 the Applicant decided not to proceed with their plans for the house in [FS], and that was reported in the Express and Star.

8. On 10th February 2005 the newspaper published an article headed "300 residents pack protest meeting: Fury at plan to house youths". It identified the address of a house owned by someone other than the Applicant and reported the owner's plan to house two children and three carers. It refers to angry residents having started a petition against the plan.

9. On 24th February 2005, there was a public meeting concerning the address at WA, and the property referred to was attacked and a number of windows smashed.

10. On 25th February 2005 the Defendant published an article headed, "Young Sex Offenders set to be housed in Residential Street Fury Over Yobs Home." The article includes the following:

> "Hundreds of angry residents and parents braved the cold weather to campaign against plans to house young sex offenders and disturbed teenagers in a quiet Wolverhampton Street.
>
> Around three hundred people attended an emergency meeting last night at Springdale Church Hall…. Where they heard the children's home operator Green Corns had bought a three-bedroom house for up to six youngsters.
>
> The house [WA] is undergoing repairs in preparation for the youngsters, who will be supervised around the clock by carers.

> … Ray Hall, aged 73 who lives at [the next door address], said: "We live in a quiet street but who knows what it will be like after they have moved these children in. I was disgusted when I found out what was going on. This will affect the price of my property, because who will want to live next door to these children? "

11. The article continues, stating that the meeting was attended by local councillors, a representative of the Member of Parliament and a neighbourhood watch co-ordinator Sylvie Dainty. It referred to the funding from the government received by the Applicant, and contained quotations from neighbours concerned about their own children. Another article headed "Protest meeting on home scheme" reports that the Applicant "recently ditched plans to house offenders at [BA] and [FS] after protests by neighbours" and went on "but a source revealed Green Corns are searching for up to 20 homes in the Black Country".

12. On 2nd March 2005 another article was published headed, "Addresses of troubled youngsters to be withheld: Paedophile target fear for offenders". It identifies the house at BA as being for sale. The gist of the article was in the first sentence, which read:

> "A children's home operator housing young sex offenders in the heart of the community today said they were unable to disclose their new addresses - because the youngsters could themselves be targeted by paedophiles ".

13. On 8th March 2005 the Defendants published a further article under the heading "Huge Bill for Care Home Provider: £190,000 for each troubled youngster". The article reported an interview with the Chairman of the Applicant. Included in the article was the following quotation:

> "'Each child has two members of staff and if we have a child who is extremely vulnerable they will have two staff awake 24 hours a day' he said. 'Sometimes there will be three workers per child…. People should feel confident because other services don't provide the same training to be able to cope with this type of behaviour. Green Corns does one thing – and we do it exceptionally well'. Anyone with worries about a Green Corns property can call [and a telephone number is given]".

14. On 23rd March 2005 the North Dudley area committee of the Dudley Metropolitan Borough Council held a meeting. The minutes are published. One of the matters considered was a petition objecting to the use of premises (which are not owned by the Applicant) as a children's or remand home. Following consideration of this, the minute records that questions were read by members of the public regarding a house at [ML], which is the property of the Applicant.

15. On 24th March 2005 the newspaper published a further article headed "Anger at meeting on homes". It reported that residents were furious over what they believed were proposed children's homes at two addresses, one of them having nothing to do with the Applicant and the other at ML.

16. On 26th March the newspaper published a further article headed "Warning over home buy out for childcare". It referred to the property identified two days previously and contained photographs of neighbouring property. On 27th March the property was found to have been extensively damaged.

17. On 28th March the newspaper published another article this time headed "Anger over Plans to House Troubled Youths in Neighbourhood: Keep Sex Offenders Away say residents". The article reported on residents joining forces to lobby Parliament. There is also a quotation from the Applicants about the training their staff receive. The article appears to be reporting what it refers to as "A Summit Meeting" of action groups in the area. It includes:

> "Plans for a children's home in [BA] were quashed thanks to people power but plans have been revealed for homes in [WA] and [FS] near St Luke's Infant School where machete maniac Horrit Campbell struck in 1996 ".

18. On 4th April 2005 the Applicant's chairman sent an e-mail to the editor of the Express and Star. The purpose of the e-mail was to arrange a meeting with the editor, which did not take place. In the e-mail he included the following:

> "We have also met with various groups of residents and launched a programme of contact with them. We understand the residents may have concerns and we need to communicate with them and we do. However, as one of the largest childcare companies we also have a responsibility to the children in our care. Naturally you have legitimate interests in what happens in Wolverhampton but printing the exact location of our homes has resulted in criminal damage to properties, incidents of breaking and entering and homes having protestors outside them when a child and carers were inside the house ".

19. On 5th April a letter before action was written. It sought undertakings to be provided by 4pm on 11th April 2005.

20. On 8th April the response came from the Defendant's solicitors. It denied that there was any legal basis for a claim. Approaches were made on behalf of the Applicant to a number of journalists and other newspapers to enquire whether they were proposing to publish the addresses. The response was that while they were proposing to cover the story they would not publish addresses. Some of those journalists happen to work for other newspapers also published by the Second Defendant, but under different editors.

21. Also on 8th April 2005 a large mob demonstrating their anger stood outside a particular property. The 15-year-old child inside and his two carers had to be escorted by the police from the house. The child had to be taken to another house for safety. Later that evening a brick was thrown through the window.

22. On 11th April 2005 the newspaper published a further article headed "Over 1000 people are against the Green Corns project: Petition launched on Children's Home Plan." The article states that a petition with more than 1000 signatures is being sent to

Parliament, and to officials in Birmingham who have allowed young sex abusers and troubled teenagers to be housed in Wolverhampton. The article refers to the earlier revelations which had led to the abandonment of a planned house in [BA]. It said that the petition had been handed to a local councillor who had sent it on to the Commission for Social Care Inspection ("CSCI") who had given a licence to Green Corns to open houses in the region.

23. On 19th April 2005 Miss Stokes, chief reporter for the Express and Star submitted to the CSCI a notice for a request for information under the Freedom of Information Act 2000. The information sought was:

> 1. The location of Green Corns Homes in the Wolverhampton Dudley areas
>
> 2. Representations made by local residents to the Commission about Green Corns Home established in residential streets".

24. On 29th April 2005 the CSCI responded as follows:

> "…Although information that CSCI holds about registration of their service providers/managers is not accessible under FIA, some information about currently registered services is available to the public under Section 6 of the Care Standards Act 2000…. Including the name, address and telephone number of the establishment, the date of registration, any conditions imposed on the registration, the service category, the number of service users of each sex, etc. Anyone asking for a copy or extract from the register is entitled to have one, under Section 36 (1) but Section 36 (3) allows for regulations to prescribe circumstances in which these provisions are not applicable. The Care Standards Act 2000 (Establishments And Agencies) Miscellaneous Amendments) Regulations 2002 state that register entries of children's homes are restricted to include only the name of the home and the telephone number but not the address or other location details for the safety and protection of children. Hence the addresses of children's homes on the register cannot be supplied to anyone making a request under Section 36 (1) of the CSA and the address is/are therefore, also exempt under Section 44 of the FOIA, prohibitions on disclosure.
>
> Regarding the second part of your request, the CSI received a petition and about eighty letters objecting to the location of Green Corns home in a residential street. As these documents contain personal information and information provided in confidence they are exempt from disclosure under Sections 40 and 41 of the FOIA. Due to the nature and number of letters received, the business relationship manager has prepared a standard response and I attach a copy for your information."

25. The standard response attached to that reply includes the following:

"The Regulations referred to are supported by National Minimum Standards, which the Commission must take into account in its decision making, but these are not in themselves legally enforceable. These touch on relations with the wider community at Standard 34.9- the manager is required to "take reasonable steps to ensure good relationships with neighbours and the wider community". I have therefore copied your letter to the Directors of Green Corns who I am advised are in the process of meeting with any local residents having concerns about the home…. You should be aware that a further set of Regulations prevents CSCI from making public the address of the children's home in order to protect vulnerable children from the attentions from those who may seek to harm them.

I understand a letter sent to Bruce Marris MP has been circulated to local residents and you may well have seen a copy of this. This may have raised expectations of a wide consultation process with the community, and we have written to the MP to correct this impression. Our expectation is that the provider will establish contact with immediate neighbours and will begin to develop good neighbour relations with them in accordance with Standard 34.9 as set out above.

The forum by which local residents may make their views known is normally the planning process, however, in many cases, because children's homes are small, the local authority deems that planning consent is not required. That is a decision for the local authority in each specific case, and CSCI will continue to check with them in respect of each application.

Many of the letters received by CSCI concerned the perceived risk to the community of having a children's home located in the area. Whilst I am not able to discuss the specifics of this particular application, I can reassure you that CSCI would wish to ensure that their home is conducted safely for all. That includes ensuring that all admissions to a children's home are the subject of a thorough risk assessment, and that the home is adequately staffed by appropriately skilled and experienced people who are able to ensure that there is adequate supervision of any children placed in the home.

I understand Allan Butler of Green Corns has met with local residents to explain the companies' intention. If, following this meeting, you have concerns about the capacity of Green Corns to provide safe homes for vulnerable children in accordance with the Regulations I refer to above, then I am prepared to take your further concerns into account as part of the registration process".

26. Also on 29th April 2005, and in response to an enquiry by solicitors for the Defendant, HM Land Registry revealed title numbers of properties registered in the name of the Applicant. From these responses official copies of the register entries were obtained.

27. The position of the Applicant is set out in a witness statement of the Applicant's Chairman and Chief Executive, Mr Oreshnick. It is dated 14th April 2005 and includes the following:

> "3. Green Corns Limited ('Green Corns') is a company which carries on the business of providing care to vulnerable children between the ages of 9 and 18. Usually these children are placed under the care of Green Corns by local authorities and very often the children will have been through a number of care homes already before coming to Green Corns.
>
> 4. It is correct to say that Green Corns is one of the largest providers of specialist care services for children aged 9 to 18 in the United Kingdom. Operations have been established by the company in the West Midlands, as there are 6,000 'looked after' children who may be in care in the region with over 3,000 in the particular region known as 'the Black Country' where the Defendant's newspaper is circulated.
>
> 5. In the recent Green Paper published by the Government entitled 'Every Child Matters', following the Laiming Enquiry set up to investigate the death of Victoria Climbie, the Government stated as policy that children in care should be housed within 20 miles of where they originate from. This is a policy which Green Corns tries to adhere to when locating a child that is placed with it.
>
> 6. The Children that are placed with Green Corns are all vulnerable children. This is not merely by reason of their minority but also because of their experiences in life. Of the children under the care of Green Corns about 75% have been abused physically, sexually or emotionally damaged. Our figures show that 26% of our clients have been sexually abused and a further 54% suffer from family disfunction, challenging behaviour (usually caused by abusive behaviour etc.). Some of the children will have been through the criminal legal system but the majority have not.
>
> 7. I shall explain the care that is provided by Green Corns in general terms so that the court can understand the sensitivity of the work with which we are engaged. I should stress that in this witness statement I am only describing the procedures employed by Green Corns insofar as they are relevant to this case.
>
> 8. The general procedure which is adopted by Green Corns is that a house is purchased outright by the company and is

selected in accordance with certain 'safety' criteria to ensure that the child under care is not exposed to inappropriate company. An example of this is that we would not acquire a house in an estate which is known to have a drug or gang problem.

9. It is important to emphasise that the investment of Green Corns in the care of the children placed with it is substantial. Green Corns purchases the property, provides carers on a 24hr/7 days a week basis to the children so that they are not left unattended at any time. Only when the Local Authority placing the child together with Green Corns assess that there is no longer a significant risk to the community, is any child allowed to leave the house. The children do not access mainstream schools as they are provided with their educational needs in the house by Green Corns. The educational services provided are specialist services as many of the children have learning difficulties. Over time the children are taught to become independent. Children are required by the placing Social Services department to be provided with pocket money. Children are taught to budget the use of this money, £8 per week under age 16 in two instalments to purchase items from the local shop on their accompanied visits.

10. It is very important that it is understood that this is specialist care that is provided by Green Corns and there is only one child in a house that is purchased at any one time. There will be one but more likely two carers in the house with that child at any one time. No two houses are purchased by Green Corns in close proximity. The intention of Green Corns is to try to place a vulnerable child into an as near "normal" and safe environment as possible near to where they originate.

11. Each house is registered with the Commission for Social Care and Inspection ('the Inspectorate') although that register is not available to the public as the publication of the addresses of homes in which vulnerable children are housed is clearly dangerous. Publication of the addresses would make the houses a target for criminals and paedophiles as well as inviting protests at the houses, which in itself can have a detrimental effect.

ACQUIRING PROPERTIES

12. In acquiring properties Green Corns does not publicise the fact, as this would be detrimental to the purpose for which it is acquired. The company only uses certain building companies to carry out any refurbishment work which is required before occupation. These builders are told not to divulge the name or business of the purchasers, as indeed are estate agents and property finders.

> 13. Likewise carers attending at houses are instructed not to discuss their activities with anyone else.
>
> 14. Whilst a register identifying the houses is kept by the Inspectorate that register is not made available to the public by the Inspectorate or by Green Corns."

28. The specific concerns of the Applicant are set out in paragraph 24 of the witness statement as follows:

> "24. The publication of the addresses and location of the house which are purchased by Green Corns creates or increases the risk that:
>
> (1) the houses will be a target for criminals and paedophiles who are made aware, through the newspaper, that a vulnerable child lives at a particular address;
>
> (2) the houses will be the subject of criminal damage by individuals;
>
> (3) the houses are considered as being an appropriate place at which to make a protest such as large groups standing outside with placards and chanting slogans… [he describes the incident on 8th April].
>
> 25. I believe that people are entitled to protest and to express their views however hurtful and misinformed those views may be. However Green Corns must draw the line at the sort of invasion of private information which creates or increases the risk of criminal damage and interference with the ability of vulnerable children and their carers to live in peace".

29. Mr Oreshnick refers to the following incidents. On 24th February 2005, the same day as a public meeting, the property referred to was attacked and a number of windows smashed. On 8th April there occurred another incident. Both are already referred to above. Mr Oreshnick notes that the Applicant has been acquiring properties and providing care since April 2004 but it is only since February 2005 that problems have occurred with protestors and attacks on the Applicants houses.

30. The Defendant disputes that the problems and attacks that the Applicants had suffered have been caused by any publication by them. That is an issue of fact which I cannot resolve in these proceedings. Apart from that, the Defendants do not dispute anything that Mr Oreshnick says concerning the Applicant and what the Defendant refers to as "its business activities". In a witness statement dated 20th April 2005 Mr Adrian Faber the editor, states that his newspaper has the right to report on local events that touch on the lives of people and that they have a duty to do so. It is his policy that he and his journalists should comply with the Code of Practice of the Press Complaints Commission. He does not consider it to be the function of the paper to try and direct

or influence current news events or to instigate local people to follow a particular course of action. The newspaper under his direction does not try to generate controversy for the sake of it.

31. There are a number of facts which he sets out as showing that the addresses of the Applicant's properties cannot be regarded in law as confidential. He points out that scores of people who live in the relevant streets must have known for some time about the Applicant's properties and the use to which they are being put. In practice people are going to know who their neighbours are. In addition he says that much information is available from HM Land Registry and information has also become available from the published committee minutes of the Council in particular the minutes of the meeting on the 23rd March.

32. Mr Faber states that there is a public interest in the public being informed about the Applicant and what it is doing with and for the young people concerned. As he puts it:

> " I believe that the issue of where problem children should be placed, including the specific location of placements, are issues of the highest public interest. People are understandably concerned about the impact on their on their own children, on the area, and on property values. Some of their concerns may be exaggerated, but I suggest they are better met by argument and information than unrealistic attempts at imposing secrecy."

33. Referring specifically to the PCC Code Mr Faber says:

> "I should emphasise that there was never, ever, any possibility of any of the residents of the Applicants homes being identified in the E and S. "

34. The point being made there is that the addresses would be published, and the purpose for which the premises are being used by the Applicant and the children should be published, but the names of the children will not be published.

35. Mr Faber explains why he decided to authorise the publication of the addresses of the four of the Applicants properties which are referred to in the published articles. He says:

> "Quite simply, I was of the view that the addresses of the properties in question had become so widely known locally, and publication would not substantially affect any risk of vigilantism, and that such a risk would in any event be outweighed by the public interest in their addresses and public meetings and demonstrations being fully reported. It will also be appreciated that to report the place of a public meeting necessarily implies that the property concerned is nearby; likewise to identify any of the speakers".

36. Mr Faber refers to the undertakings given to the court on 22nd April 2005. In the light of those, he says that he has not made public the views expressed to him by a

member of the public referring to this controversy. Those views, included in an e-mail, are:

> "I am not alone in thinking that this issue is very close to home and affects local residents in many different ways. I have daughters, and I also own my own home, so there are just two concerns that I have – my daughter's safety and the value of my home. There has been much done in this area in recent years to remove unwanted members of the community, just for this organisation to come along and undermine this. I only learnt of this via a petition in our local supermarket. Followed by the newspaper article in the local free paper Friday night. We finally, received this morning, a flyer through the letterbox about this issue from Green Corns. Just to reiterate, you have my families support to fight this gagging order ".

37. The lady gives her name and address, but is alert to the sensitivity of publishing personal information. She adds "please can you not identify me if this is to be published". The undertaking given to the court on 22nd April would not have prevented the Defendant from publishing that lady's view.

38. There is a witness statement from Ms Stokes, Chief Reporter of the Express and Star. It is partly directed to demonstrating that the reports of the newspaper are indeed reports of concerns already held by members of the public and communicated by members of the public to the newspaper. It also demonstrates the extent to which information is already known to members of the public. The matter first came to her attention during the late afternoon on 31st January 2005 in a telephone call from anxious parents. They told the newspaper about the Applicant's intention with regard to [BA] and of the public meeting and protest that was being organised. She then with her colleague Ms Spencer made enquiries. Research included the Applicant's web site. Members of the public told her of their concerns and that they had alerted councillors and their MP. He also contacted the newspaper to pledge his support to the parents. Everything that was reported in the newspaper articles was a result of these communications from members of the public and research is carried out in response. Members of the public she said were aware of the Applicant's website.

39. There is a witness statement from Paul Kelly who is the Chief Reporter of the newspaper for Dudley. He too had followed up the contact made to the Wolverhampton reporters. He says the source was anonymous and he was told that there was to be a meeting about a home in PL (the home that was not owned by the Applicant, although he appears to think that it was). He states "residents were already aware of the house and the use that the Applicant was planning for the home". He said that a petition was to be presented about that home and the protest also included ones related to the Applicant's property at ML. On the evidence before me, it is not clear whether the confusion as to the ownership of the property is one that is shared by members of the public to whom Mr Kelly spoke or whether it is his misunderstanding.

40. Finally there is a witness statement dated 5th May 2005 from Kenneth Tudor the Chief Reporter of the newspaper in the Sandwell office. He says that he has received many calls from members of the public asking the newspaper to highlight and explain the

plans of the Applicant for the area. He states that people repeatedly asked that the newspaper write and publish stories to highlight the problem, attend public meetings, and to obtain a response from the company because their requests for information were not being answered by the Applicant or the authorities. He says that he told people to whom he spoke that the newspaper were unable to report their concerns at the present time for legal reasons. That is a mistaken interpretation of the undertaking that had been given on 22nd April.

THE LAW

41. The Human Rights Act 1998 s.12 includes the following:

> "12. - (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression…
>
> (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
>
> (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to-
>
> (a) the extent to which-
>
> (i) the material has, or is about to, become available to the public; or
>
> (ii) it is, or would be, in the public interest for the material to be published;
>
> (b) any relevant privacy code."

42. The proceedings here relate to journalistic material and if I grant the relief sought that will affect the exercise of the Convention right to freedom of expression.

43. Arts 8 and 10 of the Convention, so far as material, provide as follows:

> "Article 8 - *Right to respect for private and family life*
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of

> …, public safety or …, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."
>
> Article 10 - *Freedom of expression*
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers….
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of … public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

44. It follows that I must decide whether or not I am satisfied that the applicant is likely to establish at trial that publication should not be allowed and that I must have regard to both the extent to which the material has and is about to become available to the public ("public domain"), and the extent to which it is or would be in the public interest for the material to be published. I must have regard to the Press Complaints Commission Code.

45. The relevant provisions of the Code, relied on by the applicant are as follows:

> "3 *Privacy.
>
> (i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications. Editors will be expected to justify intrusions into any individual's private life without consent.
>
> Note – Private places are public or private property where there is a reasonable expectation of privacy.
>
> 6 *Children
>
> Young people should be free to complete their time at school without unnecessary intrusion.
>
> 7 *Children in sex cases
>
> The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
>
> 9 *Reporting of crime

> Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.
>
> 11 Victims of sexual assault
>
> The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.
>
> The Public Interest
>
> There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.
>
> 1. The public interest includes, but is not confined to:
>
> (i) Detecting or exposing crime or a serious impropriety.
>
> (ii) Protecting public health and safety.
>
> (iii) Preventing the public from being misled by some statement or action of an individual or organisation.
>
> 2. There is a public interest in the freedom of expression itself.
>
> 3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.
>
> 4. The PCC will consider the extent to which material is already in the public domain, or will become so.
>
> 5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interests of the child.".

46. The meaning to be given to the word 'likely' in s.12 has been explained in *Cream Holdings Ltd v Banerjee* [2004] UKHL 44; [2005] 1 AC 253 as follows:

> "22. … section 12(3) makes the likelihood of success at the trial an essential element in the court's consideration of whether to make an interim order. But in order to achieve the necessary flexibility the degree of likelihood of success at the trial needed to satisfy section 12(3) must depend on the circumstances. There can be no single, rigid standard governing all applications for interim restraint orders. Rather, on its proper construction the effect of section 12(3) is that the court is not to make an interim restraint order unless satisfied the applicant's prospects of success at the trial are sufficiently favourable to justify such an order being made in the particular circumstances

> of the case. As to what degree of likelihood makes the prospects of success 'sufficiently favourable', the general approach should be that courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably ('more likely than not') succeed at the trial. In general, that should be the threshold an applicant must cross before the court embarks on exercising its discretion, duly taking into account the relevant jurisprudence on article 10 and any countervailing Convention rights. But there will be cases where it is necessary for a court to depart from this general approach and a lesser degree of likelihood will suffice as a prerequisite. Circumstances where this may be so include those mentioned above: where the potential adverse consequences of disclosure are particularly grave, or where a short-lived injunction is needed to enable the court to hear and give proper consideration to an application for interim relief pending the trial or any relevant appeal.
>
> 23. This interpretation achieves the purpose underlying section 12(3). Despite its apparent circularity, this interpretation emphasises the importance of the applicant's prospects of success as a factor to be taken into account when the court is deciding whether to make an interim restraint order. It provides, as is only sensible, that the weight to be given to this factor will depend on the circumstances. By this means the general approach outlined above does not accord inappropriate weight to the Convention right of freedom of expression as compared with the right to respect for private life or other Convention rights. This approach gives effect to the parliamentary intention that courts should have particular regard to the importance of the right to freedom of expression and at the same time it is sufficiently flexible in its application to give effect to countervailing Convention rights"

47. There is also guidance from the House of Lords in the event that the court finds that values under Arts 8 and 10 are in conflict. In *re S (A Child)(Identification: Restrictions on Publication)* [2004] UKHL 47; [2004] 3 WLR 1129. Lord Steyn explained the approach as follows:

> "**17** The interplay between Arts 8 and 10 has been illuminated by the opinions in the House of Lords in *Campbell v MGN Ltd* [2004] 2 WLR 1232. … What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to

> each. For convenience I will call this the ultimate balancing test."

THE LIKELIHOOD OF THE APPLICANT SUCCEEDING

48. The claim is brought in confidence, or misuse of private information. The law of confidence, so far as material, can be taken from the speeches of the House of Lords in *Campbell* paras 14-20 (Lord Nicholls) and 132 (Baroness Hale), which include the following:

> "14 This cause of action has now firmly shaken off the limiting constraint of the need for an initial confidential relationship. In doing so it has changed its nature. In this country this development was recognised clearly in the judgment of Lord Goff of Chieveley in *Attorney General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109, 281. Now the law imposes a "duty of confidence" whenever a person receives information he knows or ought to know is fairly and reasonably to be regarded as confidential. Even this formulation is awkward. The continuing use of the phrase "duty of confidence" and the description of the information as "confidential" is not altogether comfortable. Information about an individual's private life would not, in ordinary usage, be called "confidential". The more natural description today is that such information is private. The essence of the tort is better encapsulated now as misuse of private information.
>
> 15 In the case of individuals this tort, however labelled, affords respect for one aspect of an individual's privacy. That is the value underlying this cause of action. …
>
> 17 The time has come to recognise that the values enshrined in articles 8 and 10 are now part of the cause of action for breach of confidence. As Lord Woolf CJ has said, the courts have been able to achieve this result by absorbing the rights protected by articles 8 and 10 into this cause of action: *A v B plc* [2003] QB 195, 202, para 4. Further, it should now be recognised that for this purpose these values are of general application. The values embodied in articles 8 and 10 are as much applicable in disputes between individuals or between an individual and a non-governmental body such as a newspaper as they are in disputes between individuals and a public authority…
>
> 19 In applying this approach, and giving effect to the values protected by article 8, courts will often be aided by adopting the structure of article 8 in the same way as they now habitually apply the Strasbourg court's approach to article 10 when resolving questions concerning freedom of expression. Articles 8 and 10 call for a more explicit analysis of competing

> considerations than the three traditional requirements of the cause of action for breach of confidence identified in *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41…
>
> 132 Neither party to this appeal has challenged the basic principles which have emerged from the Court of Appeal in the wake of the Human Rights Act 1998. The 1998 Act does not create any new cause of action between private persons. But if there is a relevant cause of action applicable, the court as a public authority must act compatibly with both parties' Convention rights. In a case such as this, the relevant vehicle will usually be the action for breach of confidence, as Lord Woolf CJ held in *A v B plc* [2003] QB 195, 202, para 4:
>
> "[Articles 8 and 10] have provided new parameters within which the court will decide, in an action for breach of confidence, whether a person is entitled to have his privacy protected by the court or whether the restriction of freedom of expression which such protection involves cannot be justified. The court's approach to the issues which the applications raise has been modified because, under section 6 of the 1998 Act, the court, as a public authority, is required not to 'act in a way which is incompatible with a Convention right'. The court is able to achieve this by absorbing the rights which articles 8 and 10 protect into the long-established action for breach of confidence. This involves giving a new strength and breadth to the action so that it accommodates the requirements of these articles."

PRIVATE INFORMATION

49. The applicant contends that its Art 8 rights and those of children placed in its care are engaged in this case, that the children's rights are of a high order of importance, and that the potential detriment to the children of further publication of the addresses of their homes (and in some cases the homes being prepared for them) are likely to be great. What applies to the children also applies to some extent to the carers who live with them in the homes.

50. Mr Spearman QC has placed the rights and interests of the children at the forefront of his argument. In the circumstances it will not be necessary for me to consider in detail the rights of the applicant company or the carers.

51. The fact that the applicant is the company and that no individual child or carer is named as a claimant requires comment. The courts recognise that institutions can be proper claimants in respect of the rights of those entrusted to their care: *Ashworth Hospital Authority v MGN* [2002] 1WLR 2033. In that case in the House of Lords the defendant did not dispute that that the hospital authority had an independent right in the confidentiality of their patient's records, assuming that the contents of the records

were truly confidential (a point decided in the Court of Appeal in respect of which the Defendant did not appeal).

52. Mr Caldecott QC has directed his argument to the merits of the claims, and not to the fact that none of the individual children or carers are named as claimants. It is clear that, at least in those cases where the addresses are occupied as homes by individual children and their carers, those individuals could be joined as claimants. Whether individual claimants could be joined in respect of addresses which are being prepared for occupancy as homes is not clear on the evidence. This is a point to which it will be necessary to return.

53. There is no doubt that the home address of an individual is information the disclosure and use of which that individual has a right to control in accordance with Art 8. See *R (Robertson) v Wakefield MDC* [2001] EWHC Admin 915; [2002] QB 1052 [29]-[34] and *R (Robertson) v Secretary of State for Home Department* [2003] EWHC 1760. The first of those cases (as Maurice Kay J summarised it in the second) concerned the use of information on electoral registers. Maurice Kay J held that the practice of selling the electoral register for direct marketing purposes without affording an individual elector a right of objection was a disproportionate interference with the individual's right to respect for private life under Article 8 of the ECHR.

54. In the light of the first decision, an amendment was made to the Representation of the People (England and Wales) Regulations 2001 by the Representation of the People (England and Wales) (Amendment) Regulations 2002. The position now is that Electoral Registration Officers maintain two registers - the full register (which is open to public inspection and copies of which are available by purchase or otherwise to certain persons and bodies subject to restrictions) and the edited register (which excludes the names and addresses of those electors who have requested to be excluded from the edited register and which is generally available for purchase).

55. In the first case Maurice Kay J concluded at para 34 that:

> "… one … has to focus not only on the raw data – names and addresses, and by implication, the fact that those named are all over 18 (and, in some cases, recently so). Account also has to be taken of what is known and anticipated about the use to which it will be put".

56. There is nothing new about the recognition of the sensitivity of addresses. The risks associated with disclosure of personal addresses have long been recognised. See for example *R v Felixstowe Justices ex p Leigh* [1987] QB 582, 595D (entitlement of magistrates to protect their privacy by withholding disclosure of their addresses) and *Venables v News Group Newspapers* [2001] Fam 430; *Mills v News Group Ltd* [2001] EMLR 957 paras 26-27 (jurisdiction to restrain publication as a breach of confidence).

57. The public policy in not disclosing the addresses of children's homes has received statutory recognition (as pointed out in the letter of the CSCI in response to the newspaper's request under the Freedom of Information Act). The National Care Standards Commission (Registration) Regulations 2001 (as amended in 2002 by SI 2002 SI 865) provide in regulation 8 that the provision of copies of registers (under

s.36 of the Care Standards Act 2000) shall not apply to the address of a children's home, although its name may be provided. Statutory recognition of the policy of not disclosing the identities of victims of sexual offences is given by the Sexual Offences (Amendment) Act 1992 s1 (s.1(3A) specifically restricts publication of such a person's home and school addresses).

58. Where a person is a sexual offender, the public policy in restricting disclosure is reflected in Home Office Circular 45/1986 considered in *R v Chief Constable of North Wales Police ex p Thorpe* [1999] QB 396, 423, and subsequent cases. In that case the Court of Appeal described what was at stake in terms that could apply to the present case:

> "This appeal is concerned with the problem which arises when offenders who have committed serious sexual offences against children are released from prison after serving long prison sentences. When this happens, the public are naturally concerned that the offenders should not have the opportunity to commit again offences of the same nature. The police and other agencies who are involved in protecting children from offending of this nature obviously share this concern. Regrettably recent experience has confirmed that while some former sexual offenders' behaviour has changed after serving their sentence, other offenders retain the propensity to repeat their offending and, if given the opportunity to do so, commit further serious offences of the same or a similar nature. The police and the other agencies therefore have the very heavy responsibility of deciding on the steps which it is appropriate to take to provide protection for children who could in this way be at risk from former offenders.
>
> In reaching their decisions the police and the other agencies cannot ignore the position of the offender. The offender has served his sentence and he may be determined, so far as possible, to re-establish himself as a law-abiding member of society. His ability to do this will be made far more difficult if he is subject to the attention of the media or harassment by members of the community, who because of his past, do not want him to live amongst them. Sometimes a former sex offender can be at risk of physical attack from those who are outraged by his or her previous offending.
>
> In addition to having to take into account the interests of the offender, it is also necessary to take into account the danger of driving those who have paedophile tendencies underground. When their whereabouts are known, it is simpler for those responsible to ensure that they are living and working in conditions which reduce the risk of repetition of their previous conduct. Most importantly steps may be able to be taken to ensure that they are subject to suitable supervision, that they receive appropriate treatment and support and are suitably housed. If, instead, the former offender is driven underground

> by the conduct of the media or members of the community in which he is living, this may make it impossible to take steps which would otherwise be available to protect children living in the area.
>
> The tension which is the result of these conflicting considerations makes the position of the police one of extreme difficulty and sensitivity. They can be criticised for taking no or inadequate action to protect children at risk. Where they take action they can be open to criticism, either because of its effect on the ability of the offender to live a normal life or because it causes the offender to conceal his whereabouts so that children are more at risk than they would have been if this had not happened. ”

59. The Court concluded at p428:

> “Each case must be judged on its own facts. However, in doing this, it must be remembered that the decision to which the police have to come as to whether or not to disclose the identity of paedophiles to members of the public, is a highly sensitive one. Disclosure should only be made when there is a pressing need for that disclosure. Before reaching their decision as to whether to disclose the police require as much information as can reasonably practicably be obtained in the circumstances. In the majority of the situations which can be anticipated, it will be obvious that the subject of the possible disclosure will often be in the best position to provide information which will be valuable when assessing the risk.”

60. That case was decided before the Human Rights Act came into force, but little turns on that, having regard to the approach the Court adopted. It is also to be noted that the respondent was a public authority, and so did not in any event enjoy rights of freedom of expression under Art 10 (see HRA s7(7) and Art 34 of the Convention). However, the public do have rights to receive information under Art 10, and the Court could not have held that the information as to the convictions and the addresses of the individuals convicted should only be disclosed if there was a pressing social need, if the public had a right under Art 10 to receive that information in any event, whether on grounds of public interest or because the information was in the public domain. Similar observations can be made in respect of the *Robertson* cases. The respondents were public authorities, but the decisions would make little sense if the private direct marketing companies could capture the addresses on the public register and use them as they pleased in reliance on the argument that they do have Art 10 rights and the information is in the public domain.

61. The PCC Code, with its many references to children and those in a vulnerable position seems to me also to support the applicant’s position. The fact that no child has been named by the newspaper is immaterial. The mischief the Code is addressing can arise as readily if a child is identified by an address as by a name.

62. The information about individuals relevant to this case is not confined to the addresses where they live. There is other information the disclosure and use of which individuals have a right to control in accordance with Art 8. A useful indication of the sort of personal information that is regarded as sensitive can be found, in addition to the statutes referred to above, in the Data Protection Act 1998 s.6 (although no reliance is placed upon that statute by the applicant in this case). "Sensitive information" as defined in that section includes information as to a person's physical or mental health or condition, sexual life, and the commission or alleged commission by him of any offence.

63. The conjunction of information as two or more of these matters, namely an individual's address, the fact that that person is a child, and the fact that that child has a troubled history of mental health, sexual life and involvement in the commission of crime, will inevitably be regarded as a highly sensitive combination to which the court is very likely to accord some form of protection, subject to other considerations.

64. In *Thorpe* it was considered that, on the law of confidence as it was understood at that time, the applicant would not have had a private law claim in confidence. Recognition of the scope of the cause of action in confidence has developed since then, as the passages from *Campbell* show. But Buxton J anticipated the effect of Art 8 in *Thorpe* when he said at p 415:

> "…counsel for the Secretary of State and also, I think, counsel for the police authority were disposed to argue that issues of disclosure of confidential or private information could not arise in any event on the facts of this case, because the fact of AB and CD's convictions were by concession and self-evidently neither confidential nor private, and the identity of AB and CD and their presence on the caravan site was already known to the person to whom disclosure was made. I do not think that the matter can be turned away so easily. What in this case might at least be argued to have the basic attribute of inaccessibility (see Gurry, Breach of Confidence(1984), p. 70, cited in *Attorney-General v. Guardian Newspapers Ltd. (No. 2)* [1990] 1 A.C. 109, 215) was the conjunction of those various facts. It was that conjunction that the police deliberately brought to the attention of the site owner, when otherwise he would not, or probably would not, have found it out. As I have said, I very much doubt whether the subject of even that conjunction of information can claim confidence in it, because none of that information has come into the possession of its holder in circumstances that impart an obligation of confidence. I do however consider that a wish that certain facts in one's past, however notorious at the time, should remain in that past is an aspect of the subject's private life sufficient at least potentially to raise questions under article 8 of the Convention."

65. The fact (if it be such) that some of this information is already known to some individuals will not of itself mean that the information is incapable of attracting legal protection: *Campbell* para 74.

66. Mr Spearman QC concludes by submitting that the information sought to be protected in the present case is obviously private and requiring of protection (subject to other relevant considerations).

67. Mr Caldecott QC does not dispute any of this, so far as it goes. He focusses his arguments on the issues of public interest and public domain.

68. Mr Spearman QC's submissions so far are in my judgment unanswerable, and I accept them. I conclude that, subject to issues of public domain and public interest this claim is more likely to succeed at trial than not.

PUBLIC DOMAIN

69. I turn next to the extent to which material has and is about to become available to the public (s12(4)(a(i)).

70. There is in fact no evidence before me as to public knowledge of any matters in relation to any child in the applicant's care, other than the addresses of houses which the applicant has acquired. What has been available on the applicant's website until recently was a very full description of the kind of problems which are suffered by some children in their care. The website included case histories (no doubt anonymised) some of which describe harrowing experiences, ending with promising outcomes. The website includes descriptions of children inflicting serious harm on themselves and on the persons and property of those caring for them. There is no reference on the website to which my attention was drawn of the children causing any harm to anyone else. But there are descriptions of the children being allowed out to the shops with their carers, and occasionally losing contact with them.

71. A neighbour (or prospective neighbour) of children such as are described on the website might reasonably be concerned that such children (if housed near to themselves) could present a danger of some kind to other children living in the neighbourhood, or even for adults. However, as I have said, there is in fact no evidence before me at all relating to any child actually living, or intended to be living, at any of the addresses published so far, or any of the addresses of other houses acquired by the applicants.

72. Mr Caldecott QC's submissions have therefore been directed to public knowledge of the addresses. The evidence is set out above. What it amounts to is that persons living in properties adjacent to the houses acquired by the applicant have learnt that the applicant is the new owner, and have sometimes also learnt in general terms about the purpose for which the houses have been bought and the sort of problems which may be suffered by children for whom the applicant cares.

73. The evidence also shows that after these proceedings were commenced, and apparently with a view to establishing an answer to this claim, a much fuller search took place at HM Land Registry revealing the purchase by the applicant of a number of houses not previously referred to. I have little evidence as to how easy it is to conduct such a search, or how likely it is that ordinary members of the public would in fact choose to conduct it.

74. The Land Registration Rules 2003 SI 2003 No. 1417 include the following:

> "11 (1) … the registrar must keep an index of proprietors' names, showing for each individual register the name of the proprietor of the registered estate…
>
> (3) A person may apply in Form PN1 for a search to be made in the index in respect of either his own name or the name of some other person in whose property he can satisfy the registrar that he is interested generally (for instance as trustee in bankruptcy or personal representative)."

75. The form of application PN1 which was used to conduct the search pursuant to the Regulations in this case states that it was lodged by solicitors and that the interest of the Defendant in applying for the information was "For the purposes of litigation". I am not convinced that this a procedure which ordinary members of the public are likely to engage in, or, if they do, and HM Land Registry understands that the purpose of the search is to find the addresses of children's homes, that a second search would meet with the favourable response that the Defendant's search did. It seems to me that it might meet legal objections on the part of the Registry along the lines advanced in cases such as *Thorpe*, namely that the need to disclose the information has to be justified by reference to the Convention. I have not heard argument on the meaning of the test that the enquirer "satisfy the registrar that he is interested generally". I conclude that the evidence about the enquiry that was in fact made by the Defendant through their solicitors does not take the matter any further.

76. Mr Caldecott QC relies on the passage from the judgment of Lord Goff in *Spycatcher* [1990] 1 AC 109 at p282. He identified as one of the limiting principles of the law of confidentiality (as then understood) that:

> "… once it (the information) has entered what is usually called the public domain (which means no more than that the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it".

77. Mr Spearman QC submits that that must be read in context. The context was a claim for confidentiality in government secrets, which had already been published abroad. It made no sense to prevent publication in the UK, to those directly affected, when the information was already known to those who lived or travelled abroad. Lord Keith was careful to point to the different considerations that might apply where the information related to sensitive personal information, such as marital secrets. At p260 he said that even where there were widespread publication abroad of such information, the subject could reasonably claim that publication of the same material at home would bring it to the attention of people otherwise unlikely to learn of it who were more closely interested in the subject's activities than the overseas readers. He concluded:

> "The publication in England would be more harmful to her than publication in America. Similar considerations would apply to, say, a publication in America by the medical adviser to an English pop group about diseases for which he had treated

> them. But it cannot reasonably be held in the present case that publication in England now of the contents of *Spycatcher* would do any more harm to the public interest than has already been done".

78. There will be cases where personal information about a person (usually a celebrity) has been so widely published that a restraint upon repetition will serve no purpose, and an injunction will be refused on that account. It may be less likely that that will be so when the subject is not a celebrity. But in any event, it is not possible in a case about personal information simply to apply Lord Goff's test of whether the information is generally accessible, and to conclude that, if it is, then that is the end of the matter. To take the example of the electoral register, each person's address remains generally accessible on the register even since the Regulations have been altered in response to Mr Robertson's first case (as described above), but the restraint on the use of addresses for direct marketing remains in force: *R (Robertson) v Secretary of State for Home Department* [2003] EWHC 1760.

79. There are now numerous cases to illustrate this. In *A v M (Family Proceedings: Publicity)* [2000] 1 FLR 562 Charles J held that children would be likely to suffer harm of allegations already made public were repeated. In *Venables and Thompson v News Group International* [2001] Fam 430 para 105, in relation to information in the public domain, Butler Sloss P added a proviso to the public domain exception which would protect the special quality of the new identity, appearance and addresses of the claimants or information leading to that identification, even after that information had entered the public domain to the extent that it had been published on the Internet or elsewhere such as outside the United Kingdom. In the unreported judgment in the committal application for breach of the injunction granted in *Venables, Attorney General v Greater Manchester Newspapers Ltd* dated 4th December 2001, at para 33 Butler Sloss P held that information theoretically available from general public sources was not in the public domain. In *WB v H Bauer Publishing Ltd* [2002] EMLR 8 at [25]-[26] Eady J referred to the words of Lord Keith in *Spycatcher* and to *R. v. Broadcasting Complaints Commission, ex parte Granada TV* [1995] E.M.L.R. 16. He said:

> "It may be more difficult to establish that confidentiality has gone for all purposes, in the context of personal information, by virtue of its having come to the attention of certain readers or categories of readers".

80. In *Re X and Y (Children)* [2004] EMLR 607 paras 49, 66, 88-9, Munby J accepted submissions that that the repetition of information that has been placed in the public domain can be damaging to a child, and information in the public domain may be obscure so that republication could have a very significant effect, and items of information put separately into the public domain may, when republished together bring a story into the public domain in an entirely new way. He declined to include a public domain proviso in an order he granted and expressly decided to restrain republication of material already in the public domain, to give effect to compelling Art 8 rights of children.

81. I conclude that the information as to the addresses which is sought to be restrained is not in the public domain to the extent, or in the sense, that republication could have no significant effect, or that the information is not eligible for protection at all. The information as to the addresses linked with information as to the business of the applicant and thus to the likely disabilities and other characteristics of the occupants of the addresses brings together matters which together amount to new information which was previously accessible to the public only in a limited and theoretical sense. Publication or republication risks causing serious harm to the children and carers who occupy, or are to occupy, the addresses concerned. The extent to which the material has or is about to become available to the public is not, on the evidence of this case, a reason for withholding the injunction sought.

THE INTERESTS OF THE NEIGHBOURS AND THE PUBLIC INTEREST

82. Mr Caldecott QC argues that members of the public are entitled to communicate with one another both individually and at public meetings. They are entitled to report their concerns to the press. I accept this is so. Mr Caldecott QC reminds me of the important passages in the speeches in *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277 where Lord Bingham set out the role of the press in relation to public meetings. At p290-291he said:

> "In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and decisions which shape the public life of that society. The majority can participate only indirectly, by exercising their rights as citizens to vote, express their opinions, make representations to the authorities, form pressure groups and so on. But the majority cannot participate in the public life of their society in these ways if they are not alerted to and informed about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed. The proper functioning of a modern participatory democracy requires that the media be free, active, professional and inquiring. For this reason the courts, here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary to promote the legitimate object of the restriction."

83. That was said in the context of defamation proceedings and the public interest defence of qualified privilege which is available for newspaper reports of public meetings. The explanation for the importance of the press is not that journalists enjoy any greater rights of freedom of expression than anyone else. The principle is that the public's need to receive information is, and can only be, met through the medium of the press and broadcasters.

84. In this context Mr Caldecott QC invites me to have regard to the interests and rights of the persons residing near to the homes occupied, or being prepared, for children in

the care of the applicant. He submits that their concerns for their own safety and for the safety of their children are Art 8 rights.

85. There is a difficulty here. There is no evidence before the court about any individual neighbour or prospective neighbour other than the quotations in the articles set out above. I accept in principle that anti-social behaviour by a child in such a home might give rise to an interference with the Art 8 rights of a neighbour.

86. There are measures available in law to address the risk. There is the system of regulation and licensing under which the applicant operates. There has been little mention of this (or any failures in it) in the newspaper articles, or the evidence before me. If that measure fails, there are measures available once some interference in the neighbours' rights has occurred, such as the Protection from Harassment Act 1997. Conversely, groups of angry neighbours besetting a home, as described in some of the articles, could give rise to claims under the 1997 Act at the suit of the occupants.

87. But there is no evidence (as opposed to alarm) that such conduct is what any of the children cared for by the applicant are at risk of doing, and there is no evidence that any individual who has complained to the newspapers is in fact facing any such risk.

88. Mr Caldecott QC criticises the applicant for what he submits is the secretive manner in which they have set about acquiring the houses. There is some evidence that that is a criticism which has also been made by local councillors, and that there are enquiries being conducted by the council as to whether the system of regulation for children's homes provides for adequate consultation with the local population. However, none of these matters have been investigated in any but the sketchiest manner before me. Equally there is some evidence in the documents quoted above that the criticism is misplaced and that the applicant has consulted with the local community. If there has been such consultation, it appears that many people remain unconvinced. I can form no view one way or the other on this issue.

89. By way of background, it should be noted that as a general rule (and subject to planning and other regulatory legislation) a person buying or converting a house does not have to consult with the people already living in the neighbourhood. The suggestion that there should be such an obligation only needs to be stated to be seen to be extravagant. Buying and selling houses does not require the consent of the neighbours. *Thorpe* could not have been decided as it was if people already resident at a location have a right to be consulted before, or when, a person arrives who has a criminal history, or some other history, which the existing residents might fear presents a risk to them.

BALANCING THE VALUES ENGAGED

90. I turn then to consider what are the most important values that are engaged in the present case. These include, obviously, the rights of the public and of the newspaper respectively to receive and impart information, as provided by Art 10. They also include, for reasons I have given, the rights of the children and their carers in occupation of the homes whose addresses have been or are at risk of being published

in the newspaper, to control the disclosure of personal information about themselves, these being rights under Art 8.

91. They do not include any Art 8 rights of persons already living near one of the applicant's houses. While in principle they could include such rights, the evidence that such rights are engaged is just not available to me. No such individual has sought to be joined in the proceedings or otherwise present evidence to the court. I have been referred to mentions in the papers of petitions, one of which the newspaper reported to have 1,000 supporters. But I have too little information as to the petitions to do more than conclude, as I do, that there has been substantial anxiety about this matter in the locality affected, some of it based on mistakes as to who the owner of a particular house is. Mr Caldecott QC did not persuade me that any of the public interests identified in the PCC Code were engaged. There is simply not the evidence to show that anything the applicant is planning is a threat to public safety, or that the public have been misled.

92. Mr Caldecott QC submits that the legislation referred to above, in particular the regulations on disclosure of the addresses of children's homes, are specific in their application, and do not pre-empt the court's duty to have regard to public domain and public interest issues. I accept that submission so far as it goes. But the legislation does indicate recognition of a public policy. And there is no evidence before me of a conflicting public interest such as might fit with any of the public interests identified in the PCC Code.

93. The question remains as to the houses that have been bought and are being prepared for occupation, but are not yet occupied, as homes. During argument I raised with both counsel whether they might invite me to distinguish between homes that are occupied and houses that are not. For different reasons, neither invited me to draw such a distinction.

94. For the applicant Mr Spearman QC submitted that such a distinction would be most unsatisfactory. As a practical matter, it might mean that if only the addresses of occupied homes were the subject of a restraint, there would be an incentive for neighbours to rush to publish the address before the house could be occupied, thus forcing the applicant to abandon its proposals, as has already happened twice, according to the evidence. And as a matter of principle, Mr Spearman QC submits that children waiting for such accommodation and facilities have Art 8 rights which are capable of being infringed by publication of information relating to a house which has been prepared for them, if that might result in the house becoming unavailable.

95. This point does not seem to me to be easy. But even if there is no identifiable individual with rights in respect of an unoccupied home, there remain the non-Convention rights of the applicant to use its property, and the strong public interest that there should be such facilities provided in some way or another, whether privately or by the state, for children such as those in the care of the applicant.

96. I turn then to focus on the importance of the Art 10 right being claimed in this case.

97. Mr Caldecott QC submits, and I accept, that there is here political speech of a kind that attracts maximum protection under the Convention case law. The question how children such as those in the care of the applicant should be cared for is a question of

the highest public interest. It is the importance of the question that I focus on. I am not required, and it would not be appropriate for me, to assess the value of the contribution to the debate on that question which is made by the coverage which the newspaper has so far given to the question. It is not for me to comment on the editorial approach to the matter. I simply accept the submission that the question is one of the highest importance.

98. But the restraint sought would not prevent the participation by the newspaper in a debate on that question (in spite of what journalists have been telling members of the public). The restraint is aimed to preventing disclosure of particular addresses occupied, or to be occupied, by children.

99. On this issue Mr Spearman QC submits that no public interest has been identified at all. What appears to be worrying members of the public is whether or not there will be such a house next door or in their street. What is giving rise to the concern is not anything of general interest, but a series of private interests, few, if any, of which have anything in common. The point of high public interest is how such children should be cared for. It is not a matter of public interest whether, if they are accommodated in ordinary houses, it is in one house or street rather than another. Of course, it is may be a matter of concern whether a house is chosen say near a school, but most houses occupied by children in towns are near schools, and it does not inform the debate to identify any particular school. The real issue of public importance can only be the general one of policy.

100. Again I accept Mr Spearman QC's submissions. The comparative importance of the specific right claimed in this case to identify the individual addresses of houses acquired by this applicant is low.

101. On the other hand it seems obvious to me that the comparative importance of the specific rights claimed for children and carers living in homes are very high. The importance of the rights claimed in relation to the unoccupied homes is less easy to evaluate, as discussed above. Nevertheless, they are important rights, and certainly more important than the right of the newspaper to publish in its columns the addresses in question.

102. The justification for interfering with the newspaper's art 10 right falls squarely within art 10(2) and art 8, being the protection of the rights of others. The justification for interfering with the rights of the children and carers, and to a lesser extent the rights of the applicant, exists in principle: art 10 rights can provide such a justification. But the justification does not exist on the evidence in this case.

NECESSITY AND PROPORTIONALITY

103. That is not the end of the matter. It is necessary to consider whether the interference sought is necessary in a democratic society and proportionate.

104. A democratic society is one in which issues of public importance are resolved through institutions established by, or operating under, the rule of law. Subject to the rule of law, there are many cases where the rights of one class of individuals have to be

sacrificed. Compulsory purchase of property for building roads or airports is only one of the most obvious examples. Part of the process recognised by law is public protest. A high importance is attached to freedom of assembly and public protest. The press and other news media fulfil an essential role in publicising and facilitating public protest.

105. But in a democratic society protest must be lawful. The reference in the article dated 28 March to "people power" invites reflection. If "people power" means the power of people to influence events by lawful means, then it is by definition democratic. If it refers to one group of people compelling another to abandon lawful activities under threat of harassment or violence, it is the opposite of democratic.

106. A worrying feature of the publications by the newspaper is the apparent boasting that plans for homes for children have been abandoned as a result of the publicity. The information published in the articles does no more than raise concerns. There is very little factual content about the risks that the children might really pose to the neighbours. There is nothing in the newspaper publicity which corresponds to the careful weighing of conflicting values which is necessary if a decision is to be made as to the location for a child's home which is in accordance with the rights of all members of the public, including the children.

107. I conclude that a restraint on the publication of the addresses of the applicant's homes is necessary in a democratic society and is in principle proportionate.

108. Mr Caldecott QC submits that a report of a public protest or meeting about the location of a particular home will necessarily involve identifying the address. I do not agree. Journalists are familiar with reporting court proceedings involving children where identification is prohibited. It is commonly the case that cases are tried near to the place in which those involved as defendant, complainant or witness live. However the report is framed, there may be a few who will be able to identify an individual in some case. But in general it is possible and common for matters of public interest to be reported without disclosing prohibited information. The same applies to reports of meetings of the local authority where matters of public interest are discussed which involve particular locations.

109. Mr Caldecott QC also draws attention to measures short of restraining publication. One might be consultation with the police to ascertain what they may think is available as a means of protecting the children. But that does not address the fact that the newspaper boasts of responsibility for causing the applicant to abandon plans. It is not the newspaper's case that their publicity has had no effect on the applicant. Moreover, the law also provides alternative means for the protection of the neighbours from any risk that the children might pose. Publication of addresses is not necessary to protect their right.

110. Mr Caldecott QC also points to the fact that the injunction is being sought only against one newspaper, and not against members of the public or councillors. The reason why no injunction is sought against other journalists in the area is that they have been asked whether they propose to publish the addresses and have said that they do not. The position in relation to councillors debating the issue in the course of the proceedings of local authorities raises quite different issues. At present I have no evidence of any intended debate in which the addresses are to be publicly mentioned.

Even if such a debate takes place, the question whether the addresses should be reported in the press raises different questions from whether it is lawful for councillors to refer to the addresses in the course of their proceedings. The fact that no injunction is sought against the councillors is of little assistance in deciding whether one should be granted against the newspaper. Similarly, different considerations apply when considering individual members of the public. Individuals may well have an interest in discussing amongst themselves informally or at a meeting problems relating to persons residing in or near their own homes. The number of people likely to be interested in such a discussion is likely to be small compared with the readership of a local newspaper. There is unlikely to be any need for a restraint against such discussion.

111. Mr Caldecott QC drew my attention to the chronology of events set out above and submitted that it showed delay on the part of the applicant in seeking the injunction. It is true that in breach of confidence cases a claimant can normally be expected to act quickly and not wait for weeks from the first publication. But much depends on the nature of the information, and whether the threat of further publication is such as to make injunctive relief necessary and proportionate. It seems to me that what can be inferred from the chronology here is that the threat of publication might have appeared to be a temporary phenomenon, likely to end without the need for legal action. Legal action is a big step to take and can generate more publicity than it prevents. I draw no adverse inference from the course which the applicant took in this case.

CONCLUSION

112. I conclude that the application for an injunction to restrain publication through the news media or other means of mass communication of the addresses or locations of homes occupied by, or being prepared for occupation by, children in the care of the applicant succeeds.

113. There may be issues of drafting of the order. I will invite counsel to agree a form of order, or to make submissions after this judgment has been handed down.