Neutral Citation Number: [2024] EWHC 3053 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/11/2024

Before:

MRS JUSTICE KNOWLES

- -

Between:

The General Dental Council	**Applicant**
and	
KK	**Respondent**
and	
Stockport Metropolitan Borough Council	

Mr Joseph O'Brien KC for the GDC
Mr Simon Crabtree for KK
Mr Michael Jones KC for Stockport MBC

Hearing date: 23 April 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 25 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MRS JUSTICE GWYNNETH KNOWLES

This judgment was delivered in private [and a reporting restrictions order OR transparency order is in force]. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Gwynneth Knowles:

1. By an application dated 26 May 2023 pursuant to Part 18 of the Family Procedure Rules 2010 ("the FPR"), the General Dental Council ("the GDC") made an application for an order pursuant to FPR 12.73, for permission from the Family Court to the disclosure of documents in public law proceedings concerning the children of the third respondent, KK, who is a dental technician. The GDC sought to use this material in proceedings before its Professional Conduct Committee in Fitness to Practise proceedings. The precise remit of the application for disclosure sought by the GDC has been refined following case management directions and the creation of further schedules of documents. However, KK faces serious allegations about his Fitness to Practise arising from the court's findings about his domestically abusive conduct towards his then partner and the mother of the children in the public law proceedings.

2. In summary, the reason this application has been made in the High Court is because, following a request made on 23 July 2019 by the GDC to the local authority for the disclosure of information relating to the care proceedings, the local authority – Stockport Metropolitan Borough Council – provided a significant volume of documents from and connected with the care proceedings to the GDC in the absence of any order from the family court authorising such disclosure. Additionally, witness statements were also provided at the request of the GDC by two social work professionals and the solicitor advocate who represented the local authority at the final hearing in the care proceedings. It is obvious that this extensive disclosure was made in contravention of s.12 of the Administration of Justice Act 1960. Accordingly, this court was required to resolve (a) the properly constituted application subsequently brought by the GDC for disclosure of documents from and connected to the care proceedings and (b) any prospective contempt proceedings.

3. With the consent of the GDC, the local authority and KK, this judgment has been much delayed to await the completion of a process by which improperly obtained documents whose disclosure was not sanctioned by this court but which were held by the GDC were destroyed and/or returned to the local authority. This process took some considerable time because material had been distributed to third parties involved in the fitness to practise proceedings and the identification of just what had been distributed and what was in the GDC's possession was a complex task, not without its own difficulties. I am satisfied that this process is now complete and that this judgment can now be published.

4. What occurred in this case serves as a salutary warning to local authorities and to other public bodies about the unlawful mishandling of private information before the family court.

5. The respondents to these proceedings included the children, KK's former partner and her ex-husband. They were unrepresented, having provided their consent to the disclosure sought at the start of these proceedings (the children's solicitor communicating consent on behalf of the Children's Guardian). KK who was a party to the care proceedings was represented by Mr Simon Crabtree; the GDC was represented by Mr Joseph O'Brien KC; and the local authority was represented by Mr Michael Jones KC. I am grateful to all the advocates for their written and oral submissions and for the collaborative approach taken by each of them to assist the court in resolving the issues.

6. I read the substantive bundle and the written submissions prepared by those parties taking an active role in these proceedings. The hearing lasted only a day given the large measure of agreement as to the way forward. Subsequently, I received updates about what I will call the rectification process and communicated with the parties in order to establish that this process was complete. Despite the rectification process being less than straightforward, no further hearing was necessary.

Background

The General Dental Council

7. The GDC is responsible for regulating the Fitness to Practise of dental professionals in the United Kingdom. The GDC maintains a register of dental professionals permitted to practise dentistry and the professionals included on that register are referred to as "registrants". The GDC is a body corporate. Section 1 of the Dentists Act 1984 (as amended) provides that (in paraphrase):

   a) the overarching objective of the GDC in exercising its functions under the Act is the protection of the public; and

   b) in pursuit of the overarching objective, the GDC must, in its pursuit of that objective, protect, promote and maintain the health, safety and well-being of the public; promote and maintain public confidence in the professions regulated under the 1984 Act; and promote and maintain proper professional standards and conduct for members of those professions.

8. In pursuit of its overarching purpose, the GDC has established statutory committees including the Investigating Committee, whose functions are delegated to Case Examiners, the Interim Orders Committee ("the IOC") and the Practice Committees including the Professional Conduct Committee ("the PCC"). Where information is received by the GDC which supports a fitness to practise allegation, s. 27(5) of the 1984 Act provides that the Registrar shall refer the allegation to the Investigating Committee and, if the Registrar considers an interim order may be required on one or more statutory grounds, may also refer the allegation to the IOC at any time up to the point at which the Investigating Committee convenes. The 1984 Act provides for the investigation of allegations and, further, it delegates to officers of the GDC the power to exercise features of the Investigating Committee. These officers are called Case Examiners whose function is defined in secondary legislation. Interim orders, which apply to dental care professionals, are made in accordance with s. 36V of the 1984 Act.

9. S. 33B(2) of the 1984 Act provides that the GDC has the power to require any person to supply information or produce any information in his custody or under his control which appears to the GDC to be relevant in assisting the GDC or any of its committees in carrying out its functions in relation to a person's Fitness to Practise as a dentist. The failure to comply with such a request within 14 days may result in the GDC applying for an order in the County Court requiring the information to be supplied and for all the documents to be produced. However, the powers under s. 33B of the 1984 Act have one important exception which provides that *"nothing in this section shall require or permit any disclosure of information which is prohibited by any relevant enactment"*.

10. The above sections of the 1984 Act concerned dentists. The law is identical for dental care professionals at s.36Y of the 1984 Act by amendment due to this category of practitioner becoming subject to statutory regulation at a later date.

The Family Court Proceedings

11. The local authority initiated care proceedings concerning three children, the two eldest being the children of KK's former wife and her first husband, and the youngest child being the child of KK and his former wife. Those proceedings concluded on 11 April 2019 when the children were aged nearly 9 ½ years, nearly 8 years and nearly 3 years. No application was made by the local authority at the conclusion of the care proceedings for disclosure of relevant information to the GDC and the court itself made no referral to a professional body, in this case the GDC.

The Complaint Against KK

12. On 3 January 2019, the GDC received an anonymous letter stating that KK was on police bail in respect of criminal investigations regarding an allegation that he had assaulted his former wife and her two older children. Following receipt of this initial information, the GDC investigation revealed a number of allegations and escalating physical assaults and abuse by KK against Witness A over an extended period between October 2016 and September 2018. The GDC initially approached Greater Manchester Police ("GMP") for information about the criminal investigation. On disclosure of relevant information which it held about KK, GMP alerted the GDC to the involvement of the local authority with KK. On contacting the local authority, the GDC was signposted to the information governance department and subsequently the GDC caseworker made a request for information to the local authority using a template letter. On 26 July 2019, the local authority provided 22 documents, including some from the public law proceedings.

13. On the basis of the information provided by GMP and the local authority, the Registrar approved an allegation against KK of impairment by reason of misconduct for consideration by the Case Examiners. On 21 November 2019, the Case Examiners considered the allegations and made a referral to the PCC and IOC. The Presentation Lawyer with conduct of the post-referral investigation contacted the data protection office at the local authority on 10 December 2019, requesting permission to disclose the documents given to the GDC by the local authority for the purposes of proceedings before the IOC. Approval was given by the data protection office on 11 December 2019.

14. On 8 January 2020 and after an adjournment requested by KK, the IOC considered the information referred by the Case Examiners and decided not to impose an interim order. During the hearing, KK relied on an extract of information from the care proceedings that had not been obtained or disclosed by the GDC. Following this hearing, the Presentation Lawyer instructed a paralegal to contact social workers and other witnesses identified from the information provided by the local authority. This was with a view to obtaining witness statements relevant to the investigation. Two social workers were identified and permission was granted by the local authority for them to provide statements. The Presentation Lawyer wrote to one of the social workers on 5 February 2020 and the letter contained a request for further information which was copied to the data protection office on 6 March 2020. Further information was provided by the data protection officer on 13 March 2020. Statements were obtained from the two social

workers and yet further disclosure was provided by the local authority on 1 May 2020. During the process of obtaining statements, one of the social workers disclosed (a) the threshold document which set out the basis upon which the court had determined the children had experienced significant harm and (b) the supervision order granted by the family Court in April 2019.

15. In April 2020, the GDC also made contact with the family court seeking information. Both the courts contacted replied, refusing the disclosure sought on the basis that either no application had been made in accordance with the FPR or that the GDC was not a party to the proceedings. The GDC did not pursue the request further.

16. The Registrar subsequently made another referral to the IOC following consideration of the additional information which had been disclosed and the signed statements from the social workers. On 2 November 2020, the IOC determined that an order of suspension in respect of KK for a period of 12 months was necessary to protect the public and otherwise was in the public interest. On 26 January 2021, the GDC investigation concluded with disclosure of the charges against KK and the supporting material. Allegations of assault relating to the children were dropped, thereby confining the allegations to KK's behaviour towards Witness A.

17. A PCC hearing was listed on 26 July 2021 but, on the eve of the hearing, KK via his legal representatives served redaction requests and raised disclosure matters. This included requests for further disclosure of documents from the local authority. Because of the issues raised on behalf of KK, the Presentation Lawyer made enquiries of one of the social work witnesses and then contacted a lawyer who had represented the local authority during the care proceedings. These contacts resulted in the disclosure of the threshold document and the adjournment of the substantive hearing before the PCC. KK's representative objected to the threshold statement being before the PCC but that objection was later withdrawn and the redacted threshold statement remains before the PCC.

18. The matter was relisted before the PCC from 13 to 21 June 2022. However, this hearing did not proceed following an application by KK for the PCC to recuse itself. The PCC acceded to this application and the matter was relisted for hearing in May and June 2023.

19. On 2 May 2023, the GDC opened its case against KK and Witness A was cross examined at length. In discussions during breaks in the evidence and following the conclusion of Witness A's evidence, counsel for KK advised the GDC representatives that there was information in ongoing family proceedings suggesting that Witness A was no longer abstinent from alcohol and that he intended to adduce this. This would have necessitated the recall of Witness A. During discussion, KK's legal representative stated that the information related to Witness A's compliance with testing and attendance at supervision appointments. Those discussions prompted for the very first time consideration as to whether permission had been obtained by the GDC to rely on materials from the family court proceedings. In consequence, the GDC applied to adjourn the proceedings part heard on 10 May 2023.

20. On 20 March 2024, the IOC of the GDC revoked KK's interim suspension. A new date has yet to be fixed for the part heard PCC hearing.

The Nature of the Complaint Against KK

21. It is not necessary to set out all the detailed grounds relied upon by the GDC in relation to KK's Fitness to Practise. In summary, these concerned domestically abusive behaviour towards Witness A including physical assault by slapping, pushing, punching and strangling; making threats to kill Witness A; threatening to hit Witness A with a hammer; and threatening to hit Witness A's children with a hammer. These allegations were very serious.

Procedural History

22. In response to a direction from the court, the GDC's application for disclosure was refined and came before Recorder Malik on 18 August 2023. She adjourned the application to be heard by HHJ Entwhistle who had been the judge dealing with the public law proceedings concerning the relevant children. The matter came before HHJ Entwhistle on 27 September 2023 when he gave comprehensive case management directions. These included the service by the local authority of various lists of documents and a response from both the GDC and KK. The court's order included a recital that HHJ Entwhistle would liaise with Mr Justice MacDonald, then the Family Presider of the Northern Circuit, as to judicial allocation and the initiation of any proceedings for contempt of court. Subsequently, the parties were notified that the proceedings had been allocated to Mr Justice MacDonald.

23. On 5 December 2023, MacDonald J gave comprehensive case management directions and listed the matter for hearing in March 2024. His order envisaged the use of prepared schedules to navigate the large volume of information disclosed by the local authority to the GDC. This methodology was agreed between the parties. The court order contained a recital addressing the issue of contempt of court proceedings arising from the unauthorised disclosure of documents in these terms:

> *"And upon the court determining that any application for contempt of court arising out of any unauthorised disclosure of the documents in these proceedings will be considered by the court and the court will notify the parties in due course as to the procedure to be followed for any contempt application, including whether His Majesty's Attorney General should be notified."*

24. In February 2024, the parties were informed that MacDonald J had been appointed as the Family Presiding Judge for London and had concluded his role as Family Presiding Judge for the Northern Circuit. At that time, no further directions in relation to the contempt of court proceedings had been given. The final hearing was adjourned administratively to April 2024 when there was sufficient time in my diary to accommodate it, sitting as the new Family Presiding Judge for the Northern Circuit.

The Law

Disclosure in Certain Proceedings

25. Section 12 of the Administration of Justice Act 1960 states that the publication of information relating to proceedings shall not of itself be a contempt of court saving certain classes of case, for example (a) where the proceedings relate to the exercise of the inherent jurisdiction of the High Court with respect to minors; (b) are brought under

the Children Act 1989 or the Adoption and Children Act 2002; or (c) otherwise relate wholly or mainly to the maintenance or upbringing of a minor (s.12(1)(i)-(iii)). The Administration of Justice Act does not prevent the publication of the fact that the child is the subject of care proceedings, the nature of the dispute in the proceedings, and the identification or publication of photographs of the child, the other parties or witnesses (see Re J [2013] EWHC 2694 (Fam)).

26. Whilst proceedings are ongoing, s.97(2) of the Children Act 1989 provides that *"no person shall publish any material which is intended, or likely, to identify (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or (b) an address or school as being that of a child involved in any such proceedings".* Once the proceedings have concluded, the protection offered by s.97 no longer applies though a court may extend the period of anonymity by way of an injunction though this is likely to be unusual.

27. The principles relating to factors to be taken into account when considering an order for disclosure from family proceedings heard in private for the purposes of disciplinary proceedings were most recently considered in my judgment, Re Z (Disclosure to Social Work England: Findings of Domestic Abuse) [2023] EWHC 447 (Fam). Therein, I set out an analysis at paragraphs [19] – [34] which is reproduced in full below:

"[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 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."*

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."

Contempt Proceedings

28. Part 81 of the Civil Procedure Rules ("the CPR") deals with the formalities relating to applications regarding contempt. In this case, it was clear that the breach of the provisions of s.12 of the Administration of Justice Act 1960 engaged CPR 81.6(1) which provides that, if the court considers that a contempt of court may have been committed, the court - on its own initiative - shall consider whether to proceed against the defendant in contempt proceedings. The wording of the provision makes consideration of contempt proceedings on the court's own motion mandatory, in situations such as this. No application for contempt was made by KK however no

permission to do so is required as a prerequisite to any application being made (the circumstances in this case not falling within the remit of CPR 81.5(5)).

29. If the court, either on its own motion or following an application made on behalf of KK, considers that contempt proceedings should proceed, then it must give *"such directions as it thinks fit"* for the determinative hearing of contempt proceedings including directions for the attendance of witnesses and oral evidence, as it considers appropriate (CPR 81.7(1)).

30. In relation to contempt proceedings brought against a public body, including a local authority, the decision of Steyn J in JS v Cardiff City Council [2022] EWHC 707 (Admin) identified the threshold issue to be considered prior to bringing contempt proceedings against a public body and concluded as follows:

> *"I accept that, although permission is not required, when considering whether to initiate contempt proceedings for breach of an order by a public body, it would have been appropriate for the claimant to consider whether bringing such proceedings was in the public interest and proportionate, having regard to matters such as whether compliance with the order had been achieved (even if late), whether or apology for any default had been given, and the extent to which an explanation for any default had been given. Equally, those would be matters for the court to have considered if the court were considering whether to initiate contempt proceedings. An allegation of contempt of court is serious and should not be raised lightly. But where (i) contempt proceedings have been initiated by a party, (ii) there is no requirement to obtain permission, and (iii) it is not contended the application is vexatious or abusive, the court should proceed to determine the application. Matters such as late compliance, apology or explanation for default (where applicable), fall to be considered in the context of penalty, if the public bodies found to have committed contempt of court."* [53]

Submissions of the Represented Parties

31. It is not necessary to rehearse the written submissions set out on behalf of the represented parties given the large measure of agreement at the hearing on 23 April 2024. What follows is a short summary of the parties' positions.

32. On behalf of the GDC, Mr O'Brien KC acknowledged that it should have made the application prior to the disclosure of any of the documents covered by s.12 of the Administration of Justice Act 1960. Furthermore, disclosure to the GDC of any of the documents subject to the prohibition in the Administration of Justice Act 1960 was not covered under the exemptions pursuant to FPR 12.7(1) nor were they permitted disclosures pursuant to FPR Practice Direction 12G. He submitted that the assertion by the GDC that it had the power to order disclosure under s.33B(2) of the 1984 Act and, if not complied with, to apply to the County Court for an order for such disclosure, may have led the local authority into believing that it had to comply with any notice served upon it. Mr O'Brien KC offered an unreserved and full apology by the GDC for what had happened in this case.

33. Applying the factors set out in Re C, Mr O'Brien KC submitted that the court should grant disclosure of the relevant records to the GDC. The significant factor in this case was the need for public safety and public confidence in the fitness to practise of

registrants registered with the GDC. As in Re Z, the need for public safety and public confidence outweighed any of KK's rights to respect for his privacy and disclosure was both necessary and proportionate.

34. On behalf of the local authority, Mr Jones KC recognised that the disclosure provided by the local authority took place in the absence of any lawful authority to do so. The GDC and those involved in its disciplinary process had come into possession of documents to which they should not have been privy. Mr Jones KC submitted that the disclosure originally provided should be collated and destroyed by the GDC and factual confirmation that this had been done should then be provided. This would allow the court and KK to be reassured that all documents and data previously provided in contravention of the legislative provisions had been destroyed.

35. Applying the principles in Re C, Mr Jones KC submitted that the factors pointed strongly in favour of disclosure and invited the court to consider the disclosure application afresh as it would do in any other case, identifying what documentary disclosure was necessary in order for the GDC to complete a proper investigation of the allegations made against KK.

36. With respect to possible contempt proceedings, Mr Jones KC accepted that the previous disclosure was not made in compliance with the rules and asserted that the local authority had mistakenly understood that it was obliged to make the disclosure sought pursuant to s.33(B)(2) of the 1984 Act. He offered an unreserved apology for what he described as a genuine mistake and submitted that the court should take account of the strenuous efforts made by the local authority to reform its procedures and train its staff so that no similar incident of unauthorised disclosure was likely to occur in future. Mr Jones KC invited the court to conclude that it was not proportionate and not in the public interest to instigate contempt proceedings of its own motion.

37. On behalf of KK, Mr Crabtree acknowledged that some of the information generated by the local authority's child protection procedures and the care proceedings was information which the GDC might have sought lawfully to obtain and might well have had disclosed to them following the application of the relevant law. Mr Crabtree accepted that there was information which both supported but also rebutted the allegations made against KK by Witness A. He too invited the court to determine afresh what should be disclosed and to order the return of anything which had been but should not have been disclosed. Mr Crabtree maintained that both the local authority and the GDC were in contempt of court but confirmed that KK had not made an application in that respect.

The Hearing and The Court's Order

38. The hearing was listed with a time estimate of two days on 23 and 24 April 2024. By 23 April, the parties had narrowed the issues such that, subject to my view as to the merits of disclosure overall, the only outstanding issues for determination were as follows:

a) whether the threshold document should be disclosed to the GDC, it being noted that KK opposed its disclosure;

b) whether a statement obtained by the GDC from the local authority's in-house advocate who conducted the final hearing in the care proceedings should be disclosed, it being noted that the local authority and KK opposed its disclosure; and

c) whether the court should instigate proceedings for contempt of court against the GDC and the local authority (including whether proceedings for contempt should be brought against employees of the GDC and the local authority), it being noted that KK sought the instigation of such proceedings.

39. There was thus a large measure of agreement about the documents which should be disclosed to the GDC if I were to determine this was required. I heard oral submissions from the GDC, the local authority and KK about the disputed documents. I also heard submissions from the parties about possible contempt proceedings.

40. At the hearing, I indicated that I was satisfied that disclosure of material from the care proceedings was appropriate and justified in the circumstances of this particular case and I ruled on the documents in dispute. My reasons for so deciding are set out later in this judgment. Finally, I indicated that contempt proceedings in this case were neither necessary nor proportionate, subject to the Court being satisfied that all unauthorised material disclosed to the GDC had been deleted from its server and was no longer in its possession. The GDC had rightly acknowledged that any documents in its possession but which were found not to be disclosable would have to be destroyed.

41. I approved a process whereby, guided by the principle of relevance to the complaints before the GDC, the local authority and KK agreed the disclosure and redaction of the individual documents in the care proceedings bundle. This was sensible and proportionate given the significant number of documents generated by those proceedings. A schedule of the disclosed material was to be prepared and appended to the court's order. This process would take some time to complete and I did not receive an order for my approval containing the schedule of disclosed material until 23 June 2024.

42. This careful process was supported by an order for the GDC to destroy all previously disclosed and unauthorised material from its storage facilities and to liaise with all and any external parties holding this material to effect their permanent deletion of this material. I ordered that completion of this process should be evidenced in a witness statement from an officer of the GDC. Once this had been provided, I said that I would provide a judgment for handing down which would name the GDC and the local authority but otherwise would anonymise all the other individuals involved. I intended – with the agreement of the parties – that this process should be complete by the end of July 2024.

43. Regrettably, this process proved rather more complex than envisaged. On 1 July 2024, the GDC applied for an extension of time to comply with the order. The process of establishing where unauthorised items of disclosure werelocated, was much more problematic than had been realised in April 2024. The proceedings before the GDC had encompassed 11 interim order hearings; 4 extensions of the interim order in the High Court; 3 substantive hearings before the Professional Conduct Committee and 6 preliminary hearings before the Practice Committees. Consequently the unauthorised disclosure was repeated in whole or in part in various orders and guises throughout the GDC's data storage. Additionally, a significant number of staff and external associates,

such as Counsel, had been involved with the proceedings. At the time the application for an extension was made, about 85% of the 5,629 files in the main storage area still needed to be reviewed with other areas requiring substantial work and at least 149 individuals needed to be contacted to ascertain whether they held unauthorised disclosure arising from their work on behalf of the GDC. The witness statement from the GDC filed in support of the extension of time stated that it hoped to have completed all its investigations and the deletion of all unauthorised material no later than 13 September 2024. Neither the local authority nor KK objected to the extension which I granted.

44. On 13 September 2024, the Chief Executive of the GDC confirmed in a statement that the process of deleting all unauthorised disclosure had been completed and offered, once more, an unreserved apology for the deficiencies in the way the GDC had dealt with disclosure from the family court in this case. However, in the process of checking this statement, it was discovered by the GDC in-house lawyer that one contractor – a barrister – had not been formally contacted as part of the deletion exercise. This omission was notified to the court at the same time that the Chief Executive's statement was filed. Once the relevant person responsible for managing the deletion exercise as far as the GDC's contractors were concerned had returned from holiday leave, a further statement was filed on 27 September 2024 confirming that the process of deletion was now complete as the barrister concerned did not possess any unauthorised disclosure.

45. Having reviewed all this material carefully, I am satisfied that the GDC has complied with its obligations pursuant to the order approved by me in June 2024 and that all unauthorised family court disclosure relating to KK and his personal circumstances has been deleted. The GDC now only holds material which has been disclosed to it by my order.

Disclosure: Generally and Specifically

46. It falls to me to make the decision about disclosure to the GDC of documents filed within the care proceedings relating to KK's child and the other children who formed part of the household. Applying the principles distilled by Swinton Thomas LJ in Re C, I address disclosure generally before turning to the specific documents which were in dispute.

47. I begin by considering the interests of KK's child and the two other children who were the subjects of the care proceedings brought by the local authority. For all three, the care proceedings concluded over 5 years ago and there is no evidence that disclosure of relevant information to the GDC will in any way adversely impact on their welfare to any serious degree. Their interests, especially given the confidential nature of those proceedings, have also been protected by a careful process of agreement as to relevance and to redaction to preserve confidentiality of names which has been carried out by the local authority and KK under the supervision of this court. I note that I have not been asked to adjudicate upon any matter arising from that process. Furthermore, the proceedings before the GDC have been held in private with no reporting of them at all and with disclosure of documents restricted to the Panel, the lawyers (including independent legal advisors), necessary support workers at the GDC and those representing KK.

48. Secondly, KK is engaged in a profession in which he works directly with members of the public, including children and adults, some of whom may be very vulnerable. The GDC has a statutory duty to ensure that dental professionals are suitable people to do so. It is evidently in the public interest for any complaint against KK to be fully investigated by the GDC and the disclosure of relevant information from the care proceedings will allow such an investigation to proceed effectively.

49. Thirdly, the gravity of the conduct alleged against KK was significant and included abusive behaviours towards two of the children as well as towards their mother. It is plainly in the public interest for the GDC to investigate any such allegations as part of its procedures.

50. It remains important that barriers are not erected between the family court and fitness to practise procedures created by statute. I note that, with respect to the GDC's processes, the disclosure sought contains information which is likely to be used in KK's defence. Furthermore, it continues to be desirable for the various agencies concerned with the welfare of children to co-operate with each other, including not only social workers but also allied medical and healthcare professionals such as doctors and dentists.

51. Drawing the threads together, I have decided that I should permit disclosure of relevant documents from the care proceedings to the GDC as the balance of the relevant factors fall squarely in favour of that course. Despite the potential disadvantages for the privacy of the children and their mother and for KK's private and family rights pursuant to Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the need for public safety outweighs KK's right to respect for his privacy. This decision is both necessary and proportionate and is one which I make, having paid careful attention to the factors and rights engaged in the Re C balancing exercise.

52. Turning to the specific documents in dispute, I can deal with these quite shortly. The first document in dispute was the threshold document which set out the facts establishing that the children had either suffered or were likely to suffer significant harm whilst in the care of their mother and KK. This document was approved by the family court and adopted as part of the court's decision making, as set out in the final order concluding the care proceedings dated 11 April 2019. It is noteworthy that this document contained a number of concessions made by KK about his behaviour. In oral submissions, Mr Crabtree accepted that KK had conceded that the Children Act 1989 section 31(2) threshold had been met but he did not recognise the document which was in the possession of the local authority. Both KK and the children's mother disputed its contents. It was common ground between all the advocates that, very surprisingly, the local authority had not been able to locate the original threshold document approved by the court in 2019 despite a concerted effort to do so and so there was a degree of uncertainty about the provenance of the threshold document in its possession. Having thought about this carefully, I decided that the threshold document in the local authority's possession should be disclosed but should be clearly marked to the effect (a) that both KK and the children's mother disputed its contents and (b) that the local authority had been unable to establish that this was the document which the court approved. The threshold document is clearly highly relevant to the allegations faced by KK before the GDC and merits disclosure on that basis, being a document approved by

the family court. However, given the caveats about its provenance, the weight which can be attributed to that document will ultimately be a matter for the PCC to determine.

53. The second document in dispute was a statement obtained by the GDC from the local authority's in-house lawyer, detailing amongst other matters the discussion between the advocates at the final hearing in the care proceedings. Thus, the statement contained information relating to the care proceedings but was not prepared for use within those proceedings and thus falls into a slightly anomalous category of document not covered by the FPR. The statement was prepared at the request of the GDC without the local authority giving proper scrutiny or thought to the appropriateness of such a statement from its own in-house lawyer. In my view, this statement falls firmly within s.12 of the AJA and, in my view, should never have been made. I decided to refuse disclosure of it to the GDC.

54. In the same category, was another statement from a local authority employee, a senior social worker, which contained information about the family prior to the commencement of the care proceedings as well as material which postdated the instigation of those proceedings. For the same reasons as indicated above, I refused disclosure of those parts of the statement post-dating the instigation of care proceedings. I also directed that the exhibits to the first part of that statement should only be disclosed if they were included in the local authority documents authorised for disclosure by the family court in the care proceedings.

Contempt Proceedings

55. The unauthorised disclosure which occurred in this case should never have happened. Mr Crabtree submitted how very seriously aggrieved KK was at having to defend himself and his livelihood without the financial resources to do so in proceedings before the GDC which were tainted by the improper acquisition of highly sensitive documents from the local authority. KK drew a distinction between the local authority and the GDC, firmly believing that it was the GDC which led the local authority into error. He thought that GDC employees and those of the local authority who should have known better should be named and shamed in my judgment. He urged me to make a costs order against both public bodies.

56. For its part, the local authority recognised the seriousness of its misconduct and recognised that it would be identified in my judgment. It had made an unreserved apology to KK and would be responsible for payment of part of his costs in these proceedings. However, Mr Jones KC pointed to the strenuous efforts which the local authority had made to ensure that unauthorised disclosure of material from care proceedings would not occur in future. It had set up training for staff in the authority and produced a protocol which addressed how requests for information relating to care proceedings were to be managed in future.

57. Likewise, the GDC accepted the seriousness of what had taken place and had offered a fulsome apology to KK. It offered to bear its fair share of KK's costs in these proceedings and it too had engaged in an extensive programme of education and training for its staff to prevent a similar occurrence in future. The GDC accepted that it would be named in my judgment.

58. Given all the above, both public bodies submitted that naming individuals in their respective organisations who were at fault and who should have known better was neither necessary nor proportionate. To embark on such a process would necessitate those individuals having to obtain their own legal advice (though probably supported and funded by their employer); and to make submissions to the court on an informed basis. This would cause considerable delay and significant cost to, ultimately, the public purse. Both the GDC and the local authority emphasised that what had occurred was due to ignorance rather than any deliberate or malicious intent.

59. I have thought carefully about whether I should instigate contempt proceedings against both the GDC and the local authority. Applying the factors set out by Steyn J in JS v Cardiff City Council (see above), I have concluded that contempt proceedings are not warranted in the circumstances. First, compliance with the requirements of the relevant rules contained in the FPR has now been achieved and the court has ruled on the principle of disclosure generally and on disclosure with respect to certain documents. Furthermore, an extensive process of rectification has been undertaken by the GDC to identify and destroy all unauthorised disclosure in its possession. That process has consumed significant time and resources within the GDC which is a salutary reminder of the consequences for a public body of failing to comply with the court's rules and processes. I am however satisfied that the GDC has completed the rectification process and that it now only holds disclosure authorised by the court.

60. Second, both public bodies have offered an unreserved apology to KK and to the court and both have put in place measures to ensure such unauthorised disclosure does not occur in future. Both will also be liable for KK's costs in these proceedings, each paying half of the total sum. I have considered carefully the explanations offered by each for their conduct and accept this arose from lamentable ignorance in both public bodies about (a) the confidential nature of family court proceedings and consequently (b) the need to obtain the court's permission for any disclosure of family court documents. For its part, the local authority misunderstood the obligation on it to assist the GDC by supplying it with information and documents in circumstances where it was perfectly plain that the GDC's powers to require documents were subservient to statute and to the provisions of the FPR. The GDC also failed to understand the limits on its powers when legal proceedings had taken place which bore directly on matters of professional concern to it. Neither public body acted maliciously. Contempt proceedings would take up precious court time and resource as well as the resources of two publicly funded bodies and would, in my view, be disproportionate.

61. Finally, I find that bringing contempt proceedings against named employees of the two public bodies would serve no useful purpose and I accept the submissions made on this issue by the local authority and the GDC.

Conclusion

62. The contents of this judgment stand as a salutary warning to local authorities and to other public bodies concerned with fitness to practise in occupations concerned with or touching on the welfare of children. It is plain that there was a woeful ignorance about the confidential nature of documents produced for the purpose of care proceedings and about how requests for disclosure should be managed. The costs incurred by the GDC and the local authority have been significant and both have been shamed by what occurred. I hope what took place in this case will not happen again.

63. That is my decision.