Neutral Citation Number: [2023] EWHC 447 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/03/2023

Before:

MRS JUSTICE KNOWLES

- -
Re Z (Disclosure to Social Work England: Findings of Domestic Abuse)
- -

Dr Charlotte Proudman for the Appellant mother
The Respondent father appeared in person
Ms Jessica Purchase for the intervener, Social Work England

Hearing dates: 8 and 9 February 2023
- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 2 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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

Mrs Justice Knowles:

Introduction

1. This appeal is brought within the context of long-running private law proceedings between the parents of a little girl called Z who is now 10 years old. In February 2022, HHJ Ahmed ("the judge") conducted a fact-finding hearing to determine the allegations of domestic abuse made by the mother against the father and handed down his judgment on 28 February 2022. He made findings of domestic abuse against the father and, on 22 June 2022, Social Work England ("SWE") applied for a transcript of the fact-finding judgment. The father is a social worker and, as the regulatory body with responsibility for the fitness to practise of social workers in England, SWE believed that the fact-finding judgment might be of relevance to its ongoing investigation into the father's fitness to practise. On 26 August 2022, the judge refused the application by SWE. The mother applied for permission to appeal this decision and permission to appeal on two grounds was granted by Morgan J on 18 November 2022.

2. The grounds on which permission was given were as follows:

   a) that the judge had failed to balance the public interest in disclosing the fact-finding judgment to SWE in order for them to conduct a further risk assessment of the father and to ensure the father did not pose a risk to the public; and

   b) that the judge was wrong to find that SWE could conduct its own investigation without disclosure to it of the fact-finding judgment.

3. Those taking part in this appeal are the mother, represented by Dr Proudman, and the father who appears in person. Morgan J invited SWE to intervene in the proceedings and, on 12 December 2022, SWE confirmed its intention to do so. SWE is represented by Ms Purchase. All those taking part in this appeal have helped the court with their written and oral arguments. I have read the appeal bundle and all the authorities/law relied on by the parties. I indicated at the conclusion of the hearing that I would reserve my judgment for a short time.

4. In summary, I have decided to allow the appeal against the judge's decision because, in making his decision, the judge failed to have regard to the public interest in disclosing the fact-finding judgment to SWE in circumstances where it is highly desirable for the various agencies concerned with the welfare of children and vulnerable adults to co-operate with each other. I remade the decision rather than remitting it back to the judge and decided that, applying the factors set out in Re C (A Minor) (Care Proceedings: Disclosure) [1997] Fam 76 ("Re C") (also reported as Re EC (Disclosure of Material) [1996] 2 FLR 725), the fact-finding judgment should be disclosed to SWE.

5. I am very conscious that this appeal has attracted some media interest. There is an order restricting the reporting of anything which might identify the child, any party, or any witness or of any information which may lead to such a person being identified. That same restriction applies to the reporting of any information about the proceedings in the lower court or in the appellate court. I make clear that those restrictions are standard restrictions applicable to the hearing of appeals before a

judge of the Family Division and are set out in rule 30.12A of the Family Procedure Rules 2010. This judgment has also been written in such a way as to inhibit the identification of Z and her parents especially as the private law proceedings have not yet concluded.

Background

6. What follows is a summary relevant to the issues engaged in this appeal.

7. The father is a senior social worker who works with vulnerable adults. The mother and father began a relationship in 2010 and separated in 2015. Private law proceedings commenced in November 2019. To say those proceedings had their ups and downs would be something of an understatement. In March 2020, the mother successfully appealed a decision by lay magistrates to strike many of the allegations of domestic abuse from her schedule of allegations. The matter was subsequently listed for a fact-finding hearing before a deputy district judge who, in November 2020, did not find that the mother had been a victim of domestic abuse. In February 2021, the mother appealed the decision of the deputy district judge, in summary because he erred in applying criminal law concepts in the family court and had minimised serious domestic abuse. In March 2021, SWE received an online referral raising a concern about the father's fitness to practise. The hearing of the appeal against the deputy district judge's decision took place in June 2021 before the judge, who allowed the mother's appeal. The matter was eventually listed for a second fact finding hearing before the judge in February 2022.

8. The judge's fact-finding enquiry established the following findings against the father which constituted domestic abuse:

   a) The father physically assaulted the mother in August 2019 and fractured her right hand, causing lasting disability;

   b) The father used his temper to frighten and control the mother;

   c) The father was verbally abusive to the mother, including being so in front of Z and his other child (now adult);

   d) The father behaved in a way which was emotionally abusive of the children;

   e) The father behaved in a way that amounted to gaslighting, control, and denigration of the mother;

   f) The father humiliated the mother about her disability [exact details redacted];

   g) The father hit the family dog in front of Z who was upset by it; and

   h) The father threatened the mother with the police, solicitors and courts to intimidate her.

9. In May 2022, SWE made a decision to open an investigation into the father's fitness to practise. To the best of the father's knowledge, his then manager confirmed that there were no such concerns and that the father had an unblemished, productive and highly positive career as a social worker and social work manager. In June 2022,

SWE applied to the family court for a transcript of the fact-finding judgment, which was opposed by the father. Despite the mother's initial reservations, the judge recorded her eventual position as being supportive of disclosure of the fact-finding judgment to SWE. The judge determined SWE's application without an oral hearing as there was insufficient court time to do so promptly and decided that SWE should not have a transcript of his fact-finding judgment.

10. Later in this document, I will detail the process whereby the judge decided not to disclose his fact-finding judgement to SWE.

The Disclosure Judgment

11. The judge began by briefly explaining the background to his decision. He went on to set out the applicable legal principles to SWE's application for disclosure. He noted the court's discretionary power set out in rule 12.73(1)(b) to permit disclosure of information relating to family proceedings and recorded that he had taken into account the recent case of P (Children) (Disclosure) [2022] EWCA Civ 495 ("P (Disclosure)") which set out the factors to which the court should have regard in coming to its decision. He noted that those factors were derived from Re C and set them out in full. He went on to quote in full paragraph 18 of P (Disclosure) before undertaking an analysis of the circumstances of this case.

12. The judge began his analysis by stating that he would consider each of the engaged factors using narrative rather than setting them out as headings. He first considered the impact of disclosure on Z herself in this way:

> *"14. Taking it at its lowest, relying upon what the mother says, she is mindful that [the father] is at risk of losing his job and this will impact on [Z's] maintenance. That was the reason she gave for being neutral on the disclosure application. The considerations which she makes must still have been true when she sent a further email 10 days later, saying that she supports the disclosure. Nothing had changed. [The father] was still at risk of losing his job and [this] would still impact on [Z's] maintenance. The father says if he were to be suspended or lose his job altogether, there is a real risk that he would no longer be able to pay for a range of additional support that [Z] receives. [Z] suffers from [redacted] which is apparently a continuing condition for which she will require therapy, private medical treatment and [redacted]. The father also shares the costs of [Z's] [redacted] lessons, as she shows promise as a [redacted]. The father has also paid half of the cost of private dental treatment for [Z].*
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> *15. Whilst I am not able to make findings of fact without an oral hearing, it is common ground between the parents that [Z] is likely to be adversely affected by an order for disclosure. I conclude that the father is unlikely to be able to meet his current obligations to the same level as now and that it is likely to increase animosity between the parents. None of that is in [Z's] welfare interests."*

13. The judge then recorded that there was a need to maintain confidentiality for Z and that it was in her best welfare interests that the risk of wider disclosure of the facts and allegations in this case was kept to a minimum. He then recorded the need to

encourage frankness in children's cases and quoted extensively from paragraph 20 of P (Disclosure) in which the words of Hedley J on the issue of frankness in Re D and M (Disclosure: Private Law) [2002] EWHC 2820 (Fam) (paragraphs 8 and 9) were recited in full. Having set out Hedley's observations on that topic, the judge went on to say that *"although I found that the father did not tell me the truth about everything, [I] observed that he had been very frank in large parts of his evidence. I rely particularly on the father's evidence as it contains admissions"*.

14. In conclusion, the judge stated that:

> *"19. I can see that the public interest in disclosure of the judgment is outweighed by the serious harm that is likely to [Z] from disclosure. The father's frankness in certain parts of his evidence was helpful to the court. If disclosure were to be allowed, it is very likely that [Z's] welfare would be adversely affected, and her life changed in important respects. SWE can conduct its investigation without disclosure of the fact-finding judgment.*
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> *20. I therefore refuse the application for disclosure of the fact-finding judgment to SWE. I will review the matter in the event that further information is received. I do not invite such information."*

The Appeal Hearing

15. Shortly before the appeal hearing, the father sought permission to rely on two additional documents, namely (i) a position statement prepared by him for a hearing before the judge on 14 October 2022 and (ii) a transcript of the judgement given on 14 October 2022 with respect to interim contact between the father and Z. The mother objected to the father relying on this material and I said that I would decide whether he could do so during the course of the appeal hearing. During the appeal hearing, I indicated that this material might be admissible if I were to remake the disclosure decision, having allowed the mother's appeal.

16. During exchanges with the parties, I identified that I would benefit from a more detailed understanding of the process by which the judge had sought information from the mother and the father about SWE's application for a transcript of the fact-finding judgment. I received a number of documents to assist me in that regard, namely (i) the application made by SWE for disclosure of the transcript of the fact-finding judgment; (ii) a chronology of the mother's email correspondence with the judge prior to his decision on disclosure; and (iii) the written submissions made by the father to the judge opposing disclosure. I also invited the parties to set out their submissions if I were to allow the appeal from the judge's decision and were to remake the disclosure decision myself. Finally, I asked for an update with respect to Z's welfare and the current state of the private law proceedings. Very helpfully, the parties were able to provide me with this material. Dr Proudman also submitted some suggested proposals on how a judge should deal with the issue of disclosure of findings of domestic abuse to a perpetrator's employer, professional body or regulatory body in circumstances where the perpetrator was either working with vulnerable individuals or was employed in a safeguarding role.

17. On the first day of the hearing, I heard submissions from the parties about the judge's decision. The following morning and informed by the material set out in the previous

paragraph, I heard oral submissions from the parties in the event that I allowed the appeal and remade the disclosure decision myself. During the course of those submissions, I told the father that the material relating to the October 2022 hearing was of marginal relevance to remaking the disclosure decision as I now had more up-to-date information about Z's welfare. Thus, it was not necessary for me to admit it formally into the appeal.

The Legal Framework

Appeals

18. The approach of the appellate court is set out by Williams J in paragraphs 10 to 14 of Re C (Relocation: Appeal) [2019] EWHC 131 (Fam), [2019] 2 FLR 137 as follows:

> "10. FPR 30.12(3) provides that an appeal may be allowed where the decision was wrong or unjust for procedural irregularity.
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> 11. In *Re F (Children) [2016] EWCA Civ 546* Munby P summarised an approach to appeals,
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> > 22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole, and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in *SP v EB and KP [2014] EWHC 3964 (Fam), [2016] 1 FLR 228* , para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."
> >
> > 23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in *Piglowska v Piglowski [1999] 1 WLR 1360* . I confine myself to one short passage (at 1372):
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> > > "The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case … These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973] . An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."
> > >
> > > It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".
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> 12. Lord Hoffmann also said in *Piglowska v Piglowski [1999] 1 WLR 1360, 1372* :
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> "If I may quote what I said in *Biogen Inc v Medeva Plc [1997] RPC 1, 45* :
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> '…[S]pecific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.'

> … The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed."

13. So far as concerns the appellate approach to matters of evaluation and fact: see Lord Hodge in *Royal Bank of Scotland v Carlyle [2015] UKSC 13, 2015 SC (UKSC) 93* , paras 21-22:

> "21 But deciding the case as if at first instance is not the task assigned to this court or to the Inner House … Lord Reed summarised the relevant law in para 67 of his judgment in *Henderson* [*Henderson v Foxworth Investments Ltd [2014] UKSC 41, [2014] 1 WLR 2600*] in these terms:
>
> "It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

14. See also the Privy Council decision in *Chen-v-Ng [2017] UKPC 27* :

> Recent guidance has been given by the UK Supreme Court in *McGraddie v McGraddie [2013] 1 WLR 2477* and *Henderson v Foxworth Investments Ltd [2014] 1 WLR 2600* and by the Board itself in Central Bank of *Ecuador v Conticorp SA [2015] UKPC 11* as to the proper approach of an appellate court when deciding whether to interfere with a judge's conclusion on a disputed issue of fact on which the judge has heard oral evidence. In McGraddie the Supreme Court and in Central Bank of Ecuador the Board set out a well-known passage from Lord Thankerton's speech in *Thomas v Thomas [1947] AC 484* , 487-488, which encapsulates the principles relevant on this appeal. It is to this effect:
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> "(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

Disclosure

19. The Children Act proceedings relating to Z have - like other family proceedings - been heard in private. In those circumstances, the disclosure of information relating to those proceedings is liable to constitute a contempt of court. The court has a power to permit the disclosure of information about the proceedings either to the public at large or more narrowly. This power is contained in rule 12.73 of the Family Procedure Rules 2010 ["the FPR"] which also sets out certain limited circumstances under which communication of information relating to proceedings that have been held in private is automatically permitted. The more detailed table set out at Practice Direction 12G provides a general authority, by reference to rule 12.73(1)(c) and rule 12.75, for the disclosure of information in proceedings relating to children for certain specified purposes.

20. Therefore, the scheme of the current rules is that communication of information relating to children proceedings falls into three categories:

a) communications under rule 12.73(1)(a), which may be made as a matter of right;

b) communications under rule 12.73(1)(c) and Practice Direction 12G paragraphs 1 and 2, which may be made but are subject to any direction by the court, including in appropriate circumstances, a direction that they should not be made, and

c) other communications, which under 12.73(1)(b) may only be made with the court's permission.

21. It is common ground that neither (a) or (b) above applies in this case and that the fact-finding judgment can only be disclosed to SWE if the court gives permission for this to occur.

22. The court's discretion to permit disclosure pursuant to rule 12.73(1)(b) is not unconstrained. The acknowledged and long-standing authority on the approach to be adopted by a court when determining an issue of disclosure is the decision of the Court of Appeal in Re C. The leading judgment was given by Swinton Thomas LJ with whom Henry and Rose LJJ both agreed. Though the wording of the relevant procedural provision applicable at that time [FPR 1991, rule 4.23(1)] was in slightly different terms to rule 12.73 of the FPR, any difference is not material for the purposes of this appeal. Thus, having reviewed the relevant authorities, Swinton Thomas LJ identified 10 factors which were likely to be relevant when determining an application for disclosure to the police. The list is preceded by an important caveat:

> *"In the light of the authorities, the following are among the matters which a judge will consider when deciding whether to order disclosure. It is impossible to place them in any order of importance, because the importance of each of the various factors will inevitably vary very much from case to case.*
>
> (1) *The welfare and interests of the child or children concerned in the care proceedings. If the child is likely to be adversely affected by the order in any serious way, this will be a very important factor.*
>
> (2) *The welfare and interests of other children generally.*
>
> (3) *The maintenance of confidentiality in children's cases.*
>
> (4) *The importance of encouraging frankness in children's cases. All parties to this appeal agree that this is a very important factor and is likely to be of particular importance in a case to which section 98(2) applies. The underlying purpose of section 98 is to encourage people to tell the truth in cases concerning children, and the incentive is that any admission will not be admissible in evidence in a criminal trial. Consequently, it is important in this case. However, the added incentive of guaranteed confidentiality is not given by the words of the section and cannot be given.*

(5) *The public interest in the administration of justice. Barriers should not be erected between one branch of the judicature and another inimical to the overall interests of justice.*

(6) *The public interest in the prosecution of serious crime and the punishment of offenders, including the public interest in convicting those who have been guilty of violent or sexual offences against children. There is a strong public interest in making available material to the police which is relevant to a criminal trial. In many cases, this is likely to be a very important factor.*

(7) *The gravity of the alleged offence and the relevance of the evidence to it. If the evidence has little or no bearing on the investigation or the trial, this will militate against a disclosure order.*

(8) *The desirability of cooperation between various agencies concerned with the welfare of children, including the social services departments, the police service, medical practitioners, health visitors, schools etc. This is particularly important in cases concerning children.*

(9) *In a case to which section 98(2) applies, the terms of the section itself, namely that the witness was not excused from answering incriminating questions, and that any statement of admission would not be admissible against him in criminal proceedings. Fairness to the person who has incriminated himself and any others affected by the incriminating statement and any danger of oppression would also be relevant considerations.*

(10) *Any other material disclosure which has already taken place*

23. The approach described by Swinton Thomas LJ in Re C was reaffirmed by the Court of Appeal in Re M (Children) [2019] EWCA Civ 1364 (see paragraph 70) as one which identified the likely relevant factors and described how the balance was to be struck between the competing factors in play. Additionally, McFarlane P noted that applications for disclosure should only be granted if the criteria in Re C were satisfied and it was necessary and proportionate to do so (paragraph 82). In 2022, the Court of Appeal in P (Disclosure) once more endorsed the Re C approach and noted that (a) the circumstances in which disclosure decisions were made will be variable and will require the court to make an evaluative judgement and (b) Re C did not create a presumption in favour of disclosure (paragraph 18). It stated as follows (paragraph 18):

"…The question in each case is which public interest should prevail on the particular facts. This well-established approach, predating the Human Rights Act 1998, was recently endorsed by this court in Re M [2019] EWCA civ 1364 at [68] to [70]. It provides a filter on the outgoing disclosure from public and private law children cases in a manner that is sensitive to the article 6 right to a fair hearing."

24. I pause to note that, since Re C, the relative importance of the ten factors identified by Swinton Thomas LJ has *"inevitably changed"* since it was decided, as Baker J (as he then was) observed in paragraph 36 of X and Y (Disclosure of Judgment to the

Police) [2014] EWHC 278. He noted that the cloak of confidentiality surrounding care proceedings had been *"significantly lifted"* by the successive relaxation of the rules concerning disclosure in the FPR and that there were moves towards much greater transparency in care proceedings for the reasons explained in Re P (A Child) [2013] EWHC 4048 (Fam). Since Baker J's observations, the move towards greater transparency in the family court has accelerated, not just with respect to care proceedings but with respect to family proceedings generally. In that regard, I note that, at the time of writing this judgment, a pilot is taking place in three family courts (Cardiff, Leeds and Carlisle) to provide greater transparency in all proceedings relating to children. The aim of the pilot is to introduce a presumption that accredited media and legal bloggers may report on what they see and hear during family court cases, subject to strict rules of anonymity. Those observations provide context but play no part in this court's decision on disclosure which must have regard to authoritative case law.

25. Though Re C was concerned with disclosure of information from family proceedings to the police, its principles have also been held to be applicable in the case law relating to disclosure of information from family proceedings to professional regulatory bodies. Re R (Disclosure) [1998] 1 FLR 433 concerned an application by the father's employer, the Probation Service, for disclosure of a psychiatric report which opined that the father might pose a risk to children. In allowing disclosure of this report, Kirkwood J explained the purpose of the application, namely:

> *"At the core of the application is the obvious point that, as a probation officer, Mr R has to have close, balanced and responsible dealings with families and people of all ages. It is the chief probation officer's duty to ensure that the probation officers within his area of responsibility are suitable people to do that work. It is plainly and strongly indeed in the public interest that he carries out that responsibility and that an unsuitable person does not continue employment as a probation officer. Accordingly, it is undoubtedly, as I find, in the public interest that there be disclosure to him as Mr R's chief probation officer of the material that, as he knows, has given cause for concern" [435]*

26. In coming to his decision, Kirkwood J applied the factors in Re C which seemed to him to be of importance and robustly ordered disclosure of the psychiatric report subject to a variety of safeguards, including limiting those within the probation service who had access to it.

27. In Re L (Care Proceedings: Disclosure to Third Party) [2000] 1 FLR 913, Hogg J permitted disclosure of her judgment, the expert medical reports, and the minutes of two experts' meeting to the UK Central Council for Nursing, Midwifery and Health Visiting ["UKCC"]. The case concerned a mother who was a paediatric nurse and who had been diagnosed with a severe personality disorder. The judge had made findings that the child concerned had suffered significant emotional harm in the mother's care by reason of the mother's deteriorating mental and emotional state. The experts involved in the case had advised the court that the mother posed a risk to any child in the mother's care. The application for disclosure appears to have been prompted by the expert evidence of a consultant psychiatrist who had opined that he had a duty to refer the mother to the UKCC. The UKCC was not aware of the details of the application but it had attended court to assist Hogg J with information about its regulatory processes.

28. In her judgment, Hogg J set out the statutory framework which governed the UKCC's responsibilities and noted that:

> *"The UKCC, being a statutory body, has an obligation to ensure that nurses are fit to practise and an obligation to protect as far as possible vulnerable members of the public, namely patients, and in this case vulnerable children [916]".*

Hogg J considered Re C and Re R and applied the ten factors identified in Re C in determining that disclosure to UKCC was appropriate. She went on to indicate that courts and practitioners should be alive to the need, in an appropriate case, to consider whether a referral needed to be made to the UKCC and what information should be disclosed from proceedings in the family court.

29. In A Local Authority v SK & HK [2007] EWHC 1250 (Fam), Sumner J permitted disclosure of his judgment to the mother's employers and the relevant local authority in circumstances where the mother worked in a residential home for elderly people. During the care proceedings, Sumner J had found the mother had physically assaulted and injured her eight-year-old daughter, causing bruising and marks and to have thereafter denied doing so. He reviewed the authorities and set out the statutory scheme relating to the regulation of care homes and of the staff who worked in them. Notably, Sumner J said this:

> *"[47] I accept, of course, that the mother is not working with children but with adults. But the important point is that they are vulnerable adults who may well not be able to look after themselves nor, as with a child, necessarily able to give a coherent account in relation to any harm that they suffer.*
>
> *[48] There are, in my judgement many factors connecting the care of children with the care of vulnerable adults. Both are likely to be dependent upon their carer for their physical, psychological, and emotional support. They may well not be able to provide or to manage without such support, nor properly to look after themselves. Their ability to draw attention to any harm caused to them could equally be reduced or non-existent.*
>
> *[49] While there are limitations on the comparison, the standards to be expected of those looking after children may be no less than those looking after vulnerable adults. The skills required may be different."*

30. Sumner J applied the Re C factors and stated that he was *"strongly of the opinion that there should be disclosure in this instance"* [59]. In conclusion, he said this:

> *"[60] Public interest in disclosure is enhanced where there is not only a statutory duty on local authorities to share such information, but also a clearly established procedure on how the receipt of such information should be managed. They may or may not decide to make a referral. If they do make such a referral, the protection of the care worker is fully set out and a proper appeal system laid down. It does not differ significantly from the duty on the GMC or the UKCC.*

[61] The local authority are not seeking to inform some individual or some association unfamiliar with the receipt of such details. They wish to inform one that is well familiar with it and for which a proper statutory procedure for the protection of vulnerable adults is clearly established. I am satisfied that this case falls more closely in line with those decided by Kirkwood J, Hogg J and Bodey J to which I have referred. In balancing the various interests and exercising all due caution, nevertheless the decision comes down clearly on the side of disclosure for which there is a clear and potent argument."

31. All the above cases concerned public law proceedings relating to children. Re D and M (Disclosure: Private Law) [2002] EWHC 2820 (Fam) concerned private law proceedings for contact, during which the father admitted having a consensual sexual relationship with his half-sister. Applying Re C, Hedley J refused to allow disclosure to the police but permitted disclosure to the relevant local authority on condition that there would be no further disclosure without the court's permission. In his judgment, Hedley J drew attention to the fact that parents who gave evidence in private law proceedings did not have the protection of s. 98 of the Children Act 1989. The effect of s. 98(1) is to require a witness to answer all questions irrespective of whether he might thereby incriminate himself but s. 98(2) provides that any such answer may not be used in criminal proceedings. However, s. 98 only applies to public law proceedings and does not apply to private law proceedings under Part II of the Children Act 1989.

32. Hedley J stated the following:

[8] It must be the case in private law proceedings no less than in public law cases that the court should do all it can to encourage as well as require frankness from witnesses and, in particular, from parents. More so in private law cases than in those under Part IV is the court dependent for the accuracy of its information on the evidence of parents. These cases have far less external investigation as a rule and far more does the court have to find facts based on an evaluation of the evidence of parents. Frankness is therefore a rich evidential jewel in this jurisdiction.

[9] I recognise, of course, that frankness cannot come at any cost and the court must also have regard to the gravity of the offence, in particular where that offence may put at risk these or other children, and the court cannot close its mind to public policy issues where grave crime is involved. The court must also have regard to the welfare of the children concerned. Indeed I recognise that in fact every issue set out in Re C (above) may well be relevant. However, it would be my view given both the need for parental honesty and the absence of s 98(2) protection, that the need for encouraging frankness might well be accorded greater weight in private law proceedings and that accordingly the court might be more disinclined to order disclosure."

33. The Court of Appeal in *P (Disclosure)* quoted the above passages from Hedley J's decision and then stated this (paragraph 21):

" In the present case, the judge was urged to allow the father's application on the suggested principle that there is an elevated need for frankness in private law proceedings. Hayden J disagreed, saying that the absence of the protection

> *afforded by s. 98(2) in private law proceedings might lead to a judge placing greater emphasis on frankness when determining a disclosure application, but that did not follow inevitably, nor had Hedley J suggested that it did. We agree and would add that the headnote to the law report inaccurately states that the need to encourage frankness* ***ought to****, rather than* ***might well*** *(as Hedley J said) be given greater weight in private law proceedings. The dicta in D v M add no support to the father's argument."*

34. Thus, disclosure in private law proceedings requires the evaluative exercise set out in Re C, applied to the variable circumstances of the case at hand, recognising that there is no presumption in favour of disclosure

Social Work England

35. SWE is the regulatory body for registered social workers, established by the Children and Social Work Act 2017 ("the 2017 Act") and governed by the 2017 Act and the Social Workers Regulations 2018 (as amended) ("the 2018 Regulations"). In exercising its functions, SWE has statutory duties and an overarching objective to protect the public. In the pursuit of its overarching objective, this involves a statutory duty to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in social workers, and to promote and maintain proper professional standards for social workers (s.37 of the 2017 Act). In 2019, SWE published Professional Standards which stated that a social worker is not to *"abuse, neglect, discriminate, exploit or harm anyone, or condone this by others"* (5.1) and not to *"behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work"*. Social workers are also obliged to *"declare to the appropriate authority and Social Work England anything that might affect my ability to do my job competently or may affect my fitness to practise, or if I am subject to criminal proceedings or a regulatory finding is made against me, anywhere in the world"* (6.6). Those Standards are underpinned by guidance, published in 2020, which states that:

> *"The professional standards are the threshold standards necessary for safe and effective practice. They set out what a social worker in England must know, understand and be able to do after completing their social work education or training. Social workers must continue to meet the professional standards to maintain their registration. The standards apply to all registered social workers in all roles and in all settings…"*

36. SWE can make arrangements for taking regulatory action against social workers, and must make arrangements for protecting the public from social workers whose fitness to practise is impaired (s.44 of the 2017 Act). The provisions and rules in relation to fitness to practise proceedings, from triage through to adjudication, are set out in regulation 25 of the 2018 Regulations, Schedule 2 of the 2018 Regulations and SWE's Fitness to Practise Rules 2019 (as amended) ("the 2019 Rules"). The 2019 Rules were made in accordance with regulation 3 of the 2018 Regulations, in the exercise of the powers conferred by regulation 25(3) of the 2018 Regulations.

37. Where a question arises as to a social worker's fitness to practise, SWE must - as the regulator - determine whether there are reasonable grounds for investigating whether the social worker's fitness to practise is impaired (2018 Regulations, Schedule 2, para

1). Where SWE determines that there are reasonable grounds for investigating whether a social worker's fitness to practise is impaired, an investigation must be carried out and the concerns considered by case examiners to determine whether there is a realistic prospect that adjudicators would determine the social worker's fitness to practise was impaired (2018 Regulations, Schedule 2, para 3). Before referral to case examiners, SWE investigators may require any person who, in their opinion is able to supply information or produce any document which appears relevant to the discharge of their functions or to those of case examiners or adjudicators, to produce documents in the fitness to practise proceedings (2018 Regulations, Schedule 2, para 5). Case examiners must consider the information and any written submissions referred to them by the investigators and determine whether there is a realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired (2018 Regulations, Schedule 2, para 6). At any time before the case examiners determine that a case is to proceed to a fitness to practise hearing, they may require investigators to obtain and supply to them further information relevant to the investigation. Where case examiners determine that there is a realistic prospect of adjudicators determining that a social worker's fitness to practise is impaired, they must refer the case to a fitness to practise hearing if, in their opinion, it would be in the public interest to do so (2018 Regulations, Schedule 2, para 7(2)).

38. SWE has clear policies on both the management and publication of information relating to fitness to practise proceedings as set out in SWE's Fitness to Practise Publications Policy and Fitness to Practise Hearings Guidance for Social Workers. These include for the whole or for parts of the hearing to be in private, for redactions and anonymisations to be made to published decisions; and for information discussed during private sessions not to be published.

39. If case examiners do not consider that a fitness to practise hearing would be in the public interest, they may notify the social worker of the terms on which the social worker can elect to have the matter disposed of without a hearing (2018 Regulations, Schedule 2, para 7(3)). Case examiners can propose that the matter be disposed of without further investigation by either taking no further action, giving advice to the social worker on any matter related to the case, or making a final order (2018 Regulations, Schedule 2, para 9).

The Parties' Positions: Summary

40. The mother was highly critical of the judge's decision, submitting that he had failed to balance or indeed even consider many of the relevant Re C factors. Dr Proudman identified that the judge had failed to address the public interest in the administration of justice by preventing barriers from being erected between the family court and SWE; failed to consider the gravity of the findings made against the father; and failed to address the desirability of cooperation between various agencies concerned with the welfare of children. His failure to address these matters rendered the balancing exercise he undertook deficient and unsafe. Further, Dr Proudman was critical of the judge's conclusion that SWE could conduct its own investigation in the absence of any disclosure of the fact-finding judgment. How could SWE investigate and ensure that any potential risks were managed if the judgment was withheld? Dr Proudman observed that the father said in his statement that he had told SWE about the court's findings and submitted that this was problematic because (a) the father had breached confidentiality in disclosing information about the family proceedings without the

court's permission; (b) the mother was not persuaded that the father would have provided an accurate account of the findings made as he had been found untruthful about the abuse he had inflicted; and (c) SWE's awareness of the domestic abuse findings shifted the balancing exercise firmly towards disclosure. Dr Proudman invited me to remake the decision on the basis that the balancing exercise pointed unequivocally towards disclosure and submitted that Z's confidentiality could be protected by anonymisation and appropriate redaction of the judgment.

41. SWE likewise adopted the submissions made on behalf of the mother. Ms Purchase submitted that the judge had failed to consider any of the relevant case law about disclosure from family proceedings to professional regulatory bodies. The judge's failure to do so rendered the balancing exercise he conducted defective. He also failed to consider what safeguards could be put in place by either the court or SWE to maintain confidentiality. Ms Purchase also noted that it would be impossible for SWE to properly consider any concerns raised about the father's fitness to practise without disclosure of the judgment. For example, there would be continuing uncertainty about what admissions had been made during the fact-finding hearing, the extent to which those admissions were maintained in the fitness to practise proceedings, and indeed whether any findings made had simply not been relayed to the investigators. In those circumstances, SWE's ability to discharge its statutory duties to the public would be fettered. Ms Purchase likewise submitted that the balance pointed squarely towards disclosure of the fact-finding document and indicated SWE's willingness to abide by any restrictions the court might seek to impose to protect Z's confidentiality.

42. However, the father urged me to uphold the judge's decision. He submitted that the judge was alive to the damage which disclosure might cause to Z's welfare and had been right to give significant weight to this factor above all the others set out in Re C. The judge had reminded himself of the relevant case law and all the cases relied on by the mother and SWE concerned public law proceedings in which a child had either suffered or was at risk of suffering significant harm, which was not the case for Z. Because the judge had conducted the fact-finding hearing, the judge was uniquely well placed to come to a view on which Re C factor was the most important. In terms of remaking the decision on disclosure, the father's submissions were dominated by the potential financial impact on his income if disclosure was to be ordered. He submitted that Z's welfare would be seriously affected as he was very likely to be unable to work again as a social worker and thus would not be able to afford the necessary financial support for her needs. The father was of an age where it would be difficult for him to find equivalent well-paid work. The father said that he was not a risk to vulnerable people as he accepted the findings the judge had made.

Analysis: The Appeal

43. Before I set out my analysis, it is important that I record the process whereby the judge came to make his decision on disclosure.

44. SWE applied for a transcript of the fact-finding judgment on 22 June 2022. Its reason for making this application was as follows: *"As the regulator for the social worker, our role is the protection of the public. Our decision makers will need all relevant evidence to be able to make a decision that protects the public. [name redacted] has requested Social Work England to obtain the final fact-finding judgment. We believe that obtaining the final fact-finding judgment will be very relevant"*. On 15 July 2022,

the judge emailed the mother and the father to tell them that SWE had applied for a transcript of the fact-finding judgment, stating *"I see no reason why it should not be disclosed. However, before reaching a final view, I invite your submissions on the issue"*. On 19 July 2022, the mother emailed to say that, given the serious findings made against the father, SWE should see the fact-finding judgment. However, she was aware that the father might lose his job, thereby impacting on Z's maintenance and thus she was neutral on the application for disclosure. On 29 July 2022, the mother emailed the judge again to say that she had taken legal advice from her barrister and, in circumstances where she believed the father would not know of her position, she now supported the application made by SWE. Meanwhile the father submitted a document explaining why he objected to SWE receiving the transcript.

45. On 26 August 2022, the judge made his decision refusing SWE sight of his fact-finding judgment and, on 15 September 2022, the judge emailed the mother and father appending the disclosure judgment and asking if either of them objected to the court sending a copy to SWE. The mother emailed on 20 September 2022, confirming that she had no objection to SWE seeing the judgment and raising a concern that the father may have deliberately misrepresented his financial contributions to Z's maintenance. The mother also said that, given the father's lack of truthfulness during the fact-finding hearing, she doubted that SWE would be able to conduct its own safeguarding enquiries. She also asked for a copy of the father's submissions to the court and these were sent to her on 24 September. I record that regrettably SWE was not sent a copy of the disclosure judgment until it had indicated its intention to intervene in this appeal and I directed disclosure of the disclosure judgment to it in January 2023.

46. It is significant that, at no stage, did the judge ask SWE to make submissions on the issue of disclosure or to explain its statutory role as the regulator of the conduct of social workers in England.

Ground One: Failure to Conduct the Balancing Exercise Correctly

47. I begin by acknowledging that the judge was uniquely well-placed to come to a decision about whether SWE should have a copy of his fact-finding judgment. He had heard each of the parents give evidence; had an informed appreciation of Z's welfare; and had come to findings which were unchallenged by any appellate process. He had also reminded himself of the Re C factors and of P (Disclosure), this being the most recent decision of the Court of Appeal on the disclosure of findings to the police. He had explained the factors which he considered to be relevant and had given his decision in a short, reasoned judgment.

48. However, though the judge listed the Re C factors and applied those he considered were relevant, he did not explain why he regarded it as irrelevant, for example, to consider the public interest in disclosure or the desirability of co-operation between the various agencies concerned with the welfare of vulnerable people/children. The judge was fully aware of the father's occupation and, as he recorded in paragraph 10 of his judgment, knew that SWE was investigating the father and sought disclosure to assist it for that purpose. In those circumstances, the judge should have addressed the public interest and the desirability of co-operation but did not do so. Simply stating in paragraph 19 of his judgment that the public interest in disclosure was outweighed by the serious harm to Z yet without explaining why he had come to this view seriously undermined the balancing exercise required by Re C and rendered his decision unsafe.

49. In my view, the judge fell into error by not inviting submissions from SWE prior to making his decision. Those submissions would likely (a) have directed him to the relevant case law relating to the disclosure of information from family proceedings to professional regulatory bodies, particularly those bodies with a statutory duty to protect the public; (b) have reminded him that SWE was a statutory body with an obligation to protect the public and to ensure that social workers were fit to practise; (c) drawn his attention to the applicability of the Re C factors when the welfare of vulnerable adults was at stake; and (d) reminded the judge that disclosure could be ordered subject to certain safeguards such as (i) the anonymisation of the child's name and that of her mother or (ii) an order prohibiting anything in SWE's regulatory process which might either disclose Z's name or lead to her identification to the world at large. In making these observations, I am mindful of and very sympathetic to the huge pressures on judges dealing with the more difficult and sensitive family cases. These cases are often complicated by the fact that parents may be representing themselves and thus, when a significant legal issue arises, they are unable to draw the judge's attention to the relevant case law.

50. SWE's application required a careful analysis of the Re C factors which took into account the matters I have identified in the preceding paragraph. Regrettably that analysis was absent from the judge's decision. I allow the appeal on this ground.

Ground Two: Wrong to find SWE could conduct its own investigation

51. The judge's decision that SWE could conduct its own investigation in the absence of the fact-finding judgment was misconceived. Whilst SWE could continue to conduct an investigation into the father's fitness to practise, it would be entirely dependent upon the father being honest about the court's findings in circumstances where for him to do so might run the risk that he could never work again as a social worker. It may have also been possible for SWE to have sought further information about the court's findings from the mother – or indeed from the father – but to have done so ran the risk that either the mother or the father would have been in contempt of court for revealing information about the family court's decision without the court's express permission. Revealing the information in this way would also have left the child's identity and confidentiality unprotected and at the mercy of SWE's own processes rather than being in the control of the family court as should be the case with a child subject to ongoing family court proceedings as Z was.

52. Though the judge stated that he might review the matter if further information was received, he stated clearly that he did not invite such information. In my view, this was tantamount to the judge erecting an almost insuperable threshold for SWE to cross if it were, in future, to renew its application for disclosure. That message was unfortunate in the circumstances of this case.

53. Thus, for all of the above reasons, I allow this appeal on ground two as well.

Remaking the Decision

54. Having allowed the appeal, it falls to me to remake the decision on disclosure. Though the father submitted that the judge was best placed to do so, I disagree. I have been provided with an update from each of Z's parents about her welfare and I am mindful that a decision on this matter needs to be taken without delay. Given the

pressures on the family court so evident in the chronology of what took place when SWE asked for a transcript, I have decided that remitting this issue to the judge is likely to further delay resolution. This is not in Z's interests and nor is the continuing uncertainty helpful either to the father or to the general public, for the protection of whose interests SWE sought disclosure.

55. I begin by considering Z's interests. The proceedings concerning her are gradually drawing to a conclusion since there is a final hearing listed at the end of March 2023. Z lives with her mother and is thriving at her fee-paying school which she has attended since 2017. She undertakes a wide variety of out-of-school activities despite having some physical limitations. Z continues to have direct and supported contact on alternate weekends with her father together with indirect contact on the weekends when he does not see her. Nothing said to me in court suggested that there was anything amiss with the quality of the father's contact. The father contributes to Z's maintenance (though I appreciate that there is a dispute as to the extent to which he does so) though he is struggling financially because of the costs of this litigation and because he has recently been made redundant from his social work role working with vulnerable adults. He is presently looking for another social work role commensurate with his experience. It is acknowledged that Z's welfare may be affected if her father were prevented from working as a social worker but I cannot categorise this as an potentially serious impact on her. It may mean some economies are necessary in the range of activities she undertakes but, taking a broad overview, the funding shortfall is not so great as to imperil the roof over Z's head or the continuity of her education. The father placed a great deal on emphasis on the financial aspect of Z's welfare but, when set against the other aspects of Z's welfare, financial concerns do not tip the balance towards a conclusion that Z would be adversely affected by disclosure in a serious way. I also observe that it is not a foregone conclusion that the father will never be able to work as a social worker again if disclosure was made. SWE has a range of disposals available to it which, following its investigation, may address any perceived deficit in the father's fitness to practise and allow him to continue in employment as a social worker. Further, the potential loss of income from a senior social work role may be capable of being offset by the father obtaining alternative employment. He is a resourceful individual with a wealth of experience which might help him to obtain other paid employment and thus be in a position to financially contribute to Z's welfare.

56. Turning to the welfare and interests of other children, I note that the father does not work with children but with vulnerable adults, some of whom have mental health difficulties and some of whom may have experienced domestic abuse or be domestic abusers themselves. I align myself with the observations of Sumner J in A Local Authority v SK and HK as to the similarities connecting the care of vulnerable adults with the care of children. Where reference is made in the Re C factors to the interests of children generally, I have taken this to include the interests of vulnerable adults generally. High standards are properly expected of social workers engaged with either group. As Kirkwood J observed in Re R (Disclosure) albeit in a slightly different context, SWE has a statutory remit to ensure that social workers working with vulnerable adults are suitable people to do that work. That is plainly in the interests of vulnerable adults generally.

57. Whilst disclosure of the judgment to SWE undoubtedly compromises Z's confidentiality, this court has the power to control the manner in which disclosure takes place and to apply safeguards protective of Z's private and confidential information. Thus, the judgment can be redacted to remove any reference to Z's name, to her mother's name and that of her father, to the name of her school, to the names of witnesses who gave evidence at the fact-finding enquiry, and to any information which might lead to Z's identification. Further, SWE has indicated that it would abide by any order this court might make to prevent the publication of material which might identify Z. Given those robust safeguards, any adverse impact of disclosure on Z can be greatly mitigated. Of course, the maintenance of confidentiality in children's cases is a matter of general importance but where a court has determined that there should be disclosure, it has powers to restrict what is disclosed to that which is strictly necessary to allow a public body such as SWE to perform its functions adequately.

58. The importance of encouraging frankness in children proceedings applies to both public and private law proceedings but is of particular importance in private law proceedings where the court is very often dependent on the evidence of parents alone rather than evidence gathered by social workers during a child protection investigation. Given the absence of a section 98(2) protection, the need to encourage frankness in private law proceedings might well be accorded greater weight and, accordingly, the court might well be disinclined to order disclosure as Hedley J held in Re D and M (see above). However, the dicta in D v M do not – as the Court of Appeal made clear in P (Disclosure) – tilt the balance towards refusing disclosure in a private law case. In this case, I observe that, in accordance with his duties under the Code of Practise for Social Workers, the father is also under an obligation to be frank about his conduct with SWE. Frankness cuts both ways in the circumstances of this particular case.

59. It is important that, in the overall interests of justice, barriers should not be erected between one branch of the judicature and another. Whilst SWE is plainly not part of the courts or tribunals system, its fitness to practise procedures are underpinned by statute and regulations and pay proper regard to the individual right to a fair hearing as well as to the public interest in ensuring social workers are fit to practise. The public interest in disclosure is enhanced in these circumstances where SWE is a creature of statute whose duties are clear and transparent. This is a body well familiar with the receipt and management of highly confidential information and this should command the respect of the family court. Those observations apply with equal force to the desirability of co-operation between various agencies concerned with what I describe as the welfare of the vulnerable. That is, in broad terms, the business of the family court and it is also the business of SWE to protect the vulnerable in society from those who may pose a risk in their role as a social worker.

60. The gravity of the conduct which has occurred and its relevance to SWE's processes must also be added into the balancing exercise. In this case, the findings made against the father not only concerned his violent, controlling and abusive behaviour towards his former partner but also concerned his abusive behaviour towards Z who had, on occasion, been present when he was verbally abusive to the mother. Those findings were set within a judgment in which, despite the judge commending the father for his frankness in large parts of his evidence, the judge found the father to have been

untruthful with respect to the serious injury to the mother's hand. The father submitted that his behaviour was somehow of a lesser gravity than the behaviour laid bare in the reported decisions to which I was referred and suggested that it would thus be disproportionate for the judgment to be disclosed. I disagree. First, the court's findings were directly relevant to the Code of Conduct for social workers which enjoins a social worker not to engage in abuse, violence or harm to anyone. Second, the findings made against the father were very serious indeed, notably that his assault in August 2019 caused the mother to suffer a lasting physical disability.

61. Finally, the father told me that he had been frank with SWE about the court's findings though he was not specific about what he had disclosed to it. I can therefore assume that a limited degree of disclosure from the family proceedings to SWE has already taken place though this occurred in circumstances where the court was not asked for permission to disclose its confidential information.

62. Leaving aside the public interest in the prosecution of serious crime, which is not directly relevant in this disclosure exercise, I have decided that I should permit disclosure of the fact-finding judgment to SWE. Drawing the threads together, the balance falls firmly in favour of that course. Despite the potential disadvantages for Z and her family, and for the father's private rights under Articles 6 and 8 of the European Convention for the Protections of Human Rights and Fundamental Freedoms 1950, the need for public safety outweighs the father's rights to respect for his privacy. That decision is necessary and proportionate and is one which I make, having exercised all due caution and mindful of the various rights engaged in the Re C balancing exercise.

63. I will redact the fact-finding judgment and the accompanying schedule to remove material which might cause Z to be identified, including the father's name. The judgment will be disclosed to SWE on condition that no part of the judgment or schedule is to be published on SWE's website.

Observations: Process

64. This appeal has caused me to reflect on the relative rarity of opposed disclosure applications such as the one in this case. In part, that is because Practice Direction 12G provides general authority for the disclosure of information for certain specified purposes. However, it does not address disclosure to a regulatory body. The absence of that general authority must be right for disclosure is uniquely fact specific, making it hard to craft any general authority for a regulatory purpose which would not be capable of causing abuse or mischief if deployed by a party for improper purposes.

65. In the interest of assisting judges faced with these comparatively rare applications, I suggest that:

    a) where a party to family proceedings works with vulnerable people or children and where a court has made findings of fact which may engage or call into question that party's fitness to perform their role, the court should consider whether its findings and judgment should be disclosed to the relevant regulatory body pursuant to rule 12.73(1)(b) of the FPR 2010;

b) it is desirable that the court takes responsibility for considering any onward disclosure in order to prevent the need for a victim of any abuse (who, by reason of PD3AA, is a vulnerable party) having to draw the matter to the court's attention;

c) the court should first invite the parties to confirm their positions with respect to disclosure in these circumstances;

d) if disclosure is opposed, the court should consider inviting the relevant regulatory body to intervene and disclose to it such limited information as may assist that body in deciding whether it seeks disclosure for any regulatory purpose;

e) preferably, the issue should be considered at an attended hearing with the regulatory body present; and

f) in the event that disclosure is refused, the court must send its disclosure judgment promptly to the regulatory body.

66. I have also carefully considered whether, in these circumstances, there should also be disclosure to an employer. I have decided against this for the following reason. Disclosure to a regulatory body will trigger a process which is very likely to have well-established protections for the individual whose fitness to practise is under investigation and where the court can be confident that its disclosure will be carefully safeguarded. The same protections and process are, in reality, unlikely to be replicated for each and every employer. Additionally, disclosure to a regulatory body will also impose on the individual an obligation to inform his or her employer and will also trigger an investigation in which contact will be made very quickly with an employer. Thus, employers are likely to be informed as part of a process which, as it should, protects the rights of those whose fitness to practise their profession is under scrutiny.

Conclusion

67. That is my decision.