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Judgment: approved by the Court for handing down | *Delivered:* **13/10/2010**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

A (A MINOR) and B (A MINOR) BY C THEIR MOTHER AND NEXT FRIEND

Plaintiffs;

-and-

A HEALTH AND SOCIAL SERVICES TRUST

Defendant.

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GILLEN J

Background facts

[1] In this matter the relevant facts are few but the legal issue difficult. The plaintiffs are children born as a result of IVF treatment provided by the defendant to the plaintiffs' mother. The parents of the plaintiffs are white and counsel on their behalf has contended that they were anxious that any children born as a result of IVF treatment would have the same skin colour. The normal practice, according to the defendant in the course of a letter to the plaintiffs' parents of October 2003 ("the letter"), would be that only sperm from "Caucasian" or "white" donors would be requested.

[2] The defendant inseminated the plaintiffs' mother's eggs with sperm labelled "Caucasian (Cape coloured)".

[3] The defendant has conducted a full investigation into how this occurred. In the course of the letter the defendant, inter alia, recorded as follows:

> "The Cape coloured community exists in Cape province in South Africa and is derived from races of different skin colouring, including white, black and

> Malay. This means that there are some implications for a child born to a white person as a result of insemination with sperm from a Cape Coloured donor.
>
> In summary, the facts are that should your child go on to have a child with a partner of mixed race, any child born to them could possibly be darker, or indeed lighter, than either parent. However, should your child's partner be white and of white ancestry, then it is highly unlikely that any child born would have skin darker than either parent. It is therefore important that you are aware of this new information and the implications there may be for your child and future generations."

The plainitffs' claims

[4] The plaintiffs have issued claims for damages for personal injuries, loss and damage against the defendant by reason of the alleged negligence of the defendant in and about the provision of treatment for and on behalf of the parents of the plaintiffs.

[5] In the course of the statements of claim, the plaintiffs have alleged injury the particulars of which are as follows:

> "The plaintiffs are darker in complexion than their parents and are obviously different in skin colour. Further, the plaintiffs have skin colour markedly different from each other. As they have grown older, this difference has become more obvious. The plaintiffs have been the subject of abusive and derogatory comment and hurtful name calling from other children, causing emotional upset. Further, the plaintiffs have been the subject of adverse and hurtful comments from others, both directed at them and overheard, about the colour of their skin, the difference between the plaintiffs and about the difference between the plaintiffs and their parents. This causes emotional upset. The plaintiffs have questioned their parents about whether they were adopted. Should either of the plaintiffs go on to have a child with a partner of mixed race any child born to them is likely to be of different skin colour than either parent. The quality of the life of the plaintiffs and

> each of them has been adversely affected. They may suffer loss and damage."

The current application

[6] The parties have agreed to bring before me by way of preliminary application the following questions arising out of these facts:

- Prior to and at the time of fertilisation did the defendant owe a duty of care to the children to take care that the sperm used for their conception was not "Caucasian (Cape coloured)" and if so what was the nature and content of that duty?

- At the time when the mislabelled sperm was used to fertilise the egg/eggs, were the plaintiffs, or either of them persons in being to whom the defendant owed any legal duty?

- Did the plaintiffs suffer any legally recognisable "loss and damage" connected to the alleged breach of the assumed or potential duty of care?

- Is it contrary to public policy to seek to compensate the plaintiffs?

- If it is appropriate to award compensation, upon what basis should monetary compensation be assessed, measured or imposed?

Duty of care

[7] Whether a duty of care exists on given facts is a question of law. The well known words of Lord Atkin in Donoghue v Stevenson (1932) AC 562 scarcely require repetition save that they define in law a neighbour as follows:

> "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

[8] To foreseeability of damage and proximity of relationship a further criterion was added in the equally well known judgment of Lord Bridge in Caparo Industries Plc v Dickman (1990) 2 AC 605 where he said at 617-618:

> "What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other."

[9] In Caparo's case at page 628 Lord Roskill cautioned:

> "Phrases such as 'foreseeability', 'proximity', 'neighbourhood', 'just and reasonable', 'fairness', … will be found used from time to time in the different cases. But … such phrases are not precise definitions. At best they are but labels or phrases descriptive of the very different factual situations which can exist in particular cases and which must be carefully examined in each case before it can be pragmatically determined whether a duty of care exists and, if so, what is the scope and extent of that duty."

[10] An issue that arose in the instant case was whether or not the plaintiffs have sufficient status to be owed a duty of care. The question as to whether a foetus had sufficient status to be owed a duty of care was settled in respect of births after 21 July 1976 by the Congenital Disabilities (Civil Liability) Act 1976. Thereafter a right of action existed to a child born alive but disabled because of an occurrence which affected either parent's ability to have a normal child or affected the mother during pregnancy. I note in the instant case, that neither plaintiff has any disability that would bring them within the confines of this act.

[11] The common law position was settled by Burton v Islington H.A. (1993) QB 204 ("Burton's case") where after surveying Commonwealth and United States decisions, Dillon LJ held that there was a duty to take care not to cause damage to a newly born child through injuries inflicted whilst the child was en ventre sa mere. Thus although not having a legal persona when the damage occurred, an unborn child was deemed to be possessed at birth of all the rights of action which it would have had if in existence at the date of the accident to its mother.

[12] In this context Mr Simpson QC, who appeared on behalf of the plaintiffs with Mr McCartney, drew my attention to a case in the Victoria Supreme Court cited with approval in Burton's case namely Watt v Rama

(1972) VR 353 where a plaintiff had suffered pre-natal injuries as a result of the defendant's negligence. The court at page 360/361 said:

> "On the birth the relationship crystallised and out of it arose a duty on the defendant in relation to the child. On the facts which for present purposes must be assumed, the child was born with injuries caused by the act or neglect of the defendant in the driving of his car. But as the child in the very nature of things could not acquire rights correlative to a duty until it became by birth a living person, and as it was not until then that it could sustain injuries as a living person, it was, we think, at that stage that the duty arising out of the relationship was attached to the defendant and it was at that stage that the defendant was, on the assumption that his act or omission in the driving of the car constituted a failure to take reasonable care, in breach of the duty to take reasonable care to avoid injury to the child."

[13] In the instant case, Mr Simpson submitted that the very process being undertaken by the defendant was designed to bring a child into being and that the plaintiffs were therefore precisely those who were in the contemplation of the defendant when the negligent actions occurred. Counsel contended that the material time under consideration was the period leading up to and including the moment of conception i.e. the moment of the creation of life.

[14] The court is thus being asked to venture into the complexities of the creation of life involving a unique physical and scientific process and to develop the law to deal with an instance where harvested eggs were fertilised with what has been termed inappropriate donor sperm. Was there a duty owed to the cells that the eggs would not be so fertilised?

[15] It seems to me that it is for Parliament to grasp the nettle of whether there ought to be a duty of care owed in the circumstances postulated in this case. For my own part, sitting as a judge at first instance, I do not believe that it is appropriate for a judge to stretch the common law principle inherent in Burton to embrace human cells as conferring the relevant status for a duty of care to be owed. It is for Parliament, after the appropriate social, moral, medical and ethical arguments have been aired, to define the limits of protection which should be accorded in such circumstances. It would be inapposite for this court to usurp that function. Absent the imprimatur of Parliament I am not content to find that these plaintiffs have sufficient status to be owed a duty of care.

[16] However lest I am wrong in this conclusion and because the remainder of this judgment renders the issue superfluous in hoc statu I am prepared to proceed on the assumption that the plaintiffs have the appropriate status and to deal with the remaining issues in the case as if that were so.

Loss and damage

[17] The plaintiffs must establish that they have suffered some actual damage. An act contrary to law which does not result in legal harm – injuria absque damnum – is not actionable and does not give rise to any claim or cause. Negligence, except in rare instances which do not include this case, is not actionable without more. A defendant is not liable for every consequence however unintended which a reasonable man could foresee.

[18] The signal feature of the instant case is that neither of the plaintiffs has suffered any personal injury, disability, actual damage or financial consequence as a result of defendant's actions. Clearly no claim lies under the Congenital Disabilities (Civil Liability) Act 1976 because these are healthy and normal children. In a modern civilised society the colour of their skin – no more than the colour of their eyes or their hair or their intelligence or their height – cannot and should not count as connoting some damage to them. To hold otherwise would not only be adverse to the self-esteem of the children themselves but anathema to the contemporary views of right thinking people.

[19] Claims for personal injuries, loss or damage do not fit easily into situations which relate to human reproduction. In a number of cases, the courts have considered the recoverability of economic loss where a child was born in the wake of clinical negligence such as failed sterilisation or vasectomy procedures.

[20] A leading case is McFarlane v Tayside Health Board (2000) 2 AC 59 ("McFarlane's case") where a healthy normal child was born to a couple after a failed vasectomy or sterilisation operation. The House of Lords (HoL) refused the claim for the costs of maintaining the child as it grew up save that the plaintiff was entitled to recover damages for the pain and distress during pregnancy and birth and for the financial loss associated with pregnancy. Lord Millett said at page 113H-114A:

> "In my opinion the law must take the birth of a normal, healthy baby to be a blessing not a detriment. In truth it is a mixed blessing. It brings joy and sorrow, blessing and responsibility. The advantages and the disadvantages are inseparable. Individuals may choose to regard the balance as unfavourable and take steps to forego the pleasure as well as the

> responsibilities of parenthood. They are entitled to decide for themselves where their interests lie. But society itself must regard the balance as beneficial. It would be repugnant to its own sense of values to do otherwise. It is morally offensive to regard a normal healthy baby as more trouble and expense than it is worth."

[21] Thus as a matter of legal policy the five members of the HoL who gave the judgment - albeit from differing perspectives – concluded that no damages may be recovered where a child is born healthy and without disability or impairment.

[22] Mr Simpson, in the course of his skeleton argument augmented by oral submissions before me, contended that the plaintiffs had suffered a legal wrong because they carried the genes of a Cape Coloured sperm donor, or of a colour inappropriate to their parentage and children born to them could possibly be darker or lighter than either parent. Whilst these are not concerns to be lightly dismissed, there is considerable weight in the contention by Mr Brangam QC, who appeared on behalf of the defendant, that we are each the product of a mixed gene pool. Few if any of us know the full implications of the genes we carry. Variations of colour with random mutation can and do occur as genes are generationally dormant or active with skin colour, inter alia, on occasions leaping the generations. Such events do not constitute harm or damage.

[23] The children in the instant case are normal and healthy. They have entered the rich tapestry of childhood where children of all colours, shapes and sizes must be afforded equality of opportunity free from the burdens of racial or ethnic discrimination. It would be contrary to the principles which underlie our multi-cultural society to suggest that the genes they carry somehow render them "a victim" at the hands of the defendant. These children do not carry the seal of the fault of the defendants. Their colour bestows no disadvantage upon them for which they can receive recompense. It would be wrong to allow these children to grow up believing that they suffer from some damage for which they have had to be compensated financially.

[24] Private perceptual input must bear some relationship to reasonable public behavioural output. Parental perception that some damage or injury has accrued to these children largely because of the crass behaviour of others does not justify a conclusion that right thinking members of society will behave in a manner that reflects this point of view. The presence of persons sufficiently misguided and cruel as to issue racist comments directed to these children is no basis for a conclusion that they are somehow damaged.

[25] I have therefore come to the view that these children have not suffered any legally recognisable "loss or damage" connected to the alleged breach by the defendant.

A wrong without a remedy

[26] Mr Simpson sought to rely on the HoL decision in Rees v Darlington Memorial Hospital NHS Trust (2004) 1 AC 309 ("Rees' case"). In that case a normal healthy child was born to a mother with a significant visual disability in the wake of a failed sterilisation procedure. Affirming McFarlane's case and discussing the claim for additional costs of upkeep beyond those that would have arisen had she not suffered from a disability in question, the court by a majority of 4 to 3 decided that there should in such instances be a conventional award to the mother. This was in essence to reflect the injury and loss which flowed from a legal wrong in addition to whatever was awarded for pain and suffering surrounding the pregnancy and birth.

[27] Counsel urged the court to apply that approach to the present case. Citing Montreal Tramway v Leveille (1933) 4 DLR 337, Burton's case, Chester v Afshar (2004) UKHL 41 and Fairchild v Glenhaven Funeral Services Ltd (2002) UKHL 22, Mr Simpson submitted that Rees was the most recent of a litany of instances where the modern approach of the law was to ensure, as a matter of legal policy, that where a wrong has been done a remedy will be provided. The figures awarded in Rees were not intended to be compensatory but a recognition of the wrong done.

[28] The fallacy in Mr Simpson's argument is that the plaintiffs in the instant case, whatever the position of their parents might be, do not carry the seal of another person's fault. Unlike the plaintiff in the Rees claim, they have not *suffered* from a legal wrong which demands a remedy. Even a cursory glance at some of the majority judgments in the Rees betrays the flaw in his argument.

[29] At paragraph 8 of the judgment, Lord Bingham said:

> " … the fact remains that the parent of a child born following a negligently performed vasectomy or sterilisation … is the victim of a legal wrong …. I can accept and support a rule of legal policy which precludes recovery of the full cost of upbringing a child in the situation postulated, but I question the fairness of a rule which denies the victim of a legal wrong any recompense beyond an award immediately related to the unwanted pregnancy and birth … To speak of losing the freedom to limit the size of one's family is to mask the real loss suffered in

> a situation of this kind. This is that a parent, particularly (even today) the mother, has been denied, through the negligence of another, the opportunity to live her life in the way that she wished and planned."

[30] There is not such analogy with the plaintiffs in this action. They have not been denied any socially acceptable opportunity or endured any restriction on their life in the way that they would have wished or planned. They are not victims and they have not suffered in any contemporary acceptable sense.

[31] At paragraph 17 Lord Nicholls of Birkenhead said:

> "An award of some amount should be made to recognise that in respect of the birth of the child the parent has suffered a legal wrong, a legal wrong having a far reaching effect on the lives of the parent and any family she may already have."

It would be invidious to suggest that any comparable effect lies on the plaintiffs in the present case or that the colour of their skin will have a "far reaching effect on their lives" to the extent that an award of damages should be made.

[32] At paragraph 123 Lord Millett said:

> "I still regard the proper outcome in all these cases is to award the parents a modest conventional sum by way of general damages, not for the birth of the child, but for the denial of an important aspect of their personal autonomy, viz the right to limit the size of their family. This is an important aspect of human dignity, which is increasingly being regarded as an important human right protected by law."

What comparable right have these plaintiffs lost? Whatever rights an unborn child may have, they do not include the right to be born with a certain colour or for that matter size, sex, intelligence etc. They have no legitimate expectation of any such outcome.

[33] Mr Brangam made it clear on a number of occasions during the case that the defendant has long since admitted liability to the parents and is willing to negotiate settlement. The defendant does not deny that something other than what was hoped for or intended has happened to them. There is therefore a plausible argument that can be made that the parents had a

legitimate expectation that the donor sperm would be appropriate and that they have been occasioned understandable distress by what has happened. I make no comment on the validity of that argument save to say that I recognise that such an argument can be made and that in this instance the defendant has taken the view that there may well be a role for a conventional award to the parents in these exceptional circumstances.

[34] Equally, however, I have no doubt that there is an entirely separate issue to be determined in the case of the children. I do not consider that they have suffered any loss damage or distress. Nor could they have any legitimate expectation other than that they would be born healthy and well. They are not entitled to any conventional award along the lines postulated in Rees' case.

Fair Reasonable and Just

[35] A further means of testing the viability of the plaintiffs' cases is to consider them in the context of Lord Bridges' test of fairness, justice and reasonableness as set out in Caparo's case (see paragraph 8 supra).

[36] In Rees' case at paragraph 13 et seq Lord Nicholls of Birkenhead said:

> "But it is important to keep in mind that the law's evaluation of the damages recoverable for a legal wrong is not an automatic, mechanical exercise. Recoverability of damages is always bounded by considerations of fairness and reasonableness … So the answers to the questions I have stated call for an assessment of what is fair and reasonable in cases of this nature.
>
> 14. Judges of course do not have, and do not claim to have, any special insight into what contemporary society regards as fair and reasonable, although their legal expertise enables them to promote a desirable degree of consistency from one case or type of case to the next, and to avoid other pitfalls. But, however controversial and difficult the subject matter, judges are required to decide the cases brought before the courts. Where necessary, therefore, they must form a view on what are the requirements of fairness and reasonableness in a novel type of case.
>
> 15. In McFarlane … (the court) held unanimously that a negligent doctor is not required to meet the cost of bringing up a healthy child born in these

> circumstances. … However expressed, the underlying perception of all their Lordships was that fairness and reasonableness do not require that the damages payable by a negligent doctor should extend so far. The approach usually adopted in measuring recoverable financial loss is not appropriate when the subject of a legal wrong is the birth of an unintended healthy child and the head of claim is the cost of the whole of the child's upbringing."

[37] Thus the imposition of a legal duty does not turn merely on the foreseeability of harm resulting conduct. Fairness, justice and reasonableness are tools invoked by the court to resolve questions of legal duty (see Andrews v Keltz 2007 NY SLIP OP 27139). Hence, as in McFarlane's case, it is not just, fair or reasonable to require damages to be paid by the defendant in the context of the birth of an unintended healthy child save for the distress and pain of pregnancy. I find no stress, trauma, distress or pain in this case on the part of the plaintiffs which would serve to place these children outside the normal approach adopted by the courts in refusing compensation in cases of alleged wrongful birth. To do otherwise would be to make a finding which would not reflect the reasonable expectation of the public in contemporary society and would accord ill with the value society attaches to children such as in the present case who have been born healthy and normal. It would be unfair ,unjust and unreasonable .

[38] In short whilst the current circumstances could not fail to engage both sympathy and concern for the parents, I can find no basis for concluding that the defendant owed a duty of care to these children, that they suffered any loss or damage or that a finding in their favour would be fair just or reasonable or consistent with the expectations of right thinking people in modern society. I therefore dismiss the plaintiffs' claims. I invite counsel to address me on the issue of costs.

Anonymity

[39] Subsequent to the hearing, I caused to be delivered to the parties copies of my judgment in advance of it being handed down in order to obtain comment on the issue of anonymity in this case.

[40] Mr Brangam submitted on behalf of the defendant that publication of this judgment could compromise the privacy rights of these children under Article 8 of the European Convention on Human Rights and Fundamental Freedoms ("convention rights"). He submitted that:

- a report of the circumstances of the claims would point towards a line of enquiry by journalists to ascertain the identity of the children;

- the unique nature of the story made them an attractive press target;
- whilst accepting that Article 10 of the Convention protected the interests and rights of the press, there was no public interest in knowing that these novel claims have been made and found not to be sustainable in the present state of the law;
- there should be no unnecessary disturbance of confidence in the IVF service by publication of this judgment .

[41] Mr Simpson on behalf of the parents indicated that provided certain amendments were made to the judgment to aid anonymity (to which I have acceded), the attitude of the parents of these children was neutral on the issue of further anonymity and he made no submissions on the matter.

Conclusions on anonymity

[42] The general rule is that judicial proceedings are held in public and that parties should be named in judgments. Their names would also be given in newspaper reports and in the law reports. Whilst Parliament has created a number of exceptions to the ordinary rule that proceedings must be held in public e.g. under the Children Order (Northern Ireland) 1995 it is wise to recall what Lord Steyn observed In Re S (A Child) (Identification: Restrictions on Publication) (2005) 1 AC 593 at 604:

> "It needs to be said clearly and unambiguously that the court has no power to create by a process of analogy, except in the most compelling circumstances, further exceptions to the general principles of open justice."

[43] Under the Human Rights Act 1998 Article 8(1), public authorities, which include the court, are required to respect private and family life. Accordingly a court, whether in the light of submissions or not, must ensure that it does not act unlawfully under Section 6 of the Human Rights Act by infringing a party's Article 8 Convention Rights. In Von Hannover v Germany (2004) 40 EHRR 1, 25, at para. 57, the European Court of Human Rights stated:

> "Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life

> even in the sphere of the relations of individuals between themselves … the boundary between the State's positive and negative obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole." (Hannover's case)

[44] On the other hand, under Article 10 of the Convention, rights to freedom of expression are protected. Although Article 10(1) does not mention the press, it is settled that the press and journalists enjoy the rights which it confers. (See In Re Guardian News and Media Ltd and Others (2010) 2 ELR 325 at para. 33) ("In Re Guardian News"). Clearly the courts interfere with the Article 10 rights of the press when steps are taken, such as making an anonymity order, which interfere with their freedom to report proceedings as they themselves would wish. Article 10 protects not only the substance of ideas and information but also the form in which they are conveyed (see News Verlag GmbH and Co KG v Austria (2000) 31 EHRR 246 at 356 para. 39).

[45] Thus the HoL held in In Re S (A Child) (Identification: Restrictions on Publication) (2005) 1 AC 593 that the press was entitled to name a woman who had been charged with murdering one of her children, even though this would affect the private life of her other son. The public interest in publishing the defendant's name outweighed the impact on the second son's private life.

[46] Courts must also be wary of imposing requirements to report material "in some austere, abstract form, devoid of much of its human interest, (meaning) that the report would not be read and the information would not be passed on. Ultimately such an approach could threaten the viability of newspapers and magazines which can only inform the public if they attract enough readers and made enough money to survive." (See In Re Guardian News at paragraph 63).

[47] Accordingly the possibility of some sectors of the press abusing their freedom to report cannot of itself be a sufficient reason for curtailing that freedom for all members of the press. The possibility of abuse is but one fact to be taken into account when considering whether an anonymity order is a proportionate restriction on press freedom in such a situation.

[48] Nevertheless, under Article 10(2), the right of the press to freedom of expression can be subjected to restrictions which are prescribed by law and

are necessary in a democratic society "for the protection of the reputation or rights of others". The "rights of others" include their rights under Article 8.

[49] This case is one where both Articles 8 and 10 are to the fore and the court has thus to weigh the competing claims of the plaintiffs and their family under Article 8 and of the press under Article 10. More particularly the court is being asked to give effect on the one hand to the right of the press to freedom of expression and on the other to ensure that the press respect the private and family life of these plaintiffs.

[50] The decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the published material makes to a debate of general interest (see Hannover's case at page 28 para. 76 and In Re Guardian News at para. 49). There is no question of automatic priority of either of these Convention rights nor is there a presumption in favour of one rather than the other. The question is the extent to which it is necessary to qualify the one right in order to protect the underlying value which is protected by the other. (See In Re British Broadcasting Corporation (2010) 1 AC 145 at para. 17).

[51] I have come to the conclusion that provided my order ensures that no report of these proceedings shall directly or indirectly identify the plaintiffs, their parents, any member of their family or the defendant, there is sufficient general public interest in publishing my judgment so as to justify any remaining resulting curtailment of the rights to private and family life of the plaintiffs and their parents.

[52] In arriving at this determination, I have borne in mind two other matters. First I have taken steps already to protect the identity of the plaintiffs and their parents together with that of the defendant. In short I have heard the evidence in private and my judgment refers to the parties by way of letter alone. I have excised from the judgment details that might serve to identify them in light of comments made by counsel to that end. To that end I have provided a copy of my judgment to the legal representatives of the parties in advance of it being handed down publicly and I have afforded counsel an opportunity to debate this matter with me in an earlier hearing.

[53] Secondly the attitude of the parents of the children is that provided I make the removal of references already addressed by them – an application to which I have acceded – they are neutral on the matter of publication of my judgment.

[54] I believe the issue of IVF (a subject on which differing views are held by the public at large) and the general context of what has happened in this instance are matters of general public interest on which I should give effect to the right of the press to freedom of expression. Whilst I consider that the

restrictions I have imposed are necessary in a democratic society in order to ensure due respect for the plaintiffs, ordering that the court file be sealed and that there should be no publication of any account of the pleadings or the determination of this case would be a step too far and a disproportionate invasion of the press rights under Article 10 of the Convention. I am not persuaded that general discussion of the issues in this case will afford any disturbance of confidence in the IVF service or lead to irresponsible investigative journalism.

[55] Accordingly for the removal of doubt, I reiterate that this judgment may be published in the form that I have now handed down. No report of these proceedings should directly or indirectly identify the plaintiffs, their parents, their family or the defendant. Other than that restriction, the judgment may be published.

[56] I add one footnote to this judgment. Such is the need to protect the rights of the press under Article 10 of the Convention that I consider it to be good practice for the courts, in instances where anonymity is sought to the extent that a judgment should be kept from the public, to consider whether it is appropriate in the context of the case in question that the Press Association be accorded notice so that they may be represented on the issue of anonymity before such an order is made. In the present case there was no such need because I have refused to accede to the defendant's request. Had I been minded to hold otherwise I would have given such notice.