

Public Law Case Law Update

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Ms Justice Henke gave judgment surrounding the Local authority's application to disclose a family law judgment, including findings to the nursing and midwifery council (NMC). The father in this case was a registered nurse and his fitness to practice was being investigated by NMC.

This application was made by the local authority and was not opposed by the mother or guardian but was thought to be opposed by the father, who did not attend the hearing on this issue.

Ms Justice Henke clarified that the balancing exercise of the court needed to balance confidentiality and the rights of privacy to both the family and the child as well as a balance of the public interest in patient safety and professional regulation.

[Re: X \(A Child\) \(Disclosure to the NMC\) \[2025\] EWFC 332](#)

Background

The local authority made a referral to the NMC about the father in July 2024. In response the NMC notified the local authority that they were undertaking urgent initial enquiries on possible regulatory concerns arising out of an ongoing criminal investigation into a complaint made by a third party against the father about his conduct towards her when she was 16 years old. The complaint by the third party was linked to the public law proceedings in which serious findings were made against the father.

No further communication was had between the NMC and local authority until the conclusion of the Children Act proceedings on 31 July 2025. Thereafter, the local authority requested an urgent update from the professional regulation team of the NMC. The father was aware of the continued correspondence between the local authority and NMC, and the information disclosed to them by the police and exhibited this in his statements throughout proceedings.

The Children act proceedings ended with a final care order being made in relation to the subject child. Within these proceedings findings were made which were relevant to the NMC's investigation. At this final hearing it was discussed whether the finding of fact judgment could be published and whether the matters could be disclosed to the NMC. At that hearing the local authority, mother and Guardian supported this disclosure as long as there was appropriate anonymization. The father however opposed the judgment being sent to the NMC on the basis that any application for this should be made by the NMC and there should be formal notice of that application.

In response to this, Ms Justice Henke gave directions for the local authority to file and serve any application and supporting evidence, with skeleton arguments by the next hearing on 20 September 2025. There was also an order made inviting the NMC to attend that hearing.

On 12 August 2025 the local authority sent an email to the NMC requesting an urgent update on their investigation, their response is detailed at [7] but most importantly they stated that *'We may disclose this information to the nurse and their representative, should they have one, as well as the relevant people within the NMC who consider the case to determine what, if any, action needs to be taken'*.

As well as this, on 25 September 2025 the NMC wrote to the court stating they would not be attending the hearing and requested any order made was shared with them following this hearing.

On 29 September the hearing proceeded with written submissions on behalf of the local authority and child's guardian with brief oral submissions. Although the mother did not attend, she had confirmed that she continued to support the application. The father did not attend and did not provide any written submissions. Ms Justice Henke decided to proceed with the hearing in his absence given she decided he knew of the hearing and chose not to attend. Outlined at [9] is the judges reasons for proceeding in his absence, in summary they include:

- The father was represented when the date of the hearing was set;
- The father continued to have the benefit solicitors until 26 September 2025;
- After his solicitors ceased to act, he was sent a copy of the 186-page bundle;
- There was a search for him outside of court and he was not present;
- A CVP link was sent to his last known email address; and
- Despite all of this the father failed to attend the hearing and failed to give any explanation for his non-attendance.

The law

Ms Justice Henke outlines the relevant law at paragraphs [10-27]. Of note she clarified that as the children act proceedings ended on 31 July 2025, s97 Children Act 1989 no longer applied. Despite this, s12 Administration of Justice Act 1960 and the Family Procedure Rules Part 2010, r.12.73-76 and PD12G continued to apply.

FPR 2010 r.12.73 allows disclosure of material from family proceedings to specified people and bodies with the permission of the Court. Ms Justice Henke held that as PD13G did not appear to automatically permit the local authority to disclose the judgment and findings to NMC, communications about children act 1989 proceedings could only be disclosed with the courts permission (r.12.73(1)(b)).

The relevant test for such permission was that the court can permit disclosure to a regulatory body where it was necessary and proportionate to do so and in the public interest. Ms Justice Henke clarified that the public interest included child protection and safeguarding patients and the vulnerable.

Ms Justice Henke outlines certain authorities which considered this point, but particularly cited the principles and approach to be adopted by the court as stated in *Re C (A Minor) (Care Proceedings: Disclosure)* [1997] Fam 76, sub nom *Re EC (Disclosure of Material)* [1996] 2 FLR 725 at [85 and 733]. The full test is set out in paragraph [18] but in summary it shows that the relevant factors include:

- Welfare and any interests of children concerned in the care proceedings. If they are going to be adversely affected this will be a very important factor;
- The welfare and interest of other children generally ;
- Maintenance of confidentiality in children cases;
- Importance of encouraging frankness in children's cases;

- Public interest in the administration of justice;
- Public interest in the prosecution of serious crime and the punishment of offenders;
- The gravity of the alleged offence and relevance of the evidence to it; and
- The desirability of co-operation between various agencies concerned with the welfare of children.

Re P (Children) (Disclosure) [2022] EWCA Civ 495 clarified that the above case did not create a presumption in favour of disclosure, but it would require the court to make an evaluative judgment.

In Re L (Care Proceedings: Disclosure to Third Party [2000] 1 FLR 913, Hogg J noted that courts and practitioners should be alive to the need in an appropriate case to consider whether a referral needed to make the UK Central Council for Nursing, Midwifery and Health Visiting (a body which later became the NMC) and what information should be disclosed from proceedings in the family court.

In A Local Authority v SK & HK [2007] EWHC 1250 (Fam) the court permitted disclosure to the mother employers where she worked in a residential home for elderly people and was found by the court to have assaulted and injured her 8-year-old daughter.

Ms Justice Henke clarified that the balancing exercise of the court needed to balance confidentiality and the rights of privacy to both the family and the child as well as a balance of the public interest in patient safety and professional regulation.

Analysis

Ms Justice Henke outlined that the local authorities application was in furtherance of their statutory duties under Working Together to Safeguard Children 2023 and the Care Act 2014 to safeguard. She stated this application was made *'in accordance with the need for inter-agency cooperation when safeguarding children and the vulnerable and to inform the NMC's investigation into the father's fitness to practice'*.

She outlined that there was a public interest in this inter-agency cooperation but stated that there was no presumption in favour of disclosure and she must conduct a holistic evaluation. Ms Justice Henke outlined that as the subject child was in long term foster care with no rehabilitation and the father was not having contact with her and therefore disclosure was *'unlikely to have any real impact on the subject child's day-to-day life or her relationship with her father'*.

The findings that were made against the father included that he had sexual intercourse with a vulnerable 16-year-old who was placed in the care of his mother, he was found to be a significant risk to the subject child in the form of sexual, emotional and psychological harm. Although the father was no longer working, it was noted that his registration remained in place and so he could return to nursing. Although he did not work with children, Ms Justice Henke, noted the similarities connecting the care of children to the care of vulnerable adults (*A Local Authority v SK & HK*).

Ms Justice Henke considered that some of the individuals the father may work with as a registered mental health nurse, would be vulnerable and considering she found that the father knows where sexual boundaries lie but *'chooses to cross them to make his own needs'*, Ms Justice Henke considered that *'the findings are grave, and they have relevance for those assessing the risk he may or may not pose to vulnerable people in his care'*. Therefore, she held there was a public interest in the NMC carrying out a fully informed fitness to practice investigation.

Ms Justice Henke accepted this would compromise the subject child's right to privacy and confidentiality of information but confirmed she would redact the judgment appropriately. This redaction would minimise the impact on the child's article 8 rights. Ms Justice Henke held this risk could further be mitigated by making the disclosure subject to the condition that it was to be used by the NMC only for the purpose of their fitness to practice investigation. The Judge considered the importance of maintaining confidentiality to encourage frankness in cases concerning children and also that disclosure would impinge upon the father's confidentiality of information and right to privacy under Article 8.

Although Ms Justice Henke accepted this decision may impact the father's fitness to practice, it did not dictate the outcome of the process of NMC's investigation. She included the gravity of the findings against the father and the relevance to the NMC's investigation. Although Ms Justice Henke accepted the NMC already had police disclosure, she had no confidence that the father would relay his findings to the NMC given his strong opposition to them.

Overall, Ms Justice Henke held that the balance fell in favour of permitting the local authority to disclose the redacted judgment to inform their investigation into the father's fitness to practice. That permission was conditional upon the NMC being permitted to use the judgment and the Schedule of Findings solely for their Fitness to Practice Investigation. She held that the need for public safety outweighs the right to respect for privacy.

Conclusion

To conclude, this judgment establishes how a court should conduct an evaluative exercise into whether judgments should be disclosed to other organisations. It summaries the correct law for similar cases and clarifies to practitioners what should be considered in cases similar to this.



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