

[2024 Gib LR 590]

**IN THE MATTER OF G AND B (CHILDREN)
(CARE PROCEEDINGS: REMOVAL OF SIBLING FROM
GIBRALTAR)**

**CARE AGENCY v. M, F1, F2, G (A MINOR) and
B (A MINOR)**

SUPREME COURT (Restano, J.): November 27th, 2024

2024/GSC/042

Family Law—children—care order—in best interests of half-siblings for older child to remain in Gibraltar with paternal grandparents and for younger child to relocate to England to live with maternal grandparents

The Care Agency applied for care orders.

G and B were siblings who were currently living in residential care. The first respondent was their mother. The second respondent was G's father and the third respondent was B's father. The Care Agency applied for care orders under s.64 of the Children Act 2009 in respect of the children. It was said that they suffered significant harm because of neglect and emotional harm, and that they were likely to suffer significant harm if they remained in the mother's care. The care plan for G proposed that G be placed in the care of G's paternal grandparents in Gibraltar. The paternal grandparents already cared for G's older sibling, X. The care plan for B, who was younger, proposed that B should be cared for by B's maternal grandparents who lived in England. The proposals for contact included video calls between B and the mother and G, and physical contact four times a year in Gibraltar.

When the draft confidential judgment and the draft publication judgment were sent out to the parties prior to handing down, concern was expressed by the guardian that, even if anonymized, it was not difficult to identify the individuals involved and in a small jurisdiction it was not in the children's best interests to have details of the background and evidence openly available.

Held, making the care orders:

(1) The threshold criteria in s.64(2) of the Children Act were met. A full care order needed to be made in this case in respect of G and B. G was at an age where a move to England would represent too much change and

disruption, and it was in their best interests to remain in Gibraltar with their paternal grandparents. A relocation to England would be a big move for B. There was clearly a disadvantage in B moving away from their family in Gibraltar, including their sibling with whom they had been living in care and had a close bond. However it was clear that the Care Agency's social workers had given the most anxious thought to the benefits and detriments which the move to England would have on B, G and the wider family. They had a wealth of experience that they had brought to bear when balancing the various options and reaching a decision as to the best course. They clearly and convincingly explained that it was in B's best interests to live with their maternal grandparents in England and that that was preferable to B staying in residential care in Gibraltar, even if foster care might be possible in the future. B's maternal grandparents appeared to be eminently suitable to care for B and provide a loving home. The court was satisfied that despite the separation from G, B's welfare was best served by relocation to England, and that it was necessary and proportionate. Although B's contact with their sibling and the rest of their family in Gibraltar would inevitably be reduced, the maternal grandparents were committed to ensuring that those relationships sustained and that B was not isolated from the rest of the family. As well as committing to regular visits to Gibraltar, and ensuring that G also visited B in England, there would be unlimited video calls. It was in G and B's best interests to be cared for by their respective grandparents in Gibraltar and in England. The court would therefore make the final care orders (paras. 46–57).

(2) When considering the publication of the judgment, the children's interests were a primary consideration but a balancing exercise must be carried out taking into account other considerations including the open justice principle and the principle of proportionality. In a small community like Gibraltar, the court must be particularly vigilant about protecting children from the heightened risk of "jigsaw identification." In the light of the concerns raised by the guardian about publication, the court prepared this updated non-confidential judgment which did not refer to the gender or age of the children and excluded some details concerning the threshold allegations. This high level of anonymization struck the right balance between protecting the children's privacy and the open justice principle (paras. 67–77).

Case cited:

- (1) *J (A Child), Re*, [2013] EWHC 2694 (Fam); [2013] Fam. Law 1389; [2014] 2 F.C.R. 284; [2014] 1 FLR 523; [2014] EMLR 7, referred to.

Legislation construed:

Children Act 2009, s.4(3): The relevant terms of this subsection are set out at para. 46.

D. Conroy instructed by the Care Agency;
S. Gaskin (instructed by Ellul & Cruz) for the first respondent;
A. Seruya (instructed by Massias & Partners) for the second respondent;
J. Rodriguez (instructed by Isolas) for the third respondent;
G. Guzman, K.C. (instructed by Hassans) for the fourth and fifth respondents (through the guardian *ad litem*).

1 RESTANO, J.:

Introduction

This is my decision in relation to applications by the Care Agency (“CA”) for care orders under s.64 of the Children Act 2009 (“the Act”) concerning the fourth respondent (“G”) (a young child) and the fifth respondent (“B”) (a younger child).

2 G and B’s mother is the first respondent, and I will refer to her as “the mother.” G and B have different fathers. The second respondent is G’s father, and the third respondent is B’s father. G and B are currently living in residential care, and the main issue before the court is whether they should be separated.

3 There was extensive written evidence before me. The main documents relied on by the CA were care plans prepared by Jenaika Casciaro, G and B’s allocated social worker since September 2022. These care plans were approved by Rachel Netto, the CA’s interim head of children’s services, who provided addenda to the original care plans, and a further care plan on the final day of the hearing. Ms. Casciaro also provided various witness statements, including her fifth witness statement setting out the reasoning underpinning her recommendations, and a connected sibling assessment. At the guardian’s request, the CA disclosed a copy of a connected person report in respect of the maternal grandparents. That assessment was carried out by Victoria Lally, another social worker at the CA. Benjamin Hassan, who is the court-appointed guardian in this case, also filed two reports.

4 All parties were legally represented and provided position statements and, with the exception of B’s father, they also provided skeleton arguments.

5 The hearing took place on November 4th–6th, 2024, I heard oral evidence from Ms. Casciaro, Ms. Netto, Ms. Lally, the mother, and Mr. Hassan.

The parties’ positions

6 There is consensus that G should remain in the care of their paternal grandparents who live in Gibraltar, under a care order. They already care for their older sibling, who I will refer to as “X,” under a voluntary arrangement.

7 The CA's proposal is that B should be cared for by their maternal grandparents who live in England.

8 The mother attended the hearing throughout and was represented by Mr. Gaskin. She was originally opposed to the separation of G and B and wanted them both to live with her parents in England. About a week before this hearing, she reconsidered her position, and agreed that it was in G and B's best interests to be separated, and for them to live with their respective grandparents in Gibraltar and England.

9 G's father did not attend the hearing but was represented by Mr. Seruya. Although G's father was initially opposed to G being placed in the care of his parents in Gibraltar, he now agrees to that course. Further, he says that he wants to find a job and a home in Gibraltar and hopes to apply to discharge any order that the court may make at some point in the future.

10 B's father did not attend the hearing but was represented by Mr. Rodriguez. B's father has only had video contact with B in the last few months because he lives in Spain and says that he is liable to be arrested if he enters Gibraltar because of an unrelated matter. B's father accepts that he is not able to care for B but wishes to maintain contact. Should his circumstances change in the future, he intends to file an application to set aside the care order. Mr. Rodriguez said that he was not instructed to make any submissions at the hearing, and that his client was neutral as to the outcome.

11 Until the last day of the hearing, the guardian's view was that B should remain in Gibraltar with a view to being fostered. On the last day of the hearing, however, he confirmed that he supported the CA's proposals for B to move to England, subject to some clarifications in the care plan.

The exercise to be conducted by the court

12 Before the court can make a care order under s.64 of the Act, two principal questions must be addressed as follows:

(1) Are the threshold criteria for making a care order under s.64(2) of the Act satisfied?

(2) If the threshold criteria are met, the court must then assess the welfare of the child to determine what order should be made in the best interests of the child.

Threshold

13 The threshold criteria are set out in s.64(2) of the Act, namely: (a) that the child concerned is suffering, or is likely to suffer, significant harm (the "significant harm" criteria); and (b) that the harm, or likelihood of harm, is attributable to (i) the care given to the child, or likely to be given to them

if the order were not made, [not] being what it would be reasonable to expect a parent to give to them; or (ii) the child being beyond parental control (the “attributable” criteria).

14 The threshold statement is based on G and B suffering significant harm because of neglect and emotional harm. Further, it states that G and B are likely to suffer significant harm if they remain in the mother’s care.

15 The mother has provided a witness statement for this hearing, albeit in relation to the welfare stage, and also gave evidence at the hearing. She has been separated from both G’s father and B’s father for some time, and was the primary carer for both G and B. She accepts that the threshold has been met.

16 The CA provided a supplemental threshold statement against G’s father alleging that he avoided his parental responsibilities when he knew or ought to have known that G was suffering or likely to suffer neglect or significant harm. G’s father was provided with several opportunities to respond to that but having failed to do so in time, and further to an order made on October 7th, 2024, he is deemed to have accepted the threshold allegations made against him. In any event, Mr. Seruya confirmed at the hearing that G’s father did not challenge the fact that the threshold had been met, and that he agreed to a care order being made in respect of G.

17 The engagement of B’s father has been limited. In any event, Mr. Rodriguez for B’s father confirmed that he did not dispute that the threshold had been met and said that he was not instructed to challenge the evidence before the court.

18 The guardian also considers that the threshold has been crossed in relation to G and B.

19 G and B’s parents and the guardian have all therefore accepted that the threshold has been crossed. In any event, I am satisfied based on the material before me and the evidence that I heard that the threshold criteria for the purposes of s.64(2) of the Act have clearly been met in this case in relation to both G and B.

Welfare analysis

20 The second stage of the court’s assessment requires consideration of what public law orders should be made, if any. Under s.64(4) of the Act, this requires consideration of the care plans made under s.65 of the Act.

The s.65 care plans

21 G and B have been living together in a residential placement.

22 G's care plan provides for G to move in with their paternal grandparents (who are already caring for G's older sibling X) within three weeks, and that this will be a long-term placement.

23 B's care plan provides for them to move to England with their maternal grandparents shortly, also on a long-term placement.

24 The care plans state that separating the siblings has been a difficult decision for the CA but, given B's young age, moving to England is the best option for them. Further, once separation takes place, contact between G and B is to take place by video call daily to support the transition away from living together. Further, the plans provide for B to visit Gibraltar four times a year.

25 Ms. Netto provided addenda to the care plans which, in the case of B's care plan, refer to the cooperation that would take place between the CA and the relevant local authority where B would be living in relation to the proposed placement. This together with relevant emails produced at the hearing shows that the local authority will support the CA appropriately, although parental responsibility will remain with the CA.

26 On the final day of the hearing and further to discussions between the CA and the guardian, Mr. Netto provided an updated care plan for B. This provides for B to move from Gibraltar to England in January 2025 rather than December 2024. It also sets out the details of the CA's plans post placement, which would involve a social worker travelling to England to monitor the placement.

Witnesses' evidence

Jenaiika Casciaro

27 Ms. Casciaro is a social worker who was previously a residential senior care worker. She has carried out direct work with G and B for some time and knows them well.

28 Ms. Casciaro's view is that it is not appropriate for G to move to England because of their age but that it is in B's best interests to move to England, especially as the only other option for them is to remain in residential care in Gibraltar. She confirmed that, as far as she is aware, there are no appropriate foster carers available at present for B.

29 Ms. Casciaro referred to the long, difficult and sensitive conversation that she had with G to ascertain their wishes and feelings, and referred to her contemporaneous note. This states (duly anonymized):

“If [B] goes to England I will be sad.

If [B] was in Gibraltar with another family and me with my grandparents I would be sad but a bit happier because [they are] in Gibraltar.

The only reason I want to go to England is because of [B].

...

If I live in England I would be sad leaving [X] but if I stay in Gibraltar I would be sad leaving [B].

If we get separated I would not like that. I will get sad.

[B] is more little and want to look after [them] and be next to [them] all the time ...”

30 Ms. Casciaro acknowledged G’s wish not to be separated from their sibling but said that it needed to be balanced out against B’s interests, which she had clearly given much thought to. She was concerned about the high emotional impact on B staying in Gibraltar, especially if they were the only one of the sibling group in residential care. Further, she said that even if a foster home became available, there was no guarantee that it would sustain, and that she had experience of foster placements breaking down. She also said that B could spend years in residential care, where there is little stability. She was also satisfied with the proposed arrangements for contact between B and their family in Gibraltar if they moved to England.

Rachel Netto

31 Ms. Netto is the interim head of children’s services at the CA, and an experienced social worker who has worked in England and Gibraltar. She acknowledged that this was a complex case, and she explained that the decision for B to move to England had come about following a discussion between five social workers at the CA including Ms. Casciaro and herself. She said that this team-based approach ensured that a more robust decision was taken in this difficult case. She therefore confidently supported the care plans, which drew on all of the social workers’ knowledge and experience.

32 She said that whilst keeping siblings together was usually in their best interests, this was not always the case, and that everything had to be considered, with each child having their own specific needs.

33 She referred to studies that had shown better outcomes for children who grew up in stable homes. She said that resulted in better physical and mental health, education, health, future employment and relationships. She stressed the importance of permanence, how children in long-term care struggled and lacked a sense of belonging. This was especially the case when there were high levels of contact, which could be massively detrimental for

children. She expressed a concern that if B was not living with family like their siblings, that they might blame themselves, and that this would be emotionally harmful for them.

34 Ms. Netto also explained that care workers working in residential homes are transient and work shifts and, despite doing their best, that they could not offer the same love and permanence for B as their maternal grandparents could. Ms. Netto said that the practical reality is that there is a shortage of foster carers at present in Gibraltar. In any event, the foster carers on the CA's books are not matches for a child with B's profile. Even if appropriate foster carers did come up, she said that this could take time, and there is always a greater risk of foster placements breaking down than placements with families.

35 In response to cross-examination by Ms. Guzman, Ms. Netto rejected the criticism that the connected carer assessment of the maternal grandparents had been rushed, that the transition to England for B needed more time, or that there was any problem with the one-to-one training that had been rolled out for the maternal grandparents by the CA. She also rejected the suggestion that a psychological assessment was required to weigh up the impact of the different options on B and, in her view, social workers were able to do this.

36 Ms. Netto also rejected the suggestion that the cross-border arrangements for post-placement monitoring were unsatisfactory. Ms. Netto confirmed that this was the first time that she had been involved in placing a child from Gibraltar in the UK but she was satisfied that this would work. Apart from there being no safeguarding issues, she said that CA social workers would travel to England to monitor the placement, and that whilst the CA would retain parental responsibility and carry out its own checks, the relevant local authority had confirmed that it would provide support for the CA. That support would consist of four initial monthly visits, providing training for the maternal grandparents, and connecting them to relevant networks in the area. Further, if any urgent situation were to arise requiring intervention, the local authority would also step in.

37 Ms. Netto accepted that there would be an element of distress for G and B because of the move but she felt that with time and the appropriate level of reassurance and support this could be overcome. She was satisfied that B's maternal grandparents would ensure that G and X, who were also their grandchildren, formed part of B's world even when they were living in England.

Victoria Lally

38 Ms. Lally is a supervising social worker who forms part of the fostering and adoption team at the CA. She has ten years' experience as a

social worker in the UK, including experience in the preparation of complex assessments for prospective foster carers. She prepared the connected person report for the maternal grandparents, and she attended court at the guardian's request.

39 Ms. Lally confirmed that she completed her report after eight sessions with the maternal grandparents, including three face-to-face sessions, two of which took place at their home in England.

40 She confirmed that the maternal grandparents had been married for many years and were very stable, and that they were clear that they wanted the best for their grandchildren, and "would go the extra mile for those children." Further, she was satisfied that their many attributes meant that they would provide consistent and beneficial care for B with the support of their younger daughter who lives with them. Further, she thought that they would provide a very high standard of care for B, and not just "good enough" care. Her firm view was that they would abide by the care plan and do everything that was required of them, including maintaining boundaries with the mother as might be necessary. Further, she confirmed that the training that they were receiving was appropriate, and that it was going well.

41 Ms. Lally's view was also that B was better off with their grandparents in England, and she expressed the same concerns as her colleagues about B staying in residential care or moving into a foster home. She said that she was very confident that the Fostering and Adoption Panel would approve the maternal grandparents when they meet on December 4th, 2024.

The mother

42 The mother explained that she initially wanted G and B to both live with her parents in England because she was against them being separated. She had then changed her mind because, given G's age, she now understood that G is better off in Gibraltar. In her view, however, B is not settled in Gibraltar in the same way, and would be better off in England with her parents who she said were "amazing" and had always supported her.

43 The mother said that whilst she would miss physical contact with B, what was important was what was best for B, and not for herself. She said that B needed to be with their family who could give them a better life in the UK, and that she needed to "sort [herself] out," and that her priority was B. She was also satisfied that B would remain in contact with her and the rest of their family in Gibraltar. The mother showed a high level of self-awareness, she gave her evidence frankly and with civility, and agreeing to B's relocation is no doubt a very difficult decision for her to have taken. I would like to commend her for taking this child-focused decision.

The guardian

44 Mr. Hassan initially opposed the care plan for B. His main concerns were the negative impact of breaking up the sibling relationship between G and B, and the challenges of effectively monitoring a Gibraltar care order in England. He was also concerned about a number of other matters, including the fact that a move to England was, in his view, too dramatic for it not to have a negative impact on B.

45 Mr. Hassan started giving his testimony at the end of the second day of the hearing, where he maintained his opposition to B's proposed move to England. When the hearing resumed on the third day, Ms. Guzman confirmed that following developments overnight, Mr. Hassan no longer opposed B's move to England. Ms. Guzman explained that the change of position had come about because of the evidence that Mr. Hassan had heard from the CA's witnesses and the mother, and following an updated care plan, which the CA and the guardian had agreed on overnight. This sets out in more detail B's transition to England, and the monitoring that would take place once B moved there.

My welfare analysis

46 In determining whether to make the care orders sought, the children's welfare is the court's paramount consideration. The court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.4(3) of the Act, namely:

- “(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and
- (g) the range of powers available to the court under this Act in the proceedings in question.”

47 I remind myself that no one factor has greater weight than any other, and that a balanced and holistic approach as opposed to a linear one is required. Further, any proposed order must be necessary and proportionate and should therefore represent the least interventionist means of securing

the children's welfare. It is also important to remember that every child is different and every situation specific.

48 In my view, and as all parties accept, a full care order needs to be made in this case in respect of G and B, and nothing less will do. Further, apart from B's father, who is neutral, everyone now accepts that the CA's care plans for G and B are in their best interests.

49 The fact that there is broad consensus on the options for G and B is not the end of the matter, and the court must still determine whether to make the care orders sought. There is, however, in the circumstances no need for me to provide an extensive analysis by reference to each of the factors set out in the welfare checklist factors. It is immediately apparent from the evidence before the court that it is in the children's best interests for the CA's care plans to be approved for both G and B who need a stable home.

50 G is at an age where a move to England would represent too much change and disruption, and it is in their best interests to remain in Gibraltar with their paternal grandparents.

51 A relocation to England clearly represents a big move for B. There is clearly a disadvantage in them moving away from their family in Gibraltar, including their sibling with whom they have been living in care recently and have a close bond.

52 It is clear, however, that the CA's social workers had given the most anxious thought to the benefits and detriments the move to England will have on B, G, and the wider family of which they are a part. They have a wealth of experience that they have brought to bear when balancing out the various options and reaching a decision as to the best course. They clearly and convincingly explained that it is in B's best interests to live with their maternal grandparents, and that this move is preferable to B staying in residential care in Gibraltar, even if foster care is possible in the future. That evidence from the CA was of great assistance to the court.

53 B now has the opportunity to live with their grandparents in England who appear to be eminently suitable to care for B and who will provide them with a loving home. That was confirmed by the very detailed assessment carried out by Ms. Lally, who is very experienced in this field, and who made it clear that they had passed the assessment with flying colours. Further, this option will provide permanence for B.

54 Regrettably, this arrangement will mean that B is separated from their family in Gibraltar, including their sibling with whom they are particularly close. G and B have jointly experienced much, not all of which has been positive, and they have been able to rely upon each other. Despite their young age, G has gone out of their way to ensure that B is well looked after. I am satisfied, however, that despite this separation, and when everything

is taken in the round, B's welfare is best served by their relocation to England, and that it is necessary and proportionate for them to embrace this opportunity.

55 Further, although B's contact with their sibling and the rest of their family in Gibraltar will inevitably be reduced, it is clear that the maternal grandparents are committed to ensuring that those relationships sustain, and that B is not isolated from the rest of their family. As well as committing to regular visits to Gibraltar, and ensuring that G also visits their sibling in England, there will be unlimited video calls. Those video calls at least shrink the distance between B and their family in Gibraltar, and ensure that those relationships are maintained between visits.

56 Although B's move to England could in the future affect their relationship with their father and the paternal side of the family (and that aspect of their identity), the evidence points to this being a very limited relationship in any event, and there is nothing to suggest that it is likely to flourish.

My conclusion

57 It is in G and B's best interests to be cared for by their respective grandparents in Gibraltar and in England. I therefore make the final care orders for G and B in accordance with the latest iterations of their care plans.

Contact

58 The CA's proposals for contact as are follows:

59 For G, supervised contact with their mother and father separately twice a week each. The mother does not seek to challenge that. Mr. Seruya for G's father did not challenge that either but he hopes that contact will take place on an unsupervised basis following a review by the CA.

60 For B, video calls twice a week with their father, which Mr. Rodriguez for B's father confirmed was satisfactory to him. This is a continuation of the existing arrangement.

61 When B moves to England, there will be no restriction on video calls between them and their mother and sibling. Further, physical contact is to take place four times a year in Gibraltar (including overnight stays), and it is anticipated that G will visit B in England. Mr. Gaskin confirmed that the mother agrees to this level of contact.

62 Under s.68(1) of the Act, there is a primary duty on the CA to allow reasonable contact between parents and children in care. It is clear to me that these contact arrangements, which all parties agree to at present, are satisfactory.

63 In the circumstances, there is no need for the court to make an order for contact.

Publication

64 When the draft confidential judgment and the draft publication judgment were sent out to the parties in the usual way on November 8th, 2024 prior to the handing down, the lawyer for the children sent an email to court stating as follows:

“The Guardian is concerned that, even if anonymised, it is not difficult to identify the individuals involved and in a small jurisdiction and a case involving such delicate and sensitive facts which have been kept private during proceedings, it is not in the child’s best interests to have details of background and evidence generally and openly available.”

65 At the handing down of the confidential version of this judgment on November 12th, 2024, Mr. Conroy confirmed that the CA did not have any objection to the publication of the non-confidential version of the judgment circulated. Apart from the guardian, no other party raised an objection to the publication of the anonymized judgment. In the circumstances, I directed that written submissions on objections to the publication of the non-confidential version of the judgment be filed by Wednesday, November 20th, 2024.

66 In the event, no submissions were filed on behalf of the guardian, although the objection to publication was not withdrawn either. The court must therefore consider the objection advanced by the guardian based on the contents of the email set out above, and without the benefit of any specific representations or submissions.

67 Section 148 of the Act, and s.475 of the Crimes Act 2011 establish automatic restrictions on reporting and publication of family proceedings without permission of the court.

68 In considering whether to grant permission for publication of a judgment, a balancing exercise must be carried out to take account of (mainly) arts. 8 and 10 of the European Convention of Human Rights—here, s.7 and s.10 of the Gibraltar Constitution Order, 2006. This balancing exercise is summarized in *Re J (A Child)* (1) as follows ([2013] EWHC 2694 (Fam), at para. 22):

(1) This necessitates “an intense focus on the comparative importance of the specific rights being claimed in the individual case;”

(2) It is necessary to measure the nature of the impact on the child of the proposed publication;

(3) The interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations;

(4) The court must conduct a proportionality check to strike the right balance.

69 On June 19th, 2024, the President of the Family Division issued an updated practice guidance on the publication of judgments in family cases in England & Wales. That guidance states that the starting point is the principle of open justice, and that it is generally in the public interest for judgments to be published. That, of course, is subject to countervailing issues of private and family life rights. It also provides guidance on anonymization.

70 It seems to me that the broad principles set out above provide the correct legal landscape.

71 The circumstances of Gibraltar, however, are not always comparable to those of England & Wales. In a small community like Gibraltar, the court must be particularly vigilant about protecting children from the heightened risk of “jigsaw identification.” Further, it is not possible to redact the name of the arm of the state bringing public law proceedings in Gibraltar because it is always the Care Agency.

72 Against that background, I turn now to the guardian’s concern about the risk of identification, and the children’s rights.

73 The draft publication version of the judgment circulated to the parties included anonymization in accordance with the latest practice direction referred to above. It did not include the names of the parties (or their actual initials), family members, dates of birth, schools, or addresses.

74 Further, whilst the children’s interests must be a primary consideration, a balancing exercise must be carried out. This must take account the other considerations set out above, including the open justice principle, and the principle of proportionality.

75 In the light of the concerns raised by the guardian, I have prepared this updated non-confidential judgment that does not refer to the gender of the children (by using the pronouns “they/them”) nor to their age. Further, I have excluded some details concerning the threshold allegations. This judgment is therefore anonymized to an even higher level than the earlier draft publication judgment, without it becoming unintelligible or its integrity lost or distorted.

76 In my view, this high level of anonymization strikes the right balance between protecting the children’s privacy and the open justice principle. Further, it represents a proportionate response to the concerns raised.

77 Whilst children's rights are a primary consideration, and one must be alive to the risk of identification in a small community like Gibraltar, this cannot be allowed to trump all other considerations when considering the publication of judgments in family cases. The need to facilitate scrutiny of the family justice system and the actors involved in it is also a weighty consideration.

Judgment accordingly.
