

## **Disclosure of information in family proceedings cases involving children**

**A consultation produced by the Department for Constitutional Affairs.  
This information is also available on the DCA website at [www.dca.gov.uk](http://www.dca.gov.uk)**

## Contents

Executive summary .....	1
Introduction.....	3
Part 1 - Introduction .....	4
Part 2 - Background.....	5
Part 3 - The proposals .....	10
Annexe A – Examples of what the changes will mean in practice .....	17
Annexe B - Possible categories of disclosure of information to be provided for through Rules of Court .....	22
Part 4 - Questionnaire.....	27
About you .....	29
How to respond .....	33
The Consultation Criteria .....	35
Consultation Co-ordinator contact details .....	36

---

## Executive summary

Currently there are wide-ranging restrictions on the disclosure of information from cases heard in the family courts involving children. This consultation paper seeks views on the content of Rules of Court which would specify the circumstances in which information should be able to be disclosed from such proceedings without the need for a court order authorising that disclosure. Nothing is proposed that would change the court's inherent power to authorise or restrict disclosure of information in a particular case nor allow disclosure of information to the media without the authority of the court.

### **The consultation paper is divided into the following parts:**

**Part 1 - Introduction** – Briefly sets out the recent changes to the law (not yet implemented) which would restrict the criminal offence of disclosure of information identifying or likely to identify a child as being involved in family proceedings (or his school or his address) to cases where disclosure is made to the public or any section of the public. The changes to the law also clarify that it would not be a contempt of court to disclose information where Rules of Court allow such disclosure, and ensure that Rules of Court can be made on this point.

**Part 2 - Background** – Sets out in detail the background to why the Government sought to amend the legislation regarding disclosure of information from family proceedings and highlights the guiding principles in considering what information should be disclosed from family proceedings without a court order. The five principles are:

- The children's welfare is paramount
- Providing for the sharing of information between those with a legitimate need for that information
- The proper functioning of Parliament and the facilitation of the discharge of the functions of Members of both Houses of Parliament
- The legitimacy of the law (the match between the law and what actually happens)
- The proper administration of justice in family law cases.

**Part 3 - The proposals** – Seeks view on the Government’s proposals on the content of Rules of Court which would specify when information could be disclosed from family proceedings without the need for a court order authorising disclosure and free from the risk of potentially being in contempt of court when doing so. The proposals in Part 3 set out the following persons or bodies who could disclose information from family proceedings involving children, what information could be disclosed and to whom it could be disclosed. The proposals relate to:

- Parties to family proceedings
- Legal Representatives of a party to the case and their staff
- Elected Representatives and Members of the House of Lords
- Government Department or Agency
- CAFCASS or any CAFCASS officer
- Police and the Crown Prosecution Service
- Child Protection Professional
- Mediators
- Lay advisors in the lay advice sector and court appointed McKenzie friends
- Her Majesty’s Court Service

This section also considers cases where information has been obtained without due permission. The consultation paper does not deal with adoption hearings. These have been subject to a separate consultation and review. Annexe A gives case studies for when and who information might be disclosed to and Annexe B presents in tabular form the proposals on who could disclose information, to whom it could be disclosed and what information could be disclosed.

**Part 4 – Questionnaire;** About you; How to Respond; The Consultation Criteria and Consultation Co-ordinator contact details.

## Introduction

This paper sets out for consultation the circumstances in which information from family proceedings cases involving children can be disclosed without the permission of the court. The consultation is aimed at those people and groups in England and Wales who come into contact with, or have an interest in, information relating to children in family proceedings.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page [insert page number] have been followed.

The proposals are unlikely to lead to additional costs and savings for businesses, charities or the voluntary sector, or on the public sector. Consequently, this paper does not contain a Partial Regulatory Impact Assessment. If you disagree with this conclusion you are invited to send your reasons as part of your overall response to this paper.

Copies of the consultation paper are being sent to the main organisations representing the judiciary, the legal profession, the Association of Chief Police Officers and the Association of Directors of Social services as well as Government Departments. In addition, copies will be sent to a wide range of relevant organisations involved in family justice. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

## Part 1 - Introduction

Section 62 of the Children Act 2004 (not yet commenced) made changes to the law relating to **disclosure of information from family proceedings cases involving children:**

- Amended section 97(2) of the Children Act 1989 so that disclosure of information identifying, or likely to identify, a child (his school or his address) as being involved in family proceedings is only a criminal offence when it is made to the general public, or any section of the general public
- Amended section 12(4) of the Administration of Justice Act 1960 and various other statutes to make clear that it would not be a contempt of court to disclose information where Rules of Court allowed such a disclosure

This consultation paper seeks views on the circumstances in which information from family proceedings cases involving children can be disclosed without the permission of the court and which should, therefore, be included in the Rules of Court mentioned in the paragraph above. Nothing that is proposed changes a court's inherent power to authorise or restrict disclosure of information in a particular case, or allows the extension of disclosure of information from family proceedings to the media. None of the proposed changes affect the arrangements for privacy of hearings.

Currently there are wide-ranging restrictions on the disclosure of information in family cases involving children. The welfare of the child in family proceedings is, and remains, the paramount concern. However, people with a legitimate interest should be able to have access to some information from family proceedings, for instance to help parties to the case to obtain advice and support or to enable statutory agencies to make decisions about children in the light of all the facts.

## Part 2 - Background

1. The judgment handed down in the High Court by Mr Justice Munby on 19 March 2004 in the case of *Re B*, set out clearly the effect of legislation in restricting the publication of information about family cases involving children. The judgment confirmed that publication of any information about a case involving a child **whether or not** it would identify the child concerned is almost always prohibited without the direct permission of the court. Munby J also held that '*publication*' covered almost all forms of communication whether by word of mouth or in writing.
2. This judgment has far-reaching implications. It identifies the restrictions placed on a party in family proceedings being able to disclose details of their case to any other person not directly involved in their case – for example, to the police. It identifies the issue of potential difficulties people face in contacting their Member of Parliament for help and support. It identifies the wider issue of the position of MPs in such situations and how restrictions could impact on their ability to undertake constituency work effectively. And it raises the issue of disclosure more widely amongst other groups and organisations for whom it is important to be able to receive or share information about families – for example – where there are safety issues, or where an individual is seeking support or advice about their case.
3. Amongst other things, the judgment highlights that MPs or Members of the House of Lords who receive details about family court cases from constituents and who then pass them on to others, such as Government Departments or Social Services, are potentially committing a criminal offence and/or a contempt of court. However, the judgment also impacts on the Police, the Crown Prosecution Service, Social Services and others who are equally unclear about their ability to access, use and pass on information from family court proceedings.
4. The two key pieces of legislation dealing with restrictions are:
  - **Section 97(2) of the Children Act 1989**, which prohibits and makes it a criminal offence for any person to publish any material which would identify, or is likely to identify, a child as being involved in family court

proceedings (or the address or school of such a child) unless the court has decided that the welfare of the child requires disclosure

- **Section 12(1)(a) of the Administration of Justice Act 1960** which has the effect of making it potentially a contempt of court to publish information relating to proceedings before any court sitting in private where the proceedings (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors; (ii) are brought under the Children Act 1989 (or, when it comes into force, under the Adoption and Children Act 2002); or (iii) otherwise relate wholly or mainly to the upbringing of a minor
5. The DCA, working with other key stakeholders, set out to develop proposals for change through an amendment in the Children Act 2004. In developing the policy, a number of principles were adopted to try and ensure the right balance between the needs of children and others. For example, allowing legitimate access to information to those who need it, balanced against the need not to discourage those giving evidence or statements from full and frank disclosure.

### **Main Principles**

6. In considering the question of disclosure the Government regards the primary principle to be the welfare of the child, supported by four further subsidiary considerations, which are:
- Providing for the sharing of information between those with a legitimate need for that information
  - The proper functioning of Parliament and the facilitation of the discharge of the functions of Members of Parliament and Members of the House of Lords
  - The legitimacy of the law (the match between the law and what actually happens), and
  - The proper administration of justice in family law cases

### **The Amendments**

7. The changes to be effected through the Children Act 2004 (not yet in force) firstly amend the law in respect of the criminal offence created by section 97(2)

of the Children Act 1989. Secondly, the amendment to section 12(4) of the Administration of Justice Act 1960 clarifies that where Rules of Court specify the circumstances in which information from court proceedings can be disclosed, such disclosure would not be a contempt of court. Of course, disclosure might still amount to a contempt for another reason, for example, because a court has made an order prohibiting disclosure. Finally, there are a series of amendments to current rule making powers to make clear that court rules can be made specifying the circumstances in which disclosure may be authorised.

8. Specifically, the changes to be effected through the Children Act 2004 amend:
- **Section 97(2) of the Children Act 1989** to limit the potential criminal offence created by that section to publication of information from family proceedings to the public or any section of the public. In effect this means that passing on information identifying or likely to identify a child, his school or his address, as being involved in family proceedings to an individual or a number of individuals would not generally be a criminal offence. However, seeking to circumvent the law, for instance by a '*chain of disclosure*,' to organise a demonstration might be an offence
  - **Section 12(4) of the Administration of Justice Act 1960** to clarify that it would not be a potential contempt to publish information that is authorised by Rules of Court. Of course, a disclosure might still amount to contempt for another reason, for example where there is a court order prohibiting disclosure. This amendment clarifies the relationship between section 12(1)(a) of the Administration of Justice Act 1960 and Rules of Court
  - **Section 145(1) Magistrates Court Act 1980** (which is the current rule making power in relation to family proceedings in a family proceedings court/magistrates' court) which will add the power to make provision "*authorising for the purposes of the law relating to contempt of court, the publication in such circumstances as may be specified of information relating to proceedings referred to in section 12(1)(a) of the Administration of Justice Act 1960 which are held in private*"
  - **Section 76 Courts Act 2003** (which is due to come into force in 2005) so as to extend the power to make rules in relation to the practice and procedure of family proceedings in the High Court, county courts and magistrates' courts to authorising publications, in circumstances

specified in the rules, of information relating to family proceedings held in private, for the purposes of the law relating to contempt

- **Section 66 Adoption Act 1976** so as to extend the existing rule making power, to include making rules authorising publication, in circumstances specified in the rules, of information relating to proceedings under that Act which are held in private, for the purposes of the law relating to contempt
- **Section 40 Matrimonial and Family Proceedings Act 1984** – so as to extend the power to make Rules of Court for the purposes of family proceedings in the High Court or county courts to authorise publication, in circumstances specified in the rules, of information relating to family proceedings held in private, for the purposes of the law relating to contempt
- **Section 141 Adoption and Children Act 2002** – so as to extend the power to make rules in respect of any matter to be prescribed by rules under that Act to include authorising publication of information, in circumstances specified in the rules, in relation to proceedings involving children held in private, for the purposes of the law relating to contempt (section 141 is not yet in force)

9. The Government promised to consult on the proposals to make Rules of Court relating to disclosure of information from family proceedings. This paper seeks views on the detail of the proposed changes.

### **Scope**

10. The changes to section 97(2) Children Act 1989 will mean it will no longer be a criminal offence to pass on information to an individual or number of individuals to identify a child as being named in family proceedings
11. The changes to section 12(4) Administration of Justice Act 1960 clarifies that it will not be a potential contempt to publish information that is authorised by Rules of Court.
12. This consultation is seeking views on what should be included in these Rules of Courts, not on the Rules of Court themselves. We are seeking Consultees' views therefore on when and to whom disclosure of information in family proceedings should be allowed through Rules of Court.

**Disclosure of information in family proceedings cases involving children  
Consultation Paper**

13. There are two key points which set the limits within which the questions on disclosure can be considered:

- The courts **will retain their inherent power** to authorise or restrict disclosure of information in any particular case
- **Nothing** we are proposing will allow the extension of disclosure of information from family proceedings to the media, or alter the arrangements for privacy of hearings

14. Applying the principles set out in paragraph 6, within the restrictions outlined in paragraph 13, this paper proposes a range of circumstances where automatic disclosure of information relating to family proceedings would be appropriate. In other cases caught by section 12 Administration of Justice Act 1960, disclosure would continue to require the prior consent of the court.

## Part 3 - The proposals

### What the changes will mean

1. The changes to section 97(2) Children Act 1989 will enable individuals to pass on information that would identify, or be likely to identify a child as being involved in family proceedings (or the address or school of such a child) to an individual or a number of individuals without it being a criminal offence. This change will, in itself, relieve some of the difficulties surrounding the issue of disclosure, but existing restrictions would still be problematic without further changes to Rules of Court and the clarification gained through amending section 12 (4) of the Administration of Justice Act 1960. Of course, a disclosure might still amount to contempt for another reason, for example where there is a court order prohibiting disclosure.

### Principles Governing the Question of Disclosure

2. In developing proposals about what might be disclosed in family proceedings, a series of principles have been adopted. The primary principle is that the child's welfare must be the paramount concern. However, we recognise that those other interests should be taken into account and have identified four further principles for subsidiary consideration:
  - **Providing for the sharing of information between those with a legitimate need for that information.** A wide range of professionals is involved in family proceedings cases and need, on occasion, to both receive and disclose information. For example the police and the Crown Prosecution Service may need to share information, as may child protection professionals, whilst socio-legal research on family proceedings would lose its usefulness if it could not be fully disseminated.
  - **The proper functioning of Parliament and the facilitation of the discharge of functions of Members of both Houses of Parliament.** For example, MPs have a duty to represent their constituents' interests in Parliament and where these interests relate to family proceedings some disclosure of relevant information to and by MPs may be necessary

- **The legitimacy of the law.** There needs to be a closer match between the law and what actually happens. The recent judgment in Re (B) highlighted the current difference between law and current practice, where, for example, a constituent tells his MP about a judgment made in a particular family case, and yet this practice is taking place on a regular basis
- **The proper administration of justice in family law cases,** so that, for example, parties to a case can seek advice and support from others.

### Circumstances in which disclosure is permissible

3. A range of people and organisations have been potentially identified as those who should be able to legitimately disclose and/or receive information in family cases involving children. Examples of what the proposed changes might mean in practice can be found at **Annexe A**, while a table detailing the proposed categories is set out at **Annexe B**, and summarised below.

#### Question 1.

- Do you agree with the list of people identified at Annexe B?
- Are there others that need to be added (please list suggestions)?
- Are there any included that you think should not be?

### Any Party to the case

4. **Any party to the case** should be able to disclose **any documents which are held by the court on file or information about the content of them** to:
  - The lay advice sector
  - Court appointed McKenzie friends
  - Qualified legal advisers
  - A mediator
  - Legal Services Commission
  - A telephone helpline providing counselling or support
  - An expert whose instruction by a party has been authorised by the court

5. **Any party to the case** should be able to disclose **orders and judgments** and be able to identify the child as being involved in family proceedings to:

- A Member of the House of Lords
- Elected Representative (including a Member of the House of Commons, a member of the National Assembly for Wales, an MEP or an elected member of a local authority)
- Professional bodies in relation to complaints procedures (e.g. Law Society)
- Police and Crown Prosecution Service
- Local authorities
- Government Departments or Agencies
- Research bodies for Government approved research projects
- Medical professionals
- Child protection professional

**Question 2.**

- Do you agree with the range of information that could be disclosed?
- What else would you include, if anything?
- Should judgments be included?
- What would you exclude, if anything?
- Do you agree with the list of recipients?
- If you think there are others that should be included, please say whom.
- If you think there are some on the list that should not be included, please say whom.

### **Elected Representatives and Peers**

6. A Member of either House of Parliament, and other elected representatives, should be able to disclose orders and judgments to:
- A Minister of State (including Parliamentary Under-Secretaries)
  - A local authority
  - CAFCASS or any officer of CAFCASS
  - A government or public body, but not including courts or tribunals

### **Minister of State (including Parliamentary Under-Secretaries)**

7. A Minister of State should be able to disclose orders and judgments to :
- A Government or public body, but not including courts or tribunals

#### **Question 3.**

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

### **Government Department or Agency**

8. Government departments or Agencies should be permitted to disclose documents held on court files including **orders and judgments** to:
- Research bodies for Government approved research projects

### **CAFCASS or any officer of CAFCASS**

9. CAFCASS, or an officer of CAFCASS, should be able to disclose **any documents held on court file** to:
- Welsh Family Proceedings Officers

**Disclosure of information in family proceedings cases involving children  
Consultation Paper**

- National Assembly for Wales (following transfer of functions from CAFCASS Wales to National Assembly for Wales: see the Children Act 2004)
- Research bodies for Government approved research projects
- Another officer of the service not involved in the same proceedings on behalf of a different party

**Police and CPS**

10. The Police and Crown Prosecution Service should be able to share information about:

- Orders
- Judgments

**Question 4.**

- Do you agree with the range of information that could be disclosed between the Police and the Crown Prosecution Service?
- If you think it is too wide, please state what you would limit it to.
- Should the information be limited to orders and judgments?
- If you think it is too narrow, please state what you would add.
- Should the passage of information be limited to each other?

**Child Protection Professional**

11. For the purposes of child protection, a child protection professional should be able to disclose to another child protection professional all documents relating to the case, although this position has already been established in case law.

### **The legal representative of a party to the case**

12. A legal representative should be able to disclose details of cases to professional bodies (such as the Law Society) for accreditation and quality assurance purposes.
13. A legal representative should also be able to disclose any information held on the court file to the Legal Services Commission and to an expert whose instruction has been authorised by the court.

### **Lay advisors and the lay advice sector**

14. A lay advisor should be able to disclose any document relating to a case to the Legal Services Commission.

### **Staff of any of the above individuals or organisations**

15. Any of the above categories should be able to disclose to staff (employees or volunteers) information that they are permitted to receive.
16. Staff (employees or volunteers) should be able to disclose the same information to the same recipients as their employers, so long as they are acting on their employer's behalf.

### **Mediators**

17. Mediators should be able to disclose any document held on the court file and be able to identify a child as being involved in family proceedings to:
  - Legal advisors,
  - The Legal Services Commission
  - The Court Service

#### **Question 5.**

Apart from those proposed in the paper above as able to disclose information, are there any other parties that should be included?

If so, whom?

### **Child Support**

18. The Child Support Agency can require a wide range of information and evidence going beyond just orders and judgments under the Child Support (Information, Evidence and Disclosure) Regulations. The present rules state that the permission of the court is not required by any person disclosing information or evidence in relation to these regulations.

### **Information that has been obtained without due permission**

19. The intention is that these proposals will not apply where the information was not legitimately obtained. That is, if one person discloses information to a second person and that first disclosure was not in accordance with the law, then the second person cannot make onward disclosure of that information.

### **Adoption**

20. These proposals will form the basis for all proceedings. However, adoption proceedings, where current arrangements have been the subject of consultation, are currently under review as part of the implementation of the Adoption and Children Act 2002. The new adoption provisions will capture the core provisions on disclosure that are to be applied to Children Act proceedings with the addition of some specifics to adoption to reflect the extremely sensitive nature of these cases.

## Annexe A – Examples of what the changes will mean in practice

### Example 1

#### A constituent writing to their MP

A constituent writes to his MP about his housing situation, explaining his need for securing local authority accommodation more quickly because of his family situation. He mentions he is currently going through a divorce and has issued an application to court to see his two small children because his former partner is unreasonably preventing him from seeing the children. He now lives beyond reasonable travelling distance for day visits, but does not have suitable sleeping arrangements for his children to stay overnight. This means his contact is severely restricted and is adversely affecting both him and his children, which is why he wants local authority housing. He asks his MP if he can help.

Current restrictions mean that the constituent is potentially committing a criminal offence by identifying his children as being involved in family proceedings; and a contempt of court if he tells his MP about the substance of his contact dispute with his former partner even if the children are unnamed. The MP ought to return the information to the constituent. If the MP discloses this information onwards (for example, by writing to the housing department), he is also potentially committing a criminal offence or may be held in contempt of court. The constituent would need the permission of the court in order to disclose this information.

Under the new proposals, the constituent would be able to send his MP copies of orders and judgments. The MP would be able to write to the housing department on his constituent's behalf, mentioning his circumstances and forwarding copies of orders and judgments as necessary.

## **Example 2**

### **A party to the case needing legal advice**

A non-resident father is unhappy about the operation of contact arrangements between him and his child, which were court-ordered. He does not qualify for legal assistance but is unable to afford legal representation. He approaches a voluntary organisation that offers advice and support for parents to ask if they can help him to pursue his case, including through the courts.

Current restrictions mean that the father is potentially committing a criminal offence by identifying his children as having been involved in family proceedings; and may be held in contempt of court if he discusses the substance of the case with the voluntary organisation. Without sight of any documentation, the voluntary organisation is unable to assess accurately the strengths or weaknesses of the case, or whether the father should continue to pursue the case through the courts. The father would need the permission of the court in order to disclose this information and documentation to the voluntary organisation.

Under the new proposals, the father would be able to discuss privately any aspect of the case with the voluntary organisation, and show them court orders and judgments. The voluntary organisation would then be able to assess the father's situation and offer appropriate advice and support.

### **Example 3**

#### **An MP wishing to raise concerns with a Minister**

An MP has received a number of letters from constituents about a Local Authority Social Services Department, each raising concerns about perceived delays in responding to concerns about the safety of children. One constituent gives details about a child about whom she had contacted social services because of safety concerns, and who had subsequently been harmed without any apparent action to protect her being taken by social services. The child was now the subject of care proceedings. The MP wrote to the Minister raising concerns about the Local Authority concerned, making reference to certain details of the court proceedings, asking the Minister to investigate.

Current restrictions mean that the constituent is potentially committing a criminal offence by identifying a child as involved in family proceedings. By writing to the Minister and describing details of the proceedings, the MP is also potentially committing a contempt of court.

Under the new proposals, the constituent would be able to disclose the fact that the child is involved in proceedings, while the MP would be able to lawfully send details to the Minister.

#### **Example 4**

##### **A party to the case involved in a Domestic Violence Dispute**

A mother is visited at home by an ex-partner with a history of violence against her. Because of this history, there is an interim contact order in place, limiting the father's contact with his children to a supervised contact centre. He arrives on her doorstep threatening to use force to gain access to the house unless she allows him to see the children. She is concerned for both the children's safety and her own. He then proceeds to break into the house and she calls the police for assistance. The ex-partner is arrested and taken away while police question the mother.

Current restrictions mean that the mother would potentially be committing both a criminal offence and contempt of court by showing the police the interim order and telling them about the ongoing family proceedings. This could mean that the police do not have all the information they need in order to decide what is required to ensure the safety of the mother and the children. It also means that the police cannot let the CPS have relevant information, for instance if bail conditions are imposed, to ensure that they are consistent with the orders from the family proceedings.

Under the new proposals, the mother could disclose to the police relevant information about family proceedings, such as the interim contact order, and, in turn, the police could pass that information onto the CPS. This should ensure that the police, the CPS and the criminal court have all the relevant information that they need in order to make decisions about, for instance, the mother and children's safety, whether a prosecution was in the public interest, and what, if any, bail conditions should be imposed.

### **Example 5**

#### **A party to the case wishing to pursue a complaint to a professional body**

A court decides that a child should reside with his father and grandparents and have only limited contact with his mother. The court expressed serious concerns, based very largely on the view of a psychiatrist, about the mother's mental health and her ability to care and supervise the child for longer periods of time. The mother disputes the views expressed by the psychiatrist and insists that he did not have adequate time or opportunity to reach such conclusions. She wants to investigate whether she can make a formal complaint and writes to the General Medical Council. She encloses copies of reports and other documents from the court proceedings.

Current restrictions mean that the mother is potentially committing a criminal offence by identifying her children as involved in family proceedings. The professional body does not have automatic access to the documentation held by the court, and therefore ought to return it to the mother, who will need the permission of the court to disclose it to the GMC.

Under the new proposals, the mother would be able to identify her child as disclose orders and judgments in order to pursue a complaint with a professional body.

## **Annexe B - Possible categories of disclosure of information to be provided for through Rules of Court**

- This Annexe lists proposals about which documents should be discloseable through Rules of Court, and to whom.
- Changes to **section 97(2) Children Act 1989** will mean that passing on information identifying or likely to identify a child, his school or his address as being involved in family proceedings to an individual or a number of individuals would not generally be a criminal offence
- **Adoption** - These proposals will form the basis for all proceedings. However, adoption proceedings, where current arrangements have been the subject of consultation, are currently under review as part of the implementation of the Adoption and Children Act 2002. The new adoption provisions will capture the core provisions on disclosure that are to be applied to Children Act proceedings with the addition of some specifics to adoption to reflect the extremely sensitive nature of these cases.
- **Section 12(4) of the Administration of Justice Act 1960** clarifies that it would not be a potential contempt to publish information that is authorised by Rules of Court.
- Proposals in this table **do not** affect the Courts ability to authorise or restrict disclosure as they consider appropriate on the facts of an individual case.
- **Nothing** we are proposing will allow the extension of disclosure of information from family proceedings to the media.

**Disclosure of information in family proceedings cases involving children  
Consultation Paper**

<b>DISCLOSED BY</b>	<b>DISCLOSED TO</b>	<b>DISCLOSEABLE INFORMATION</b>
<b>Any party to the case</b>	Lay Advice Sector Citizens Advice Bureaux McKenzie Friends (if permission has been given by a court to assist a Litigant in Person)	Any documents which are held by the court on file, and be able to discuss any aspect of the case through private communication
	Qualified legal adviser	Any documents which are held by the court on file, and be able to discuss any aspect of the case through private communication
	Elected representative (for example, Member of Parliament, Member of the National Assembly for Wales, MEP or Councillor) or member of the House of Lords	Orders and judgments
	Child protection professional	Orders and judgments
	Police Crown Prosecution Service	Orders and judgments
	Professional bodies in relation to complaints procedure (for example, General Medical Council, Law Society, Bar Council, Legal Services Ombudsman)	Orders and judgments

**Disclosure of information in family proceedings cases involving children  
Consultation Paper**

<b>DISCLOSED BY</b>	<b>DISCLOSED TO</b>	<b>DISCLOSEABLE INFORMATION</b>
<b>Any party to the case</b>	Local Authority	Orders and judgments
	Government Department or Agency	Orders and judgments
	Research bodies for Government approved research projects	Orders and judgments
	Medical professionals	Orders and judgments
	Mediators	All information and documents connected with the case
	Telephone helpline providing counselling and support	All information and documents relating to the case
	An expert whose instruction by a party has been authorised by the court	All information and documents relating to the case
	Legal Services Commission	Information and documents required for the Legal Services Commission to perform its functions under the Access to Justice Act 1999
<b>The legal representative of a party to the case</b>	Professional bodies for reasons of accreditation	Anonymised details of cases

**Disclosure of information in family proceedings cases involving children  
Consultation Paper**

<b>DISCLOSED BY</b>	<b>DISCLOSED TO</b>	<b>DISCLOSEABLE INFORMATION</b>
<b>The legal representative of a party to the case</b>	Professional bodies for reasons of quality assurance	All information and documents relating to the case
	Legal Services Commission	All information and documents relating to the case
<b>Elected Representative or Member of the House of Lords</b>	A Minister of State (including Parliamentary Under-Secretaries)	Orders and judgments
	A local authority	Orders and judgments
	CAFCASS or any officer of CAFCASS	Orders and judgments
	Government or public body (other than a court or tribunal)	Orders and judgments
	Professional bodies in relation to complaint procedure	Orders and judgments
<b>Minister of State (including Parliamentary Under-Secretaries)</b>	Government or public body (other than a court or tribunal)	Orders and judgments
<b>Any Government Department or statutory agency</b>	Research bodies for Government approved research projects	Orders and judgments
<b>CAFCASS or any Officer of CAFCASS</b>	Welsh Family Proceedings Officers, National Assembly for Wales (following transfer of functions for CAFCASS Wales to National Assembly for Wales)	Any documents which are held by the court on file, and be able to discuss any aspect of the case through private communication

**Disclosure of information in family proceedings cases involving children  
Consultation Paper**

<b>DISCLOSED BY</b>	<b>DISCLOSED TO</b>	<b>DISCLOSEABLE INFORMATION</b>
<b>Police (and vice-versa – CPS to Police)</b>	Crown Prosecution Service	Orders and Judgments
<b>Child protection professional</b>	Child protection professional	Any documents which are held by the court on file, including orders and judgments, for the purposes of child protection
<b>Mediators</b>	Legal advisers, the Legal Services Commission, the court	All information and documents relating to the case
<b>Lay advisers and the lay advice sector</b>	Legal Services Commission	All information and documents relating to the case
<b>Any of the above</b>	Staff employed either in a paid or voluntary capacity	Information as allowed to be received by their employers, whether in a paid or unpaid capacity
<b>Staff employed by any of the above individuals or organisations, whether in a paid or unpaid capacity</b>	Any of those, as allowed for their employer	Information as allowed to be received by their employers, whether in a paid or unpaid capacity

## Part 4 - Questionnaire

We would be grateful if you could use this questionnaire as the basis for your response, either by copying it, or by completing it on-line ([www.dca.gov.uk](http://www.dca.gov.uk)). The following questions are set out in this consultation paper. It is not a requirement that you answer all the questions – if you only have views on some of the questions, we still want to hear from you. Personal data (i.e. information which could identify you) will not be published or passed on to any third party without your consent.

		Tick one box only	
		Yes	No
<b>Q1</b>	Do you agree with the list of people identified at p18 Annexe B?	<input type="checkbox"/>	<input type="checkbox"/>
	Are there others that need to be added? (please list suggestions)	<input type="checkbox"/>	<input type="checkbox"/>
	Are there any included that you think should not be?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Q2</b>	Do you agree with the range of information that could be disclosed? p19	<input type="checkbox"/>	<input type="checkbox"/>
	What else would you include, if anything?		
	Should judgments be included?	<input type="checkbox"/>	<input type="checkbox"/>
	What would you exclude, if anything?	<input type="checkbox"/>	<input type="checkbox"/>
	Do you agree with the list of recipients?	<input type="checkbox"/>	<input type="checkbox"/>
	If you think there are others that should be included, please say whom.	<input type="checkbox"/>	<input type="checkbox"/>
	If you think there are some on the list that should not be included, please say whom.	<input type="checkbox"/>	<input type="checkbox"/>

- |                  |                                                                                                                                                        |                          |                          |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| <b>Q3</b><br>p20 | Should disclosure of orders and judgments be extended to include disclosure to or by Select Committees?                                                | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Q4</b><br>p21 | Do you agree with the range of information that could be disclosed between the Police and Crown Prosecution Service?                                   | <input type="checkbox"/> | <input type="checkbox"/> |
|                  | If you think it is too wide, please state what you would limit it to.                                                                                  | <input type="checkbox"/> | <input type="checkbox"/> |
|                  | Should the information be limited to orders and judgments?                                                                                             | <input type="checkbox"/> | <input type="checkbox"/> |
|                  | If you think it is too narrow, please state what you would add                                                                                         |                          |                          |
|                  | Should the passage of information be limited to each other?                                                                                            | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Q5</b><br>p23 | 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? | <input type="checkbox"/> | <input type="checkbox"/> |
|                  | If so, whom?                                                                                                                                           | <input type="checkbox"/> | <input type="checkbox"/> |

**Thank you for participating in this consultation exercise**

## About you

Please use this section to tell us about yourself. Personal data (i.e. information which could identify you) will not be published or passed on to any third party without your consent.

**Please insert your name and address, or the name and address of the organisation on behalf of which you are completing this questionnaire**

---

---

---

---

---

**Q1 Under the Code of Practice of Open Government, any responses will be made available to the public on request, *unless you indicate that you want your comments to remain confidential.***

a) Do you want your comments to remain confidential?  Yes  No  
(Tick one box only)

b) Are you responding as an individual or on behalf of an organisation?  
(Tick one box only)

Individual (please go to **Q2**)

Organisation (please go to **Q3**)

---

**Q2 Which of the following best describes you?**  
(Answer this question only if you are responding as an individual)

**Non court user**

- |                                                               |                          |
|---------------------------------------------------------------|--------------------------|
| Social Worker                                                 | <input type="checkbox"/> |
| I have not been involved in family proceedings about children | <input type="checkbox"/> |
| School Teacher                                                | <input type="checkbox"/> |
| Relative of a family member involved in family proceedings    | <input type="checkbox"/> |
| Other (please specify)                                        | <input type="checkbox"/> |
- 

**Court user**

- |                 |                          |
|-----------------|--------------------------|
| Party to a case | <input type="checkbox"/> |
| Witness         | <input type="checkbox"/> |
| Expert witness  | <input type="checkbox"/> |
| CAFCASS officer | <input type="checkbox"/> |
| Guardian        | <input type="checkbox"/> |
| Police officer  | <input type="checkbox"/> |
- 

**Judiciary**

- |                                                        |                          |
|--------------------------------------------------------|--------------------------|
| Lord of Appeal                                         | <input type="checkbox"/> |
| Lord Justice of Appeal or High Court Judge (or Deputy) | <input type="checkbox"/> |
| Circuit Judge (or Deputy)                              | <input type="checkbox"/> |
| District Judge (or Deputy) (including DJ (MC))         | <input type="checkbox"/> |
| Recorder                                               | <input type="checkbox"/> |
| Lay Magistrate                                         | <input type="checkbox"/> |
- 

**Lawyer**

- |               |                          |
|---------------|--------------------------|
| Barrister     | <input type="checkbox"/> |
| Solicitor     | <input type="checkbox"/> |
| ILEX Member   | <input type="checkbox"/> |
| ILEX Advocate | <input type="checkbox"/> |
-

<b>Court Staff</b>	
Justices' Clerk	<input type="checkbox"/>
Court Clerk	<input type="checkbox"/>
Other member of court staff	<input type="checkbox"/>
<hr/>	
Voluntary sector worker	<input type="checkbox"/>
Lay advice sector worker	<input type="checkbox"/>
Local Authority employee	<input type="checkbox"/>
Local Education Authority employee	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>

**Q3** Which of the following best describes your organisation? (Answer this question only if you are responding on behalf of an organisation)

Tick one box only

- Representing the judiciary
- Representing the legal profession
- Representing children
- Representing parents
- Government Department
- Government Agency
- Local Government
- Police
- Representing the advice sector
- Representing a voluntary or community organisation
- Other (please specify)

**Q4 Where do you live/ is your organisation based?**

Tick one box only

England

Wales

Other (please specify)

---

**Q5 What is your ethnic group? (optional)**

Tick one box only

White

Asian or Asian British

Black or Black British

Chinese

Mixed

Other (please specify)

---

## **How to respond**

Please send your response by Wednesday, 23 March 2005 to:

**Ray Owen**  
**Family Justice Division**  
**4<sup>th</sup> Floor (Postpoint 9A)**

**Department for Constitutional Affairs**  
**Selborne House**  
**54-60 Victoria Street**  
**London**  
**SW1E 6QW**

**Tel: 020 7210 8618**

**Fax: 020 7201 8681**

**Email: [ray.owen@dca.gsi.gov.uk](mailto:ray.owen@dca.gsi.gov.uk)**

### **Extra copies**

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>. Copies of the consultation paper in alternative formats can be provided on request.

### **Publication of response**

A paper summarising the responses to this consultation will be published during Spring/Summer 2005. The response paper will be available on-line at <http://www.dca.gov.uk/index.htm>

### **Representative groups**

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## **Confidentiality**

The Department may wish to publish responses to this consultation document in due course. **Please ensure your response is marked clearly if you wish your response or name to be kept confidential.**

If you are replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

**Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.**

## **The Consultation Criteria**

The six consultation criteria are as follows:

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

**These criteria must be reproduced within all consultation documents.**

## **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.gov.uk](mailto:consultation@dca.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 the contact given under **the How to respond** section of this paper at page 40.