



# **Disclosure of Information in Family Proceedings Cases Involving Children**

## Response to the public consultation<sup>1</sup>

Presented to Parliament  
by the Secretary of State for Constitutional Affairs and Lord Chancellor  
by Command of Her Majesty

July 2005

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<sup>1</sup> Disclosure of information in family proceedings cases involving children – CP 37/04

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## 1 Introduction

This Command Paper is the post-consultation report for the consultation paper, *Disclosure of Information in Family Proceedings Cases involving children* (CP 37/04) published in December 2004.

It will cover:

- the background to the consultation;
- a summary of the responses to the consultation;
- a detailed response to the specific questions raised in the consultation; and
- the next steps following this consultation.

## 2 Background

- 2.1** The consultation paper *Disclosure of Information in Family Proceedings Cases Involving Children* was published on 16 December 2004. It invited views on the possible content of rules of court that would specify the circumstances in which information should be able to be disclosed in such proceedings without the need for a court order authorising such disclosure.
- 2.2** Nothing was proposed which would change the court's inherent power to authorise or restrict disclosure of information in a particular case or allow disclosure of information to the media or to the general public, or a section of the general public, without the court's authority.
- 2.3** The consultation period closed on 23 March 2005 and this report summarises the responses, including how the consultation process has influenced the final shape and content of the rules of court.
- 2.4** Changes have already been made. On 12 April 2005, section 62 of the Children Act 2004 came into force. This means that:
- It is no longer a criminal offence for a party to family proceedings involving children to disclose orders to other individuals or bodies, so long as disclosure is not made to the general public or any section of the general public, or to the media;<sup>2</sup> and
  - It will no longer be a contempt of court to disclose information where these rules authorise circumstances in which specified information relating to family proceedings involving children and held in private could be communicated.
- 2.5** Some responses to the consultation mistook the nature of the rules and called for these rules to permit disclosure of information by or to individuals or bodies who are already permitted by other legislation and rules of court to receive or make disclosure in certain circumstances, without having to seek the express permission of the court. For instance, disclosure to the Criminal Injuries Compensation Board and to Her Majesty's Inspectorate of Court Administration.
- 2.6** These rules of court authorise disclosure in certain specified circumstances. An extract from the rules can be found at **Annex C**.

<sup>2</sup> References to whether or not *orders* should be discloseable are included in this Command Paper. At the time of consultation, section 62 of the Children Act 2004 (as outlined above) had not come into force.

**2.7** The rules set out three circumstances in which it will not be a contempt of court to communicate information:

- When the court gives permission;
- When communication is made to people specified and listed in the body of the rules (outside of the table); and
- In the circumstances specified in the table and via onward disclosure by a recipient for the purposes for which the information was received; and/or onward disclosure of anonymised information for the purpose of professional development or training.

**2.8** It is important to note that the court can continue to modify or restrict any disclosure permitted by the rule.

## 3 Summary of responses

- 3.1** A total of 57 responses to the consultation paper were received, representing a wide range of bodies and individuals involved in the family justice system. A full list of respondents can be found at **Annex A**. Responses were received from members of the judiciary, the magistracy, the courts and associated bodies; voluntary, support and staff organisations; the legal profession and academics. Responses were also received from central and local government as well as from a number of private individuals with experience of the family justice system. A number of the responses, particularly those from academics, represented the views of more than one signatory.
- 3.2** Given the number of responses, it has been difficult to glean any meaningful and unqualified statistics or to group respondents and reflect views within such groups. Many of the respondents did not answer all of the questions, confining themselves to those questions on which they wished to express an opinion. A significant minority of responses were in textual form and did not clearly answer the questions posed in the consultation, but focused on other matters of direct relevance to the proposed content of the rules of court.
- 3.3** Three responses, from The Newspaper Society, Families Need Fathers and Mr W Frost, have been discounted from the analysis. These three responses did not address the questions posed in the consultation paper or the possible content of rules of court on disclosure. All three responses argued for greater transparency of the family justice system with particular emphasis on their wish to see public and media attendance in the family courts. The term “transparency” has been used commonly to refer to a number of issues including media and public attendance at family court proceedings, reporting of such proceedings and handing down judgments in open court. The Executive Summary of the consultation paper clearly stated that the proposals were specifically not to “... allow disclosure of information to the media...” and there was no suggestion that the consultation was considering the more general matter of transparency. However, the content of these three responses has been noted and they will be considered when further consideration is given to transparency.
- 3.4** In addition to the formal consultation paper, a number of meetings were held with stakeholders and a full list of those meetings can be found at **Annex B**.
- 3.5** Accordingly, in order to provide a meaningful report of responses, analysis has taken a thematic approach. This response paper seeks to reflect significant issues raised in relation to each question. The issues have been drawn together in the “Conclusion and next steps” which explains how particular issues have been considered in drafting and finalising the content of the rules. A timetable for implementation and an indication of likely further Government policy development has also been included.

## 4 Responses to specific questions

### 4.1 Question 1 in the consultation paper was in three parts:

#### i) Do you agree with the list of people identified at Annex B?

Of the 54 responses received, 45 respondents had a definitive opinion on the people identified in the list, with 64 per cent (29) of them agreeing with the list. 11 responses were received from the judiciary, courts and associated bodies, and 73 per cent (8) of them were content with the list.

#### ii) Are there others that need to be added? (please list suggestions)

38 respondents had definitive opinions on whether others needed to be added to the list with 58 per cent (22) believing that additions were needed.

- A number of people were consistently identified in the responses as needing to be added to the list. These included: spouses and close family; individual researchers; Bar and Solicitors' Pro Bono units; and a range of people involved in caring for a child and/or their family, such as child therapists, psychologists and schools.

*"Information and papers are often disclosed to other close family members, even though this is not permitted at present. Defined close family members, who are not party to the proceedings, should also be considered as suitable to receive information as parties may wish to refer to them for advice and counselling." (The Magistrates Association)*

- In relation to research, Professor Judith Masson and co-signatories explained that:

*"most research on the Family Justice System is conducted by researchers employed by (or studying for degrees at) universities or working for research organisations. However, there are independent researchers working in this field. There is no reason why a further restriction which allows disclosure to "Research Bodies" only should be imposed where research has ethical and Government approval. If the rules are to include the term "Research Bodies", this should be defined to include individuals." (Professor Judith Masson et al)*

iii) Are there any included that you think should not be?

38 respondents also expressed an opinion on whether anyone should be removed from the list. Opinion was divided, with 53 per cent of those believing that no one should be removed and 47 per cent wanting someone removed.

- Of those that qualified their view about people included at Annex B of the consultation paper who perhaps should not be, the majority called for clearer definition of the individuals or bodies to be included within each category of recipient. There was a consistent call across responses for definition of the relationship between discloser and recipient, the nature of the information and the purpose for which that information could be communicated.
- Those recipients most commonly identified for removal from the list and/or as needing closer definition were: telephone helplines, the lay advice sector, McKenzie Friends, mediators, medical professionals and child protection professionals.
- Graham Walsh, an individual working in the family justice system, expressed a common view about including telephone helplines and the lay advice sector in asking:

*“what constitutes an advice agency or telephone helpline, amongst whom all documents can be shared according only to the organisation’s rules?” (Graham Walsh)*

- HHJ Hamilton, amongst others, queried *“if mediators are to be included, should this not be confined to those who are professionally qualified?”*, adding also that *“[the term] ‘medical professionals’ is far too wide and needs to be defined by their specific relationship to the child.”*

**4.2 Question 2 in the consultation paper was in seven parts:**

i) Do you agree with the range of information that could be disclosed?

Of the 54 responses received, 40 respondents had a clear opinion on the range of information. However, of those 40, opinions were divided with 53 per cent (21) agreeing and 48 per cent (19) disagreeing with the proposal.

ii) What else would you include, if anything?

iii) Should judgments be included?

35 respondents gave a definitive opinion, with 97 per cent (34) agreeing that judgments should be included.

iv) What would you exclude, if anything?

v) Do you agree with the list of recipients?

35 respondents had a definitive opinion. However, opinions were divided with 43 per cent (15) agreeing and 57 per cent (20) disagreeing with the list.

vi) If you think there are others that should be included, please say whom.

vii) If you think there are some on the list that should not be included, please say whom.

- Views expressed by respondents about the list of proposed recipients have been included in question 1 above.
- Responses about the range of information that could be disclosed varied between: agreeing with the proposals without further qualification; calling for the inclusion of specified types of information, such as expert reports and statements; and calling for all information to be discloseable without the need to seek the express permission of the court.
- Most suggestions for the disclosure of information, beyond that stated in the consultation paper, were prescribed by the relationship between the proposed discloser and recipient and the purpose for which the disclosure should be permitted. For instance, Parentline Plus highlighted the different types of service provided by helplines and accordingly, what information they should be able to receive:

*“There seems to us to be a need to distinguish between helpline services that provided advice from those providing information and/or emotional support. Those who provide information and support should not require documentation. Those providing advice will on some occasions require this” (Parentline Plus)*

- The Law Society made the point that it *“can only regulate solicitors and firms effectively if it has access to all files”* and that it is *“...important to extend the disclosure provisions to any proper regulatory activity.”* Furthermore, the Law Society, amongst others, raised the need for information to be discloseable for accreditation and quality assurance purposes, stating that *“disclosure should be permitted for non-regulatory activity aimed at raising standards.”*
- A strong response was received from the research community which did not agree that researchers should be limited to only orders and judgments without having to seek the express permission of the court. Professor Masson, and co-signatories, explained that *“in order to provide the detailed accounts of both process and outcome, and to relate outcome to process, researchers need access to the whole court file, not only to orders and judgments.”*
- The question of disclosure to elected representatives identified a number of conflicting views. There are in the region of 60,000 local councillors and respondents questioned whether it was necessary to authorise wide disclosure to such a great number. Individuals would still be able to show orders to their councillors and raise most issues with them without disclosing judgments. Applications to disclose further information could continue to be made where necessary. It was thought that significant complaints would tend to be referred to an MP.
- A minority, including the British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN), called for disclosure of all information to MPs, as *“copies of orders and judgments are not likely to assist the MP in deciding whether to assist his constituent ... In giving support the MP may be acting against the interests and wishes of other constituents – perhaps the spouse or partner, or the child. That judgment requires access to the full papers.”*

*“...[we do] not think it appropriate that a party to a case should be able to send orders and judgments to as many elected representatives and members of the House of Lords as he chooses ... This could be open to abuse by a party to children proceedings who has an interest in making the proceedings as public as possible...”*

*“...we do not think that a party should be able to disclose any material from the proceedings to a local councillor, let alone any number of local councillors...”*

*“...[there are many cases where] identifying the child involved in proceedings to those living in the area in which he lives is particularly sensitive and likely to cause the child harm.”*

(The Law Reform Committee of the Bar Council)

- There was a consistent call for guidance to be distributed so everyone would be clear about what information they could disclose and what the recipients could do with it, without the express permission of the court.
- There were also a number of reminders about the information sharing initiatives taking place elsewhere and how it would be important to consider the impact of these when drafting the rules. For example, both the Department for Education and Skills' development of the Integrated Children System, and the implementation of the Bichard Inquiry Report<sup>3</sup> recommendations, may eventually impact on the work of the family courts.

#### 4.3 Question 3 in the consultation paper was as follows:

- i) Should disclosure of orders and judgments be extended to include disclosure to or by Select Committees?

48 per cent of the total respondents had no opinion on including Select Committees. Of the 28 respondents that did express a view, 54 per cent (15) agreed they should be included.

- Some of those who agreed that orders and judgments should be extended to include disclosure to or by Select Committees did not tend to explain why they agreed. However, on the basis that disclosure to individual Members of Parliament would be permitted, the Clerk of the Journals and the Clerk to the Constitutional Affairs Select Committee felt that any legal provision relating to Select Committees, whether explicit or implicit inclusion, risked an infringement of parliamentary privilege and would be unwise.
- The Magistrates' Court Service Inspectorate commented that orders and judgments should not be extended to or by Select Committees, *"because this seems to risk Select Committees being drawn into the merits of individual cases..."*

#### 4.4 Question 4 in the consultation paper was in five parts:

- i) Do you agree with the range of information that could be disclosed between the police and Crown Prosecution Service (CPS)?

31 of the 54 respondents expressed an opinion on this, with 81 per cent (25) of those in agreement. Of the 11 responses received from the judiciary, courts and associated bodies, 91 per cent (10) of those were in agreement.

<sup>3</sup> HC653 (June 2004)

ii) If you think it is too wide, please state what you would limit it to.

iii) Should the information be limited to orders and judgments?

29 of the 54 respondents did not express any opinion. Of the 25 that did, opinions were divided with 48 per cent (12) agreeing and 52 per cent (13) disagreeing.

iv) If you think it is too narrow, please state what you would add.

v) Should the passage of information be limited to each other?

33 of the respondents did not have a definitive opinion. Of those that did, opinions were divided with 43 per cent (9) agreeing and 57 per cent (12) disagreeing.

- Opinion was divided on this issue. A minority of respondents did not think judgments should be discloseable to the police and CPS without the express permission of the court.
- For example, the disparity of opinion between Rights of Women and Women's Aid highlighted the complexity of the issue. Whilst both organisations have similar objectives, their views on what disclosure should be allowed were markedly different. Rights of Women fear that permitting disclosure of any information without seeking the express permission of the court will make women feel that they are no longer in control of their own situation, as they will not know who has what information about them, which may impact on their safety. Whereas, "Women's Aid would not wish to limit the information that can be disclosed to the police and CPS."

*"...[Women's Aid] strongly supports the need for the police and CPS to have automatic access to orders and judgments – but the police and CPS should also have automatic access to Victim's statements in civil proceedings and to contact application and response forms where domestic violence is alleged. These will add to the range of (as yet unproven) statements and information they have to inform the prosecution process, to bring perpetrators to justice and to protect victims and witnesses." (Women's Aid)*

- A distinction was made between the extent of information that the police may require in their capacity as child protection professionals as opposed to criminal investigators. For instance, CAFCASS said: *“We believe that to limit the disclosure between police and CPS to orders and judgments is too narrow... We propose that all documents on the court file, CAFCASS file or Social Services file, where there is a child protection or domestic violence issue of concern should be discloseable between the police and CPS...”*
- Whereas, the Association of Lawyers for Children opposes such disclosure:

*“There are many reported cases where the police have intervened in the proceedings to seek to have leave to read certain statements made by parents or to have transcripts of oral evidence. The courts have considered those cases on a case-to-case basis and often leave for disclosure has been refused on very valid grounds. The Association ...would not support and vigorously oppose disclosure to the police as prosecuting authority via their role in the Child Protection area.”*  
(Association of Lawyers for Children)

- A strong response was received from the CPS advocating disclosure of all information to them without the express permission of the court on the basis that *“the public interest in the administration of justice requires [such access].”* The Association of Chief Police Officers endorsed the CPS’s response.
- The protection against the use of self-incriminating evidence does not apply to private family law proceedings.<sup>4</sup> Some respondents, including members of the judiciary, expressed concern that allowing the disclosure of judgments and any further information could lead to defendants being less candid in evidence. However, other respondents, such as the police and CPS, saw this fact precisely as justification for greater disclosure, beyond orders and judgments on the basis that:

*“The interests of justice require that a defendant should know that he cannot, with impunity, exploit the separation between civil and criminal proceedings.”* (CPS)

<sup>4</sup> i.e. Statements and admissions made in family proceedings can be used in a criminal investigation if leave is given by the family judge to disclose the relevant documents to the police

- Similarly, there was disagreement about the extent of information needed by the police and CPS to be able to make effective decisions to fulfil their functions. The CPS were clear as to the principal purposes for which all information obtained would be used: *“to inform appropriate representations as to bail ... ensure charges properly reflect the totality of offending ... to inform decisions about how best to handle a case ... [and] to inform sentence.”*
- The importance of having judgments containing findings of fact, as opposed to other documents containing untested allegation and opinion, was recognised in responses. For instance, Nigel King (a consultant specialist in child protection matters and investigation of criminal offences against children and vulnerable adults) stated that, without the rules, *“The police or any other agency involved in the management of sex offenders or potentially dangerous people cannot be informed of these judgments and no proper assessment can be made of the risk they may pose.”*

**4.5 Question 5 in the consultation paper was in two parts:**

- i) Apart from those proposed in the paper above as able to disclose information, are there any other parties that should be included in these categories?
  - ii) If so, whom?
- The majority of views about this were raised in response to Question 1 above. Specific examples are included there of the parties most commonly proposed.

## 5 Conclusion and next steps

- 5.1** Since the initial concerns about disclosure of information were raised in March 2004 following the judgment of Mr Justice Munby in *Re B*,<sup>5</sup> a considerable amount has been achieved in terms of both clarifying the position and relaxing some of the restrictions which previously prevented families and individuals from seeking advice and support.
- 5.2** Changes to the law have already been made. Section 62 of the Children Act 2004 was commenced on 12 April 2005.<sup>6</sup> As a result, some of the original causes for concern have already been resolved and the new rule will provide additional opportunities for people to get the help, support and advice they need; whilst the courts' discretion to deal with additional requests for disclosure is retained.
- 5.3** The responses received have helped shape and inform the content of the rules:
- We have considered the call to define those providing and receiving information. A list of definitions is included at paragraph (5)<sup>7</sup> of the rule<sup>8</sup>;
  - We have responded to the need to specify the purpose for which disclosure can be made and have defined the relationship overall between the purpose, provider and recipient, and the discloseable information. The table at paragraph (3) of the rule sets this out.
- 5.4** Other concerns that we have addressed in the rules include those relating to:
- **Telephone helplines and Citizens Advice Bureaux (CAB).** These bodies are not now specified in the rule. We acknowledge the lack of strict and consistent regulation of telephone helplines and the consequent concerns about confidentiality. Those telephone helplines providing *advice* to a party, the CAB and similar persons or bodies will be covered and their operation safeguarded by the definition of “lay adviser” and the prescribed purpose.
  - **Mediators.** They have been closely defined in the rules by their membership of the Law Society Family Panel and/or the training received, which must have been approved by the UK College of Family Mediators. Without this definition, anyone would have been able to hold themselves out as a “mediator” to receive information.

<sup>5</sup> *Re B* [2004] EWHC 411 (Fam)

<sup>6</sup> See paragraph 4 of the Background section about the effect of section 62

<sup>7</sup> The paragraph numbers refer to the rule of court for the High Court and county courts.

<sup>8</sup> An extract from the rules of court can be found at **Annex C**

- **Spouses, cohabitants and close family members.** The rules permit a party to disclose any information relating to proceedings to spouses, cohabitants and close family members, to enable that party to obtain advice or assistance in relation to family proceedings. Civil Partners will be included once the Civil Partnership Act 2004 comes into force on 5 December 2005.
- **McKenzie Friends.** They have now been defined to be consistent with the guidance issued by the President of the Family Division (Family Law, May 2005).
- **Medical professionals.** The potentially wide range of those who could count as “medical professionals” has now been limited by the definition in the rules. “A healthcare professional [which is further defined] or a person or body providing counselling services for children or families” may disclose any information relating to the proceedings for the purpose of enabling the party, or any child of the party to obtain healthcare or counselling.
- **Regulation, quality assurance and accreditation.** All these purposes have now been provided for and closely defined as appropriate to particular bodies.
- **Elected Representatives.** The rules provide for MPs, National Assembly Members, MEPs and members of the House of Lords to receive the text or summary of the whole or part of a judgment given in proceedings to enable them to give advice, investigate any complaint or raise any question of policy or procedure. Local councillors were not included for the reasons raised in the responses.

**5.5** The Government believes that the police and the CPS will be helped to make effective decisions in investigating and prosecuting criminal offences by being permitted the text or summary of a judgment containing findings of fact. The rules reflect this. If further documentation appears necessary after consideration of the judgment, an application can be made to the court. We are considering the development of a protocol for the sharing of information from the family courts with the police and CPS. There already exists a protocol in relation to information sharing from the police to the family courts.

**5.6** However, when the police and other professionals are acting in furtherance of child protection, there is a clear need for any information relating to proceedings to be discloseable, without the need to seek the express permission of the court. This is permitted by the rules, and a definition is given of what is meant by “acting in furtherance of the protection of children.”

- 5.7** We accept that researchers need access to any information relating to proceedings to conduct meaningful research. This has now been included in the rules. We recognise too that individual researchers should be included (as well as research bodies) as those able to conduct approved research projects and therefore able to access any information. There remains a clear call for a review of the procedure for approval of research, which is beyond the scope of these rules.
- 5.8** We are aware of other information sharing initiatives and we have been liaising with the Department for Education and Skills and others to ensure that these rules complement developments elsewhere.
- 5.9** We are grateful to all respondents and to those such as the Family Procedure Rule Committee, the Family Criminal Interface Committee (FCIC) and the General Medical Council (GMC), who have provided further advice and assistance in the development of these rules.
- 5.10** This paper will be laid simultaneously with the Statutory Instruments containing the rules. We want people to be clear about what information they may disclose or receive and for what purpose. Guidance will be published in advance of the rules coming into force on 31 October 2005.
- 5.11** The Government recognises that these rules do not open up the family courts as far as recommended in the recent Report<sup>9</sup> by the Constitutional Affairs Select Committee of their Inquiry into the operation of the family courts.
- 5.12** These rules deal only with disclosure of information in family proceedings and not with the wider issue of transparency, including public and media attendance at family court proceedings, reporting of such proceedings and handing down judgments in open court. That work is in progress and we will announce our plans as soon as possible.

## Annex A: List of respondents

Association of Chief Police Officers  
Association of District Judges  
Association of Lawyers for Children  
Bar Council (Law Reform Committee)  
Bar Pro Bono Unit  
British Association for Adoption and Fostering  
British Association of Social Workers  
British Association for the Study and Prevention of Child Abuse and Neglect  
Child Care Law Joint Liaison Unit  
Child and Family Court Advisory and Support Service  
Crown Prosecution Service  
Department for Work and Pensions (Child Support Division)  
Doughty, J  
Douglas, Professor Gillian  
Essex Magistrates' Court Committee  
False Allegations Support Organisation  
Families Need Fathers  
Family Justice Council  
Frost, W  
Fullinfaw, H  
Greater London Family Panel (Legal Committee)  
Hamilton, His Honour Judge  
Home Office (Public Protection Unit)  
Isle of Anglesey County Council  
Jones, T  
King, N S  
Lancashire Magistrates' Court Committee  
Law Society  
Law Society (Solicitors Sole Practitioners Group)  
Legal Services Commission (Children & Family Services Division)  
Macdonald, G  
Magistrates Association  
Magistrates Court Service (Court Clerks)  
Magistrates Court Service Inspectorate  
Mannering, S J  
Masson, Professor J (Also: Professor Jane Tunstill, Professor Mervyn Murch, Doctors Liz Trinder, Vanessa May, Julia Brophy and Ms Joan Hunt, Ms Harriet Bretherton)  
McCourt, S  
Medical Protection Society  
Mitchell, His Honour Judge  
Murch, Professor Mervyn  
National Family and Parenting Institute  
National Association of Guardians Ad Litem and Reporting Officers  
National Society for the Prevention of Cruelty to Children  
Newspaper Society  
Northumberland County Council

Parentline Plus  
Quigley, M  
Rights of Women  
Smart, Professor Carol & May, Doctor Vanessa  
Suffolk Magistrates' Court Committee  
Surrey County Council (Children's Services and Legal Services)  
Telford County Court  
Victim Support  
Walsh, G  
Welsh Assembly Government  
Women's Aid  
Worcester Crown and County Court

## Annex B – List of stakeholder meetings

Association of District Judges

Children’s Commissioner for Wales

Family Law Bar Association

Families Need Fathers

House of Commons (Clerk of the Journals, Speaker’s Counsel,  
and Clerk to the Constitutional Affairs Select Committee)

Law Society

National Association of Probation Officers  
(representing CAFCASS Guardians)

National Family and Parenting Institute

Parentline Plus

Resolution (formerly known as “Solicitors Family Law Association”)

Telephone Helpline Association

Women’s Aid

## Annex C – Rules of court (extract)

### Extract from the rules of court for the High Court and county courts.<sup>10,11</sup>

#### Amendments to the Family Proceedings Rules 1991

2. The Family Proceedings Rules 1991(a) shall be amended in accordance with the provisions of these rules.

3. In the Arrangement of Rules—

- (a) omit the entry for rule 4.23;
- (b) after the entry for rule 10.20 insert—

**“10.20A**

**Communication of information relating to proceedings”.**

4. Omit rule 4.23.

5. In rule 10.20(3) for “and 3.16(10)” substitute “, 3.16(10) and 10.20A”.

6. After rule 10.20 insert—

**“Communication of information relating to proceedings**

**10.20A**—(1) This rule applies to proceedings held in private to which these Rules apply where the proceedings—

- (a) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
- (b) are brought under the Act of 1989; or
- (c) otherwise relate wholly or mainly to the maintenance or upbringing of a minor.

(2) For the purposes of the law relating to contempt of court, information relating to the proceedings (whether or not contained in a document filed with the court) may be communicated—

- (a) where the court gives permission;
- (b) subject to any direction of the court, in accordance with paragraphs (3) or (4) of this rule; or
- (c) where the communication is to—
  - (i) a party,
  - (ii) the legal representative of a party,
  - (iii) a professional legal adviser,
  - (iv) an officer of the service or a Welsh family proceedings officer,
  - (v) the welfare officer,
  - (vi) the Legal Services Commission,
  - (vii) an expert whose instruction by a party has been authorised by the court, or
  - (viii) a professional acting in furtherance of the protection of children.

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(a) S.I. 1991/1247, amended by S.I. 1997/1056, S.I. 2000/774, S.I. 2001/821 and S.I. 2005/559; there are other amending instruments but none is relevant.

10 Made under the rule making powers conferred by Section 40 of the Matrimonial and Family Proceedings Act 1984.

11 Equivalent rules of court will apply for magistrates' courts hearing family proceedings in private.

(3) A person specified in the first column of the following table may communicate to a person listed in the second column such information as is specified in the third column for the purpose or purposes specified in the fourth column.

**Communication of information without permission of the court**

<i>Communicated by</i>	<i>To</i>	<i>Information</i>	<i>Purpose</i>
A party	A lay adviser or a McKenzie Friend	Any information relating to the proceedings	To enable the party to obtain advice or assistance in relation to the proceedings.
A party	The party's spouse, cohabitant or close family member		For the purpose of confidential discussions enabling the party to receive support from his spouse, cohabitant or close family member.
A party	A health care professional or a person or body providing counselling services for children or families		To enable the party or any child of the party to obtain health care or counselling.
A party or any person lawfully in receipt of information	The Children's Commissioner or the Children's Commissioner for Wales		To refer an issue affecting the interests of children to the Children's Commissioner or the Children's Commissioner for Wales.
A party or a legal representative	A mediator		For the purpose of mediation in relation to the proceedings.
A party, any person lawfully in receipt of information or a proper officer	A person or body conducting an approved research project		For the purpose of an approved research project.
A party, a legal representative or a professional legal adviser	A person or body responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers		For the purposes of making a complaint or the investigation or determination of a complaint in relation to a legal representative or a professional legal adviser.
A legal representative or a professional legal adviser	A person or body assessing quality assurance systems		To enable the legal representative or professional legal adviser to obtain a quality assurance assessment.

A legal representative or a professional legal adviser	An accreditation body	Any information relating to the proceedings providing that it does not, or is not likely to, identify any person involved in the proceedings	To enable the legal representative or professional legal adviser to obtain accreditation.
A party	An elected representative or peer	The text or summary of the whole or part of a judgment given in the proceedings	To enable the elected representative or peer to give advice, investigate any complaint or raise any question of policy or procedure.
A party	The General Medical Council		For the purpose of making a complaint to the General Medical Council.
A party	A police officer		For the purpose of a criminal investigation.
A party or any person lawfully in receipt of information	A member of the Crown Prosecution Service		To enable the Crown Prosecution Service to discharge its functions under any enactment.

(4) A person in the second column of the table in paragraph (3) may only communicate information relating to the proceedings received from a person in the first column for the purpose or purposes—

- (a) for which he received that information, or
- (b) of professional development or training, providing that any communication does not, or is not likely to, identify any person involved in the proceedings without that person's consent.

(5) In this rule—

“accreditation body” means—

- (a) The Law Society,
- (b) Resolution, or
- (c) The Legal Services Commission;

“approved research project” means a project of research—

- (a) approved in writing by a Secretary of State after consultation with the President of the Family Division,
- (b) approved in writing by the President of the Family Division, or
- (c) conducted under section 83 of the Act of 1989 or section 13 of the Criminal Justice and Court Services Act 2000(a);

“body assessing quality assurance systems” includes—

- (a) The Law Society,
- (b) The Legal Services Commission, or
- (c) The General Council of the Bar;

“body or person responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers” means—

- (a) The Law Society,
- (b) The General Council of the Bar,
- (c) The Institute of Legal Executives, or
- (d) The Legal Services Ombudsman;

“cohabitant” means one of two persons who although not married to each other, are living together as husband and wife, or (if of the same sex) in an equivalent relationship;

“criminal investigation” means an investigation conducted by police officers with a view to it being ascertained—

- (a) whether a person should be charged with an offence, or
- (b) whether a person charged with an offence is guilty of it;

“elected representative” means—

- (a) a member of the House of Commons,
- (b) a member of the National Assembly for Wales, or
- (c) a member of the European Parliament elected in England and Wales;

“health care professional” means—

- (a) a registered medical practitioner,
- (b) a registered nurse or midwife,
- (c) a clinical psychologist, or
- (d) a child psychotherapist;

“lay adviser” means a non-professional person who gives lay advice on behalf of an organisation in the lay advice sector;

“legal representative” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990<sup>(a)</sup>) who has been instructed to act for a party in relation to the proceedings;

“McKenzie Friend” means any person permitted by the court to sit beside an unrepresented litigant in court to assist that litigant by prompting, taking notes and giving him advice;

“mediator” means a family mediator who is—

- (a) undertaking, or has successfully completed, a family mediation training course approved by the United Kingdom College of Family Mediators, or
- (b) a member of the Law Society’s Family Mediation Panel;

“peer” means a member of the House of Lords as defined by the House of Lords Act 1999<sup>(b)</sup>;

“professional acting in furtherance of the protection of children” includes—

- (a) an officer of a local authority exercising child protection functions,
- (b) a police officer who is—
  - (i) exercising powers under section 46 of the Act of 1989, or
  - (ii) serving in a child protection unit or a paedophile unit of a police force;
- (c) any professional person attending a child protection conference or review in relation to a child who is the subject of the proceedings to which the information relates, or
- (d) an officer of the National Society for the Prevention of Cruelty to Children;

“professional legal adviser” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990) who is providing advice to a party but is not instructed to represent that party in the proceedings;

“welfare officer” means a person who has been asked to prepare a report under section 7(1)(b) of the Act of 1989.”

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(a) 1990 c.41.

(b) 1999 c.34.

7. In rule 10.21A for “nothing in rules 4.23 (confidentiality of documents), 10.20 (inspection etc of documents in court)” substitute “nothing in rules 10.20 (inspection etc of documents in court), 10.20A (communication of information relating to proceedings)”.

## **Annex D**

### **Consultation co-ordinator contact details**

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622 or email him at [consultation@dca.gsi.gov.uk](mailto:consultation@dca.gsi.gov.uk)

Alternatively, you may wish to write to the address below:

**Laurence Fiddler**  
Consultation Co-ordinator  
Department for Constitutional Affairs  
5th Floor Selborne House  
54-60 Victoria Street  
London  
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to:

**Erika Maass**  
Family Justice Division  
Department for Constitutional Affairs  
4th Floor Selborne House  
54-60 Victoria Street  
London  
SW1E 6QW  
[erika.maass@hmcourts-service.gsi.gov.uk](mailto:erika.maass@hmcourts-service.gsi.gov.uk)

## Annex E

### The consultation criteria

The six consultation criteria are as follows:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.







# Disclosure of Information in Family Proceedings Cases Involving Children Response to the public consultation

July 2005



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