



Neutral Citation Number: [2022] EWCA Civ 495

Case No: CA-2021-003245

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE

Mr Justice Hayden
ZE17P01593/BT17F00201

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 April 2022

Before:

THE LORD BURNETT OF MALDON
LORD CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE PETER JACKSON

and

LORD JUSTICE BAKER

P (Children)(Disclosure)

Sam Momtaz QC and Annabel Barrons (instructed by Dawson Cornwell) for the Appellant
Father

Allison Munroe QC and Maggie Jones (instructed by Duncan Lewis & Co. Solicitors) for
the Respondent Mother

Tom Little QC (instructed by the Crown Prosecution Service) for the Director of Public
Prosecutions as Intervenor

Hearing date: 31 March 2022

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10am on 13 April 2022

Lord Burnett of Maldon CJ:

1. This is the judgment of the court to which we have all contributed.
2. The appellant father in private law family proceedings has been the subject of findings of serious criminality by Hayden J, including rape of the mother of their two children: [2021] EWFC 4. The mother and father are now in dispute about the arrangements that should be made for the children in respect of which there will be further hearings. She seeks an order that he should be deprived of parental responsibility; he seeks an order for contact.
3. The father has the right not to incriminate himself in the further family proceedings but suggests that he may have to do so to stand any prospect of persuading a court to allow him to have contact with his children. In advance of the substantive hearing on the outstanding issues he applied for an order:

“... that any statements or admissions made by him in the proceedings, in reference to the findings that have been made by the court, will not be disclosed to the police (or, by extension, to the CPS).”

The father has previously been interviewed by the police, but a decision was taken not to prosecute the father. The fact-finding judgment of Hayden J has subsequently been disclosed to the police.

4. The essence of the argument for the blanket advance protection sought by the father is that the proceedings determining the arrangements for the children will not be fair unless he incriminates himself and is given the protection he seeks. Mr Momtaz QC submits that otherwise “the position is neither ‘fair’, within the meaning of Article 6 ECHR and the Overriding Objective, nor is it in the best interests of the subject children within the meaning of s.1(3) Children Act 1989.”
5. The judge dismissed the application, first on the basis that it was premature to consider a question of disclosure to the police without knowing the content of any statement or admission in respect of which the question arose; and secondly that it was inappropriate to fashion the wide protection sought by the father by analogy with the more limited protection provided in public law family proceedings by section 98 of the Children Act 1989 (“the 1989 Act”). That provides:

“98 Self-incrimination

- (1) In any proceedings in which a court is hearing an application for an order under Part IV or V, no person shall be excused from –
 - a. giving evidence on any matter; or
 - b. answering any question put to him in the course of his giving evidence,

on the ground that doing so might incriminate him or his spouse or civil partner of an offence.

(2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse or civil partner in proceedings for an offence other than perjury.”

6. Parts IV or V of the 1989 Act respectively concern public law family proceedings and child protection measures. Parliament has thus removed for those proceedings the privilege against self-incrimination and replaced it with a restriction on the use that can be made of an incriminating statement or admission. To that extent it offers some protection but, whilst preventing the admissibility of such material in criminal proceedings, it does not otherwise preclude its use by the prosecuting authorities. Subject to orders by the Family Court preventing disclosure to the prosecuting authorities (see paras 17 to 20 below) such statements or admissions are capable of being used for the purposes of a criminal investigation. It follows that the protection being sought by the father in these private law proceedings is greater than that provided by Parliament in public law proceedings.

The privilege against self-incrimination

7. The privilege against self-incrimination, also referred to as the right to silence, is a common law right that emerged in the 17th century after the abolition of the Star Chamber. It prevents a person, on pain of punishment, from being required to give evidence against himself. The privilege was restated (other than for criminal proceedings) by section 14 of the Civil Evidence Act 1968:

“14 Privilege against incrimination of self or spouse or civil partner

(1) The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty—

(a) shall apply only as regards criminal offences under the law of any part of the United Kingdom and penalties provided for by such law; and

(b) shall include a like right to refuse to answer any question or produce any document or thing if to do so would tend to expose the spouse or civil partner of that person to proceedings for any such criminal offence or for the recovery of any such penalty.

(2) ...

(3) In so far as any existing enactment provides (in whatever words) that in any proceedings other than criminal proceedings

a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that enactment shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband or wife of that person.”

4 – (5)...”

8. The privilege against self-incrimination may be overborne only by Parliament: *Rank Film Distributors Ltd. v. Video Information Centre* [1982] AC 380 per Lord Wilberforce at 443A. Section 98 of the 1989 Act is an example but there are many more. Article 6 of the European Convention on Human Rights (“the Convention”) has also been construed by the Strasbourg Court as guaranteeing the privilege against self-incrimination in some circumstances. The Strasbourg jurisprudence in this area is not free from difficulty but was synthesised by Lord Reed PSC in *Volaw Trust and Corporate Services Ltd. v. Comptroller of Taxes (Jersey)* [2019] UKPC 29; [2019] STC 2016, a case concerning the compulsory production of incriminating documents.
9. It is no part of his appeal that the father should be deprived by judicial decision of his privilege against self-incrimination, as would be the case pursuant to statute were these proceedings governed by Part IV or Part V of the 1989 Act. His aim is to preserve his privilege and to rely upon it if he chooses, by refusing to answer questions in court or to engage in the pre-hearing processes. But, in addition, he seeks to fashion a further blanket protection including but going beyond those provided by section 98 of the 1989 Act if he chooses to answer questions.

The facts and history of proceedings in more detail

10. The parents separated in 2017, when the mother was expecting their younger child. The father has not seen the older child since then and has never met the younger child. At the time of the separation, the mother went to the police, making serious allegations about the father’s behaviour towards her, but no prosecution followed. The father applied for contact and the mother made the same allegations in response. The father then entered a second relationship in which it was alleged that he had behaved in a strikingly similar way. The mother successfully appealed an order that evidence relating to the second relationship should not be admitted: [2020] EWCA Civ 1088. Hayden J then conducted a fact-finding hearing, leading to a judgment given in January 2021. He found that during the four years of the parents’ relationship the mother had been subjected to a brutalising, dehumanising regime, and that the father had behaved in a similar way in his second relationship. Among his findings was that the father had raped the mother. He described the father as a young man who is profoundly dangerous to vulnerable women and to children. The judgment was disclosed to the police as permitted by the Family Procedure Rules 2010 PD12G 2.1.
11. The judge set a timetable for the parties to make any further applications and respond to the court’s judgment, and a hearing was fixed for May 2021. The mother issued an application for the removal of the father’s parental responsibility and for permission to disclose documents from the proceedings to the police in due course. In response, the father made the application to which we have referred. In the meantime, he declined to be interviewed by the Cafcass officer.

12. The father's application was heard on 17 November 2021 and was refused in a judgment handed down on 23 November 2021: [2021] EWHC 3133 (Fam). In granting permission to appeal Peter Jackson LJ invited the Director of Public Prosecutions to intervene in the appeal.

The judge's decision

13. The judge summarised the father's application as suggesting that "he is effectively prohibited from engaging with the Cafcass officer or the Court more generally, because to do so might incriminate himself and potentially expose him to prosecution." On behalf of the father, it was submitted that he would have to choose whether to stay entirely silent to avoid incriminating himself or whether to engage with questions put to him about the extent to which he "accepts" the findings that have been made against him. Without some measure of acceptance his application would fail. The judge noted Mr Momtaz's submission that the court should rule that:

"any statement or admission that he makes (if any) will not be disclosed to the police. By removing the prospect of F incriminating himself in that way, both parents will have the opportunity for full engagement within the court process, and the proceedings will operate most effectively in the best interests of the children."

14. The judge noted that he was being asked to make this ruling prospectively and without knowing what, if any, admissions the father was contemplating making. He declined to evaluate the application in "an evidential vacuum" as to do so would be to fetter his discretion to consider questions of disclosure in respect of unknown material. He surveyed the legislation and case law and concluded that the father's application sought "wholesale pre-emptive protection". In rejecting the application, he noted that this would afford the father greater protection than that provided in public law proceedings by section 98 of the 1989 Act.
15. The father's alternative submission was that the court should afford him similar protection to that provided by section 98 which would prevent incriminating statements or answers being admitted as evidence in criminal proceedings but not, as we have noted, preclude their disclosure to the police. He rejected that submission. Parliament distinguished between public and private law proceedings. Although the consequences of orders made in private law cases may be far-reaching, public law cases involved interference by the state including the removal of children from their families and even adoption. The judge did not consider it open to the court in effect to legislate for private law proceedings when Parliament had not done so.

Disclosure to third parties in family proceedings

16. Proceedings under the Children Act 1989 and the Adoption and Children Act 2002 are heard in private. It is a contempt to publish information relating to them: Administration of Justice Act 1960, section 12. However, Rule 12.73 of the Family Procedure Rules 2010, permits the communication of information where the court gives permission or where the communication takes place in one of the circumstances listed in Practice Direction 12G.

17. The principles on which the court decides whether to give permission to disclose information from family proceedings were set out by this court in *Re C (A Minor) (Care Proceedings: Disclosure)* [1997] Fam 76 (also reported as *Re EC (Disclosure of Material)* [1996] 2 FLR 725) at [85]:

“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 because this may be 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 co-operation 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.”

18. As the introduction to the list of factors makes clear, the circumstances in which disclosure decisions are made will be variable and call for an evaluative judgement. In *Re AB (Care Proceedings: Disclosure of Medical Evidence to Police)* [2002] EWHC 2198 (Fam); [2003] 1 FLR 579, Wall J affirmed that *Re C* does not create a presumption in favour of disclosure. None of the factors set out in that case has a pre-determined importance, and the list is not exhaustive. 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 of information from public and private law children cases in a manner that is sensitive to the article 6 right to a fair hearing.
19. *Re D and M (Disclosure: Private Law)* [2002] EWHC 2820 (Fam); [2003] 1 FLR 647 concerned private law contact proceedings. The father admitted to the court that he was having a consensual sexual relationship with his half-sister. Applying *Re C*, Hedley J declined to allow disclosure to the police, but permitted disclosure to the relevant local authorities on condition that there would be no further disclosure without leave of the court. In relation to disclosure to the police, he found that the father’s frankness with the court without the protection of section 98(2) weighted heavily, that a criminal prosecution would not be in the interests of the children, and the public interest did not require other factors against disclosure to be overridden.
20. Hedley J made these observations on the need for frankness in proceedings involving children:

“[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 ... 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 (A Minor) (Care Proceedings: Disclosure)* 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.”

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 accorded by section 98(2) in private law proceedings might lead to a judge placing greater emphasis upon 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.
22. Parliament may provide that evidence given in one set of proceedings is inadmissible in another, as it did in section 98 of the 1989 Act. But a civil court cannot determine whether evidence is admissible or inadmissible in a criminal trial: see *Rank Films* per Lord Wilberforce at 442G; Lord Fraser at 446E. If material were disclosed to the police to inform a criminal investigation and a prosecution followed, the question of the direct admissibility or use of the material in a criminal trial would be for the criminal court.

Admissibility in criminal proceedings

23. We are grateful to the Director of Public Prosecutions and to Mr Little QC for placing before the court submissions relating to the use to which material disclosed from family proceedings might be put in a criminal investigation and prosecution. No more than the briefest summary is necessary for the purposes of this judgment.
24. A criminal court would, of course, be obliged to comply with the terms of section 98 of the 1989 Act if disclosure had come from proceedings covered by that provision. Equally, if material were provided to the police, they could use it for the purposes of a criminal investigation.
25. The fact-finding judgment is not itself admissible in criminal proceedings.
26. The question of the admissibility of evidence of admissions and hearsay evidence is governed, for the most part, by the detailed statutory provisions found in the Criminal Justice Act 2003 (“the 2003 Act”) and Police and Criminal Evidence Act 1984 (“PACE”). Section 119 of the 2003 Act deals with the admissibility of previous inconsistent statements of a person who gives evidence at trial; and sections 114 and 115 cover hearsay evidence. Admissions made to third parties, such as the Cafcass

officer could be admitted under the hearsay provisions: see the guidance in *R v Riat and others* [2012] EWCA Crim 1509; [2013] 1 Cr. App. R. 2. Section 76 of PACE governs the admissibility of confessions. They may not be admitted if obtained by oppression or in circumstances likely to make them unreliable. The statutory scheme governing all these matters provides safeguards to ensure the fairness of the criminal trial, buttressed by the role of the judge to ensure a fair trial including by giving appropriate directions to the jury. The ultimate safeguard against evidence being admitted unfairly is provided by section 78 of PACE:

“(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence”

27. This provision provides the ultimate guarantee that no evidence will be admitted in a criminal trial that would, by its admission, render a trial unfair in article 6 terms.

Adverse inferences

28. In written and oral submissions, the parties referred to the possibility that adverse inferences might be drawn in the family proceedings from the father’s refusal to engage or to answer questions in evidence. The judge understood the parties to have agreed that the court would be entitled to draw inferences from a party’s silence in family proceedings where the broader canvas of the evidence enables the court to do so. He referred to *R v. IRC and Another, ex p. TC Coombs and Co.* [1991] 2 AC 283, a decision cited in *In re T (Children)* [2020] EWCA Civ 1344; [2021] 4 WLR 25. However, this appeal does not concern the drawing of adverse inferences because the underlying proceedings have not reached the stage where that question might arise. Whether any inference should be drawn would have to be decided in accordance with principle derived from many appellate decisions. It does not bear upon the question we have to decide.

The submissions on appeal

29. Mr Momtaz QC and Ms Barrons submit that the judge was wrong because:
- i) He should have found that the father was facing an unfair binary choice.
 - ii) He should have found that the proceedings would not operate in the best interests of the children, when the father’s silence will leave an evidential gap in circumstances where case law and Practice Direction 12J emphasise the crucial importance of recognition and insight on the part of a parent if a positive welfare outcome is to be achieved.

- iii) He wrongly characterised the application as “pre-emptive” and gave too much weight to that aspect of the matter.
 - iv) He wrongly treated the protection sought as “wholesale” without linking it to the specific terms of the application.
 - v) He placed too much weight on the apparent distinction between private law proceedings under Part II and public law proceedings under Parts IV and V of the CA 1989.
30. In response, Ms Munroe QC and Ms Jones submit that:
- i) The father has the same choices as any other litigant in this position: appeal if there are grounds, fully accept the findings, accept some of them, offer some alternative view, or continue to deny. The layers of protection that apply in the family and criminal proceedings ensure that the process is fair.
 - ii) The father is seeking a cloak of immunity that is neither in the public interest nor in the interests of the children. He has had a fair hearing: he has been represented, given evidence, cross-examined the mother and made submissions. Having heard all that, the court has made serious findings that have not been appealed.
 - iii) The process of disclosure is not static. Evidence evolves and no judge could make a pre-emptive blanket order at the outset.
 - iv) In this case the judge’s findings are so serious that there are no admissions that the father could make that could realistically improve his position.

Discussion

31. In our judgment, the father’s application faced insuperable difficulties both in relation to its timing and its scope. The judge was right to dismiss it.
32. The application failed, first, because the judge was unwilling to entertain a blanket application in respect of hypothetical incriminating statements or evidence. They might range widely in seriousness and even involve details which did not form part of the findings of fact made by the judge. The adverse findings made in the fact-finding hearing covered a wide spectrum of criminality, the most serious of which was rape. Even assuming in the father’s favour that the court could fetter its later discretion to consider questions of onward disclosure when it possessed knowledge of the detail of what might be disclosed, we find it almost impossible to envisage a situation in which it would be proper for it to do so. Instead of carrying out the *Re C* exercise by balancing all relevant factors, the court would be required to give pre-emptive priority to some at the expense of others: in effect it would be writing a blank cheque. The judge was right to decline to embark on such an unsound exercise.
33. Moreover, we do not accept that the father has a binary choice of the sort he suggests, namely involvement or staying silent. Putting the case in that way is apt to confuse the scope of the privilege against self-incrimination which the father enjoys in these private law proceedings. He is a party to the proceedings and has made an application for contact with his two children. He responds to the mother’s counter application. In

pursuing his application, he is engaged in the proceedings and has assumed an evidential burden. His privilege against self-incrimination entitles him to refuse to answer questions when giving evidence in court that tend to incriminate him. The privilege extends to refusing to answer such questions from a Cafcass officer because his answers would be admissible in the family proceedings. He would also be entitled to avoid making incriminating statements in any written evidence he produced in the proceedings. The privilege does not entitle a witness or party to refuse to engage at all. In simple terms, a witness would not be entitled to say that he or she refuses to answer any and all questions.

34. The effect of the father's contention is that article 6 of the Convention confers a right on a party to family proceedings to admit to having committed any criminal offence without the possibility that the admission might be used either (a) as evidence in criminal proceedings, or (b) as a springboard for investigation. That right, he submits, prohibits the court from disclosing self-incriminating material to the prosecuting authorities.
35. This is not a case directly about the privilege against self-incrimination. That exists to protect defendants in criminal and equivalent proceedings, whether the protection arises at common law, from statute (the Civil Evidence Act 1968) or as a component part of article 6. The several protections afforded in a criminal prosecution and trial process admit of no possibility that anything disclosed from family proceedings could be used in a way which would give rise to a violation of article 6 in the criminal proceedings. Ultimately, it would be the duty of the trial judge to exclude evidence which had that effect. In saying this we do not wish it to be thought that admissions of serious criminality in private law family proceedings would be likely to be regarded as inadmissible in criminal proceedings directly, or as previous inconsistent statements (in the event that they arise for use in that context). Lord Reed's review of the Strasbourg case law in the context of the criminal limb of article 6 in *Volaw* reinforces that view.
36. The submission we are concerned with devolves to the proposition that a party to family proceedings such as this father can only take part in those proceedings fairly and compatibly with his rights under article 6 of the Convention if he is immunised from the possibility of the use in criminal proceedings of admissions or incriminating evidence. The overriding objective in the Family Procedure Rules and section 1 of the 1989 Act (that the child's welfare shall be the court's paramount consideration) give no purchase, in our view to this submission.
37. That submission entails the proposition that section 98 of the 1989 Act is itself incompatible with article 6 of the Convention because it provides only partial protection in these circumstances. The evidence a witness is compelled to give by virtue of section 98, whilst not directly admissible as evidence in criminal proceedings save perjury, may be used by the prosecuting authorities for investigative purposes. Mr Momtaz does not shy away from that consequence of his primary submission, but alternatively submits that the court must provide the private law litigant with equivalent protection to that which exists in public law proceedings. In our view, that last submission runs into the ground because the Family Court cannot determine admissibility of evidence in a criminal court. On this hypothesis, the father recognises that the incriminating material could be disclosed to the police for investigative purposes. But to provide parity with section 98 of the 1989 Act the Family Court would need somehow to fashion a mechanism that prevented its direct use in criminal proceedings. That it cannot do.

38. The reality is, however one views it, that the father seeks greater protection than accorded by Parliament to those in public law proceedings because he does not suggest that he should be stripped of his privilege against self-incrimination.
39. We must consider, therefore, whether article 6 confers the suggested very wide-ranging protection on a private law family litigant. The material part of article 6 is:
- “1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing by [a] tribunal ...”
40. We have been shown no Strasbourg case which comes close to supporting the father’s proposition. In our view, the order which the father seeks relying on article 6 of the Convention is an attempt to establish a new principle of Convention law which goes beyond the “clear and constant jurisprudence of the Strasbourg Court”. As I indicated recently in *DPP v. Cuciurean* [2022] EWHC 736 (Admin),
- “It is clear from the line of authority which begins with *R (Ullah) v. Special Adjudicator* [2004] 2 AC 323 at [20] and has recently been summarised by Lord Reed PSC in *R (AB) v. Secretary of State for Justice* [2021] 3 WLR 494 at [54] to [59], that this is not the function of a domestic court.”
41. In making the argument, the father is not seeking a privilege *not to* incriminate himself but a privilege *to* self-incriminate *with* absolute protection as to the consequences. That would be contrary to the sound administration of justice. That conclusion is illustrated by the facts of this case. It is one thing, as Hedley J decided in *D and M*, to prevent the disclosure to the police of an admission to a sexual offence which involved no violence or lack of consent, but quite another to hold back an admission of rape, were the father to make one. The father’s submission risks undermining aspects of the rule of law and giving no weight to the public interest in the conviction of those guilty of serious criminality.
42. We see nothing unfair in expecting the father to make his case in the family proceedings to secure the outcome he desires and, if he considers it to be the case, to seek to persuade the judge that contact is in the best interests of his two children. He played a full part, including giving evidence, in the fact-finding hearing. If he has decided that his evidence in that earlier hearing was untrue and wishes to qualify or change it there is nothing unfair in letting him choose to do so. We observe that even section 98 of the 1989 Act provides no protection in the case of perjury. The Strasbourg Court generally looks at the totality of proceedings before determining whether they have been fair for the purposes of article 6. It does not exclude the possibility that a single step may render them unfair. Yet it is inconceivable that the refusal of a pre-emptive blanket order of this sort could amount to a violation of article 6. We are satisfied that the approach to disclosure from the family proceedings found in *Re EC (Disclosure of Material)* (see para. 17 above) provides appropriate protections and ensures that the family law proceedings would, in this respect, be fair.
43. For all these reasons, we dismiss the appeal.