

# Re K and others (Minors) (Disclosure)

**[1994] 1 FLR 377**

22/11/1993

## **Barristers**

Private: Elizabeth Coleman

## **Court**

Family Division

## **Facts**

In October 1993 Booth J made substantive orders in proceedings under Part IV of the Children Act 1989 relating to four children. In August 1993 the father of the children had been charged with the rape of two of the children, girls aged 7 and 4. It was common ground that the children had been sexually abused; but the father denied that he was the perpetrator. In determining the Children Act proceedings, Booth J had not been satisfied that the father was the perpetrator of the abuse, and pointed to inconsistencies between statements made by the mother to the police on the one hand and in the Children Act proceedings on the other. Pursuant to FPR 1991, r 4.23, the father sought leave to disclose evidence adduced during the Children Act proceedings for use in his defence to the criminal proceedings against him. Leave was sought in order to enable the father, in the criminal proceedings against him, to challenge the credibility of the mother pursuant to the Criminal Procedure Act 1965, s 5, by reference to previous inconsistent statements made by her in the Children Act proceedings. Objection to this was taken on the grounds that disclosure of those statements could be used to incriminate the mother and would therefore be contrary to s 98 of the Children Act 1989.

## **Held**

Held – granting leave – in determining an application for disclosure of evidence adduced in Children Act cases, the principles to be applied were those established in the reported wardship cases. Following *Re D (Minors) (Wardship: Disclosure)*, whilst the court must have regard to the interests of the child or children concerned, the court determining the application had to balance the importance of confidentiality and the frankness which that engenders in Children Act proceedings against the public interest in seeing that the interests of justice are properly served. In the present case, there could be no detriment to the children concerned, since it was in their interests that their father have a fair trial. Moreover, the disclosure would not be contrary to s 98 of the Children Act 1989. If it was likely that evidence adduced in Children Act proceedings would be inadmissible in criminal proceedings, no purpose would be served by disturbing the confidentiality of that evidence, in which case it would be most unlikely that leave would be granted. To that extent, the question of admissibility was directly relevant to the application for disclosure. On the facts, it was likely that evidence given in the Children Act proceedings would be admissible in the criminal proceedings for the purpose for which the father required them. Section 98 provided protection to a witness when such evidence could incriminate the

witness. In this case the statements made did not in themselves incriminate the mother, and the possibility of there being any charge brought against her was remote. That being so, the discretion should be exercised to permit disclosure.

### **Permission**

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