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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/03/2023

Before:

MRS JUSTICE KNOWLES

- -

Re G (Disclosure of Fact-Finding Judgment to Secretary of State for the Home Department)

- -

Mr Richard Harrison KC and Miss Samantha Ridley for the father
Mr Teertha Gupta KC and Miss Fitzrene Headley for the mother
Ms Dorothea Gartland for the child by his children's Guardian
Mr Thomas Jones for the Secretary of State for the Home Department

Hearing date: 27 February 2023

- -

Approved Judgment

This judgment was handed down remotely at 15.00pm on 1 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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

Mrs Justice Knowles:

Introduction

1. I am concerned with a boy who I shall refer to by the initial "G"; this is not the first letter of his name. He is 11 years old and presently lives with his mother in this jurisdiction. He is the only child of the Applicant ("the father") and the Respondent ("the mother"). G is represented in these proceedings by his children's guardian. Both G and his parents are nationals of country X where the father continues to live. G has not seen or spoken to his father or paternal family since October 2020.

2. The application before the court made by the father is for G's summary return to country X under the inherent jurisdiction. It is opposed by the mother. The position of the children's guardian is presently not known but will evolve following some life-story work with G and professional intervention to reintroduce contact between G and his father.

3. In November and December 2022, I conducted a fact-finding hearing to investigate the nature of the mother's and father's relationship and the circumstances in which G both travelled to this jurisdiction with his mother in October 2020 and came to remain here. On the father's case, this was a pre-planned and clandestine abduction by the mother in an attempt to excise him from G's life. On the mother's case, this was a flight from life-threatening persecution and/or discrimination by elements of the authorities in country X. Additionally, she alleged serious physical and sexual abuse of G by his father and paternal uncle as well as serious domestic abuse. I handed down a judgment on 21 December 2022 and it is that judgment which lies at the heart of the application before the court today.

4. To set the context, it is important to note that, although this court is entitled to make an order for G's summary return to country X, it is not permitted to implement such an order as, in March 2022, both the mother and G were granted asylum in this jurisdiction. However, the prohibition on implementation in these circumstances neither prevents the court from making a return order nor prohibits the court from investigating matters which are germane to the mother's asylum claim. I observe that, although concerned with an application pursuant to the 1980 Hague Convention, neither the Supreme Court in G v G (Secretary of State for the Home Department and Others intervening) [2021] UKSC 9 at [164] nor the Court of Appeal in Re R (Asylum and 1980 Hague Convention Application) [2022] EWCA Civ 188 at [97]-[99] criticised a party to proceedings who, on the basis of a reasoned judgment in the family court, sought to obtain reconsideration by the Secretary of State for the Home Department of a grant of asylum. By analogy, that course is also available to a parent in proceedings for the return of a child pursuant to the inherent jurisdiction.

5. I conducted a directions hearing on 10 January 2023 when it became clear that an issue had arisen as to whether my fact-finding judgment should be disclosed to the Secretary of State for the Home Department ("the SSHD"). There were matters in that judgment which, in my view, might have a bearing on the asylum status of G and his mother. I invited the SSHD to intervene in the proceedings for the purpose of deciding whether or not I should order disclosure of my judgment. All the parties filed helpful skeleton arguments addressing this issue. Alongside those directions, the children's guardian was directed to prepare an analysis addressing (a) interim contact between G and his father; (b) G's knowledge of the proceedings; (c) how my findings should be communicated to him; and (d) disclosure of my judgment to the SSHD. The children's guardian produced a most helpful and insightful analysis which has played a significant role in my thinking about this very difficult case.

6. I have read all the material in the revised court bundle together with the skeleton arguments. I heard submissions from the SSHD and, in the absence of Mr Jones, from the other parties. I indicated that I would provide the parties with a written judgment on 1 March. I am grateful to the advocates for their realistic and helpful submissions.

7. In summary, I have decided that, applying the factors set out in Re C (A Minor) (Care Proceedings: Disclosure) [1997] Fam 76 ("Re C") (also reported as Re EC (Disclosure of Material) [1996] 2 FLR 725), the fact-finding judgment should be disclosed to the SSHD. Disclosure should happen straightaway and it will then be a matter for the SSHD to decide what steps she wishes to take in respect of G and the mother's status in this jurisdiction.

Fact Finding Judgment: Summary

8. During my fact finding enquiry, I heard oral evidence from the father, the mother, the paternal uncle, the paternal grandmother, and the jointly instructed expert, Mr Spencer. In a lengthy judgment, I rejected the mother's case that she was a victim of domestic abuse by the father and that G was a victim of serious physical and sexual abuse by the father and/or the paternal uncle. I found that the mother and G left country X on 9 October 2020 by aeroplane, travelling on passports which did not belong to them, and arrived in this jurisdiction on or about 10 October 2020. It thus follows that I rejected, as constituting a fabrication, the mother's account about how she travelled to this jurisdiction which was given to the SSHD in November 2020 and maintained by her to date. I also found facts which were incompatible with the mother's account of summary arrest and detention in country X by state agents in September 2020. That account was an integral part of her asylum claim.

9. I observe that, at the fact-finding enquiry, the basis for the mother's asylum claim was known to the father because I had granted his application for disclosure of suitably redacted parts of the mother's asylum file into these proceedings (Re G (Inherent Jurisdiction Return: Disclosure of Asylum Documents) [2022] EWHC 2134 (Fam)).

Positions of the Parties

10. What follows is inevitably a summary of each party's position.

11. The SSHD expressed her thanks to the court for bringing issues which might be relevant to the exercise of her functions to her attention and for the opportunity to intervene in these proceedings by way of written and oral submissions.

12. The SSHD drew the court's attention to the relevant international and domestic framework relevant to her reconsideration of the protection status granted to an individual in this jurisdiction. I set out a summary of that material later in this judgment. Mr Jones submitted that, if there was material in my fact-finding judgment to suggest that there had been a misrepresentation or omission of facts relied upon as part of the mother's and G's asylum applications, this would be relevant to the exercise of the SSHD's functions. The Immigration Rules obliged the SSHD to revoke a grant of asylum where she was satisfied that it had been obtained by misrepresentation or omission of facts. By virtue of the Revocation Guidance, the SSHD had to give careful consideration to revoking refugee status where evidence had emerged that this status had been obtained by misrepresentation or omission of facts.

13. Withholding the fact-finding judgment from the SSHD would be for the court to intervene in an area entrusted by Parliament to a particular public authority as the determination of refugee status fell entirely within the remit of the SSHD. There was

a compelling public interest in the SSHD making asylum decisions on the basis of full and correct facts, and barriers should not be erected between the family court and the SSHD, especially in circumstances where there had already been disclosure of documents from the asylum file into the family proceedings.

14. Though the SSHD noted the analysis of the children's guardian that disclosure would have both positive and negative welfare considerations, Mr Jones submitted that the compelling public interest in disclosure outweighed any negative welfare considerations in circumstances where (a) those considerations were said to be finely balanced; (b) where welfare considerations could be mitigated, for example, by parental reassurance; and (c) where there were statutory safeguards in place to protect G's welfare following disclosure of any judgment to the SSHD. He pointed to the safeguards available to G and his mother if their status was under review and emphasised that any reconsideration by the SSHD would not simply be a matter of establishing whether deception was proven but would also require the SSHD to consider whether G and his mother would still qualify for protection status for any other protection-based reasons. At the moment, Mr Jones could not give the court a firm timeframe for the reconsideration of G and his mother's asylum status but noted the SSHD's duty to carry out her functions in a way that takes account of the need to safeguard and promote the welfare of children in the United Kingdom, by virtue of section 55 of the Borders, Citizenship and Immigration Act 2009, which includes the need to demonstrate that asylum applications were dealt with in a timely fashion.

15. In response to my questions, Mr Jones provided further detail in an email after he had taken further instructions. He confirmed that, pending a reconsideration decision by the SSHD, the mother was able to work. However, were her status revoked, and leave to remain cancelled, the mother would ordinarily not be able to do so even though it was understood she may wish to challenge that decision. Additionally, in those circumstances, neither she nor G would ordinarily have access to benefits. He confirmed that G's status would be considered separately to that of his mother.

16. On behalf of the father, Mr Harrison KC submitted that the fact-finding judgment should be disclosed to the SSHD, especially in circumstances where there had already been substantial disclosure and liaison between the court and the SSHD. Applying the Re C factors, the balance fell squarely in favour of disclosure in circumstances where it would be undesirable for the court and the SSHD to come to conclusions about a child which were diametrically opposed. He also relied on the decision of the Supreme Court in G v G which anticipated transparency insofar as disclosure from the family court to the SSHD was concerned. Withholding disclosure would have serious implications for the Article 6 rights of left behind parents who would be effectively denied a remedy to challenge a status conferred on their child which interfered to a substantial degree with both their Article 8 rights and the Article 8 rights of the child.

17. With respect to G's welfare, it was difficult to conceive that it would be in his best interests to hold refugee status on a false basis. G would not only be unable to live with his father in country X but could not even visit that country. His relationship with his father would be extremely circumscribed and he would also be unable to see members of his paternal family such as his elderly grandmother. The psychological burden on G of being required to collude in his mother's narrative and keep her secrets would likely have an adverse impact on him. It would be very difficult to rationalise the life story work recommended by the children's guardian if at the same time the court continued to impose a cloak of secrecy as far as the SSHD was concerned. Any suggestion that disclosure should await the court's welfare determination was misconceived since the main welfare detriment was uncertainty and insecurity for G which any reconsideration would create whether now or at some

future date. There was a strong argument for initiating that process now before G's roots in this jurisdiction became even more firmly established than they already were.

18. On behalf of the mother, Mr Gupta KC was neutral on the application but submitted that, if I were to order disclosure, the SSHD should have the mother's most recent statement filed in response to the fact finding judgment as well as my welfare judgment when that became available in late July 2023. On balance, he submitted that, should I order disclosure, I should not allow my judgment to be made available to the SSHD until after I had made the welfare decision. Disclosure now ran the risk of unsettling G and might interfere with the reintroduction of contact to the father. In any event, reconsideration by the SSHD would potentially lead to the revocation of status and with it the mother's ability to work or claim benefits. That would be destabilising for G. Were the SSHD to revoke the mother and G's status, the mother would seek to appeal that decision which would inevitably delay the implementation of any welfare decision this court might make.

19. The children's guardian was neutral on the disclosure issue. She recognised that disclosure of the fact-finding judgment was inevitable and that this may cause instability for G. Factors in favour of disclosure included clarity about whether G's residence in this jurisdiction was secure and the need to provide G with a truthful narrative about what had happened to him. She recognised that G was clear he wished to remain in the UK but accepted that those wishes were not informed by a full appreciation of either the facts found in the judgment or the implications for him of a status founded on misrepresentations and lies. The Guardian recognised (a) that there had already been substantial disclosure between the SSHD and the family court; (b) that G's welfare was not the court's paramount consideration; and (c) that there was a strong public interest in the administration of justice such that the family court could not condone deceit before it being kept from the SSHD when this might be relevant to the exercise of her functions.

20. In her skeleton argument, Miss Gartland emphasised the children's guardian's concern for G's welfare if the SSHD were to take any immediate action which might impact on G's status as an asylum seeker and suggested that the SSHD's reconsideration decision might sensibly await the court's welfare determination.

The Legal Framework

21. The structure of the rules governing the disclosure of information relating to children proceedings is that communication/disclosure of such information 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.

    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 the SSHD 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 balancing exercise 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 explained 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. 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 the SSHD. The authorities identified below have all placed particular importance on co-operation and the sharing of information between judicial and public and administrative bodies.

26. In Re B (Abduction: False Immigration Information) [2000] 2 FLR 835, Singer J was concerned with proceedings under the 1980 Hague Abduction Convention in the course of which it emerged that the mother had given, by her own admission, a false account of various matters to the immigration authorities. Singer J made an order for the child's summary return under the Convention and then considered whether he should take steps to bring the mother's admitted lies to the attention of the SSHD. When considering the Re C factors, Singer J held that the child's welfare was not engaged in the balancing exercise because he had made an order for the child's return and thus welfare interests were matters to be considered by her country of habitual residence. However, when considering the maintenance of confidentiality in children cases and the importance of clarity and frankness, Singer J said this (837):

"... This lady has as to her antecedent history being frank in the account she has placed before me. It would be an odd way of upholding the importance of

encouraging frankness if I were to permit her to continue to pull the wool over the eyes of another public authority, namely the Home Office, in the discharge of its immigration duties.

A principal consideration does seem to me in the particular circumstances of this case to be the public interest in the administration of justice. The administration of justice includes the appropriate operation of administrative procedures pursuant to the law such as those which the Home Secretary discharges in relation to immigration. The message, if there is to be a message, that goes out from the court in connection with the facts of this case is that no one should suppose that they will be protected if in the course of proceedings before a court of law evidence appears to establish, as here, that they are attempting or may be attempting to deceive another public authority in the discharge of its statutory or administrative duties. I am not saying that a case for such protection could not be established, only that it will do harm for people to understand the importance of consistency and that the court's initial approach is likely to be to do what it can to avert miscarriages of justice in any part of the public system."

Singer J stated that he would have ordered disclosure of the relevant documents to the SSHD but it was no longer necessary for him to do so as the mother's lawyers had already taken steps to notify the relevant authorities that her initial account had been neither complete nor accurate.

27. In F v M (Joint Council for the Welfare of Immigrants Intervening) [2017] EWHC 949 (Fam), Hayden J was concerned with a hearing to establish (a) whether a decision by the SSHD to grant the child refugee status provided an absolute bar to the court in family proceedings ordering his return to Pakistan and (b) by what process the father could challenge the grant of refugee status, given that he denied the allegations of violence made by the mother and the child on which their asylum claims had been based. Hayden J held that the grant of refugee status to a child by the SSHD was an absolute bar to any order in family proceedings seeking to effect the return of the child to an alternative jurisdiction. Further, he held that the SSHD was actively obliged, in accordance with the relevant immigration rules and guidance, to revoke a grant of asylum where she was satisfied that the evidence established that the person's misrepresentation or omission of facts, including the use of false documents, had been decisive for the grant of refugee status. Were the court in the family proceedings to make findings of fact which undermined the allegations made by the mother against the father in her asylum claim, the SSHD would be required to reconsider her decision with such findings included within the scope of her consideration. At the conclusion of his judgment, Hayden J indicated an intention to release his eventual fact-finding judgment to the SSHD.

28. In R v D and H [2022] EWHC 367 (Fam) ("R v D and H"), Mr David Rees KC, sitting as a Deputy Judge of the High Court, was invited to disclose his fact-finding judgment to the SSHD in circumstances where he had rejected aspects of the mother's evidence upon which reliance had been placed by the SSHD and the First Tribunal in relation to the mother's asylum application. Applying the Re C factors, Mr Rees KC paid particular regard to the child's welfare, and to the public interest in the administration of justice and the desirability of cooperation between various agencies concerned with the welfare of children. He concluded that the latter factor outweighed the potential welfare concerns he had identified and decided to permit disclosure of his judgment to the SSHD. He stated as follows (paragraph 69):

"… I, of course, recognise that the ultimate decision as to whether disclosure should be made in any particular case is a fact sensitive one, and accept

that there may be cases where other factors such as welfare concerns will compel the court to withhold disclosure. However, the family courts are part of a broader justice system and I consider that there is great importance in this court facilitating the proper administration of justice before other courts and tribunals and cooperating with other public bodies concerned with the protection of children. In my view the court should be wary of permitting the confidentiality which attaches to family proceedings to be used to conceal material and adverse findings about a party or their evidence from another public body that has a direct and legitimate interest in those findings."

29. In G v G, the Supreme Court considered the correct approach to 1980 Hague Convention cases where there are related asylum claims. Though that case was decided in the context of the 1980 Hague Convention, the guidance suggested by the Supreme Court is informative in this present context. So far as disclosure from the family courts to the SSHD is concerned, it is clear that transparency is expected as set out in paragraph 64*: "information in the 1980 Hague Convention proceedings and the court's decision may inform the determination by the Secretary of State of a person's asylum claim or as to whether the Secretary of State revokes refugee status"*. The Supreme Court was concerned to smooth the interplay between the family court and the SSHD, for example, by suggesting that the SSHD should ordinarily be invited to intervene in the family proceedings and that there should be prompt liaison between the family court and the SSHD (paragraphs 166-169). In paragraph 169, the Supreme Court said that the documents in the 1980 Hague Convention proceedings should ordinarily be made available to the Secretary of State. The Court's suggested standard directions contained in Appendix 2 of its judgment included the following:

> *"The [family] court should inform the Secretary of State either that the court has listed the hearing of the 1980 Hague Convention proceedings or has granted a stay, and that if it has listed the proceedings for hearing, that the court will provide the Secretary of State with the court's judgment."*

I observe that the Supreme Court did not appear to have had the benefit of hearing argument about the Re C principles and these were not referred to in its discussion of suggested case management directions. For the avoidance of doubt, I am of the view that the suggested guidance given by the Supreme Court informs the context rather than dictates the manner in which the Re C factors are to be applied by the family court in an application for disclosure to the SSHD.

30. Likewise informative in this context is the decision of the Court of Appeal in Re R [2022] EWCA Civ 188, where Moylan LJ expressed concern at the potential for tactical abuse of the asylum system in the context of 1980 Hague Convention proceedings (paragraph 92). Those concerns are equally applicable to the present case, where summary return is sought under the inherent jurisdiction.

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

incriminate himself but s. 98(2) provides that any such answer may not be used in criminal proceedings. However, s. 98 only applies to public law proceedings and does not apply to private law proceedings under Part II of the Children Act 1989.

32. Hedley J stated the following:

> *[8] It must be the case in private law proceedings no less than in public law cases that the court should do all it can to encourage as well as require frankness from witnesses and, in particular, from parents. More so in private law cases than in those under Part IV is the court dependent for the accuracy of its information on the evidence of parents. These cases have far less external investigation as a rule and far more does the court have to find facts based on an evaluation of the evidence of parents. Frankness is therefore a rich evidential jewel in this jurisdiction.*
>
> *[9] I recognise, of course, that frankness cannot come at any cost and the court must also have regard to the gravity of the offence, in particular where that offence may put at risk these or other children, and the court cannot close its mind to public policy issues where grave crime is involved. The court must also have regard to the welfare of the children concerned. Indeed, I recognise that in fact every issue set out in Re C (above) may well be relevant. However, it would be my view given both the need for parental honesty and the absence of s 98(2) protection, that the need for encouraging frankness might well be accorded greater weight in private law proceedings and that accordingly the court might be more disinclined to order disclosure."*

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

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

34. Thus, disclosure from 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.

Reconsideration of Asylum Status by the SSHD

35. The 1951 Refugee Convention and the 1967 Protocol relating to the status of refugees ("the Refugee Convention") are the foundations of the framework of international refugee protection. Article 33(1) prevents states from returning individuals to their country of origin where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. Article 12 provides that the personal status of a refugee is governed by the law of the country of domicile or residence. The provisions of the Refugee Convention have been transposed into domestic law through primary and secondary legislation and the Immigration Rules.

36. Section 76 of the Nationality, Immigration and Asylum Act 2002 provides the power to revoke indefinite permission to enter or stay in certain circumstances. Section 76(2) applies where the leave was obtained by deception. If an application is refused because the applicant's protection status has been revoked, the applicant has a right of appeal against the decision to revoke protection status under section 82(1)(c) of the Nationality, Immigration and Asylum Act 2002 (as amended by section 15 of the Immigration Act 2014). Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the SSHD to carry out her functions in a way that takes account of the need to safeguard and promote the welfare of children in the United Kingdom.

37. Part 11 of the Immigration Rules sets out the provisions for considering asylum claims. Paragraphs 338A to 339AC provide the circumstances where the SSHD may revoke refugee status:

a) the Refugee Convention ceases to apply (cessation) (para 339A (i)-(vi)): namely where the SSHD is satisfied that, for example, a person has voluntarily re-availed themselves of the protection of the country of nationality;

b) exclusion from the Refugee Convention (para 339AA): namely that the SSHD becomes satisfied that, for example, a person should be excluded from being a refugee in accordance with the Refugee Convention;

c) misrepresentation or omission of facts decisive to the grant of refugee status (para 339AB): namely where the SSHD is satisfied that the person's misrepresentation or omission of facts, including the use of false documents, was decisive for the grant of refugee status and the person does not otherwise qualify for refugee status under paragraph 334;

d) danger to the UK (para 339AC(i)-(ii)).

38. Paragraph 339BA states that where revocation is being considered, the refugee should be informed in writing of the ongoing consideration which must include the reasons for the reconsideration. It also provides that the individual should be given the opportunity to submit, in a personal interview or in a written statement, reasons why their refugee status should not be revoked.

39. The Immigration Rules also set out the circumstances when humanitarian protection may be revoked such as when it ceases to apply; the individual is excluded from humanitarian protection; or where there is misrepresentation of facts decisive to the grant of humanitarian protection.

40. The SSHD has published guidance on the Revocation of Protection Status dated 28 June 2022 ("the Revocation Guidance"). This describes the circumstances in which it may be appropriate to revoke protection status (either refugee status or humanitarian protection) and explains the policy, process and procedures that must be followed by SSHD functionaries. It is a publicly available document.

41. The Revocation Guidance notes that, where someone has protection status, revocation action can be taken at any time if there is sufficient evidence to justify such action. The process for revoking protection status includes making contact with the individual, normally in writing, and providing the UNHCR with the opportunity to present their views on the case. An individual's case is referred to the Status Review Unit whilst a decision on revocation is pending.

42. Applicable in this case in respect of revocation on the basis of misrepresentation, the Revocation Guidance notes that:

a) Paragraphs 339AB and 339GD of the Immigration Rules relate to situations where an individual with refugee status or humanitarian protection has misrepresented or omitted facts, including the use of false documents, and this behaviour was decisive in the decision to grant protection status. This means that, had the facts been known, such status would not have been granted;

b) Where there is evidence to suggest that the grant of refugee status was obtained by misrepresentation or omission of material facts, the SSHD must be satisfied that clear and justifiable evidence of deception exists and that the deception was material to the grant of protection status; and

c) Even where deception is admitted or proven, the SSHD must consider whether the person still qualifies for a grant of protection status for any other protection-based reasons. It will only be appropriate to revoke protection status on the grounds of misrepresentation where an individual does not need protection.

43. The SSHD's Settlement Guidance for People on a Protection Route dated 6 October 2021 notes that, where settlement is refused because there is no longer a need for protection or where evidence has come to light that leads to revocation, careful consideration must be given to any child's best interests when deciding whether leave to remain on another route may be appropriate. In accordance with section 55 of the Borders, Citizenship and Immigration Act 2009, this Guidance requires the SSHD to show that, throughout her decision-making process relating to children, the following matters have been observed:

a) fair treatment which meets the same standard a British child would receive;

b) the child's best interests being a primary, although not the only, consideration;

c) no discrimination of any kind;

d) timely processing of applications;

e) and identification of those who might be at risk from harm.

Analysis

44. G – the child with whom the court is concerned – is now 11 and a half years old and has been living in the UK since 2020. Throughout the lengthy fact-finding hearing, his perspective and experiences were at the forefront of my mind and informed the questions I posed to both the witnesses and to the advocates. I concluded that, arising from the behaviour of his mother, G had experienced serious harm by being abruptly taken from his country of origin and birth without a chance to say his farewells to those he loved and was friendly with. His relationship with his father had been severed and I thought it more likely than not that G had been involved in the mother's enterprise by having to keep secrets about how they had travelled to this jurisdiction. These matters make the Re C welfare considerations engaged in the balancing exercise unusually complex.

45. At the directions hearing on 10 January 2023, my focus was to establish how best G might be informed of the court's findings and what scope there was for the resumption of interim contact between G and his father. In both those respects I have been hugely assisted by the perceptive and sensitive analysis of the children's guardian. She considers that there is a role for the Cafcass commissioned Improving Child and Family Arrangements ("ICFA") service to work on reintroducing contact between G and his father as G seems emotionally able to contemplate resuming a relationship with his

father. This will require patience and restraint by the father as well as reassurance from the mother who has said she supports direct contact resuming.

46. Alongside the ICFA service, the children's guardian will undertake some life story work with G to inform him about the court's findings and to help unburden him from the secrets he has had to keep about how he and his mother travelled to the UK. It was very plain from her analysis that G was uncomfortable and evasive when asked by the children's guardian about his journey to England and did not volunteer any information about this, claiming that he could not remember. I accept the children's guardian's recommendation that G is provided with only the most important and understandable information about my findings since the priority must be to rebuild his relationship with the father in a sensitive and emotionally attuned way. Nevertheless, G needs to know that he is not responsible for any of the events that have unfolded around him and that his father loves him and does not pose a risk to his safety. I also accept the view of the children's guardian that G needs to be told that his mother has been untruthful about the way she and G travelled to the UK and about not having siblings who live here. G has no knowledge of his mother's account of detention and arrest in country X, or of her allegations of sexual abuse and radical extremism.

47. All of the above demonstrates that G has much to negotiate and come to terms within the immediate future. Much of the above may be difficult for him but, in the view of the children's guardian, G is settled in his school and home life and does not present with any obvious emotional and behavioural difficulties. He has shown significant resilience in coping with (a) living in temporary accommodation, (b) learning a new language and (c) settling into a new way of life in the UK.

48. Turning to the Re C exercise, I have had G's welfare uppermost in my mind. It is of key importance that he re-establishes a positive and loving relationship with his father at his own pace and in his own time. Likewise, G needs to be informed of some of my findings to build a foundation for successful contact as well as possibly releasing him from the burden of secrecy placed on him by the mother. I recognise that both these features have the potential to create uncertainty for G and that disclosure of my fact-finding judgment may cause G further anxiety about what might happen to his status in this jurisdiction and this may potentially interfere with the resumption of contact.

49. However, G is a resilient young boy and I accept the analysis of the children's guardian that there are benefits for G should the fact-finding judgment be disclosed. Certainty about his status – whatever that is - will support G's stability and I am clear that his identity needs to be constructed on a truthful narrative rather than one distorted by lies. It is also much to G's benefit for the court to know about the realistic options for him if his ability to remain in the UK is compromised. Disclosure of the judgment does not itself mean that G will be returned to country X or that any such step is imminent. Even if the SSHD chose to revoke G's asylum status, there remain significant legal hurdles which would stand in the way of his immediate removal from the UK. Further, there is no clear advantage in postponing disclosure until after my welfare determination – this prolongs uncertainty for G and may be even more damaging for him as his roots in this jurisdiction inevitably deepen and extend.

50. Hence, the welfare considerations do not all point in one direction. G can be helped by patience on the father's part and the skilled intervention of the children's guardian and the ICFA service. G's mother also has a role to play in reassuring him and this court will keep under active review her commitment to do so. Thus, taking all these welfare considerations into account, I am of the view that the overall impact on G of disclosure is not so serious as to be determinative in the balancing exercise.

51. The maintenance of confidentiality in children cases is important but, as envisaged by G v G, there has already been significant disclosure of information from these proceedings to the SSHD. This court has the power to control the manner in which disclosure takes place so that which is disclosed is strictly necessary for the SSHD to perform the administrative functions entrusted to her.

52. The importance of encouraging frankness in children proceedings applies to both public and private law proceedings. However, the dicta in D and M do not - as the Court of Appeal made clear in P (Disclosure) - tilt the balance towards refusing disclosure in a private law case such as this one. In my view, concerns about encouraging frankness – such as the ones which concerned Hedley J in D and M - are simply not engaged in this case. This was not a mother who made admissions against her own interests or who gave a frank and honest account of her circumstances. On the contrary, the mother lied to the family court about almost every issue in dispute and, I note, she continues in her most recent statement to maintain her version of events notwithstanding my findings of significant dishonesty. Frankness in the context of the Re C exercise does not provide protection to a parent who has lied and intends to lie in future about matters germane to the exercise of either this court's functions or the functions of another administrative or judicial body.

53. With respect to public confidence in the administration of justice and the desirability of co-operation between those concerned with the protection of children, I regard it as crucial that barriers should not be erected between the family court and other public bodies or agencies. I agree with the analysis of Mr David Rees KC in R v D and H that the family court should be wary of permitting the confidentiality which attaches to family proceedings to be used to conceal material and adverse findings about a party or their evidence from another public body such as the SSHD who has a direct, legitimate and undisputed interest in that material. Further, the decision-making processes of the SSHD with respect to the revocation of asylum status are clear and transparent with mechanisms for making representations and challenging her eventual decision. In my view, these processes serve to enhance the public interest in disclosure. Thus, in the particular circumstances of this case, other factors such as G's welfare are insufficiently decisive so as to prevent disclosure to the SSHD.

54. The serious findings I made in December 2022 are clearly relevant for the proper discharge of the SSHD's functions. No one sought to suggest that they were not.

55. Finally, as I have already mentioned, there has been significant disclosure between the SSHD and the family court and vice versa. Indeed, my order dated 21 February 2022 stated that the SSHD was to be provided with all documents and orders filed within the family proceedings. Accordingly, the solicitors for the father sent the bundle available in February 2022 to the SSHD and she also received a copy of my August 2022 judgment concerning disclosure of the mother's asylum file into the family proceedings. Mr Harrison KC told me that the SSHD had not received any of the other material filed in these proceedings. I note that the ambit of the February 2022 order was deliberately unconstrained and would, in my view, encompass providing a copy of my fact-finding judgment to the SSHD.

56. Drawing the strands together, the balance falls firmly in favour of disclosure to the SSHD. Despite the potential disadvantages for G, for the mother's private rights under Articles 6 and 8 of the European Convention for the Protections of Human Rights and Fundamental Freedoms 1950, the factors engaged outweigh the mother's rights to respect for her privacy and family life. Disclosure is both necessary and proportionate as the above analysis demonstrates. That decision is one which I make, having exercised all due caution and mindful of the various rights engaged in the Re C balancing exercise.

Conclusion

57. Accordingly, I direct that the father's solicitors provide a copy of the full, updated bundle to the SSHD alongside a copy of my fact-finding judgment. As envisaged in my February 2022 order, there will be ongoing disclosure by the father's legal representatives to the SSHD of all future orders and evidence filed in the family proceedings. It also seems to me to be prudent that I give permission to the mother and to G to disclose my judgment for the purpose of obtaining advice and assistance with respect to any reconsideration by the SSHD.

58. That is my decision.