

2005 No. 1976 (L. 18)

FAMILY PROCEEDINGS, ENGLAND AND WALES

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Family Proceedings (Amendment No 4) Rules 2005

<i>Made</i> - - - -	<i>18th July 2005</i>
<i>Laid before Parliament</i>	<i>19th July 2005</i>
<i>Coming into force</i> - -	<i>31st October 2005</i>

We, the authority having power under section 40(1) and (4)(aa) of the Matrimonial and Family Proceedings Act 1984 (a) to make rules of court for the purposes of family proceedings in the High Court and county courts, in the exercise of the powers conferred by section 40 of that Act, make the following Rules:

Citation and commencement

1. These rules may be cited as the Family Proceedings (Amendment No 4) Rules 2005 and shall come into force on 31st October 2005.

Amendments to the Family Proceedings Rules 1991

2. The Family Proceedings Rules 1991(b) 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”.

(a) 1984 c.42; section 40(1) was amended by the Courts and Legal Services Act 1990 (c.41) and section 40(4) was amended by the Civil Procedure Act 1997 (c. 12), the Children Act 2004 (c. 31) and the Civil Partnership Act 2004 (c. 33).
(b) 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.

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.

(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;

(a) 2000 c.43.

“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(a)) 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(b);

“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.”

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)”.

*Sir Mark Potter, P
Mr Justice Charles
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Philip Waller
Duncan Adam
Angela Finnerty
Bruce Edginton
Charles Hyde*

Falconer of Thoroton, C

18th July 2005

(a) 1990 c.41.
(b) 1999 c.34.

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules amend the Family Proceedings Rules 1991 (“FPR”) and deal with the communication of information relating to children cases.

These rules follow on from the amendments made by section 62 of the Children Act 2004 (2004 c.31) and in particular the amendment made by section 62 to section 12(4) of the Administration of Justice Act 1960 (1960 c.65) (publication of information relating to proceedings in private). Section 12(4) provides that nothing in section 12 of the Administration of Justice Act 1960 shall imply that any publication is punishable as contempt of court where in particular the publication is not so punishable by reason of it being authorised by rules of court.

Paragraph (6) of these rules introduces a new rule (rule 10.20A) into Part X – Procedure (General) – of the FPR entitled, “Communication of information relating to proceedings”.

Paragraph (1) of rule 10.20A sets out the types of family proceedings held in private to which the new rule will apply. Broadly, these are proceedings concerning the welfare and upbringing of children.

Paragraph (2) of rule 10.20A sets out 3 circumstances in which it is permissible, for the purposes of the law of contempt, to communicate information. These are (1) when the court gives permission; (2) in the circumstances provided for in the table in paragraph (3) and the onward disclosure rule in paragraph (4); and (3) when the communication is made to specified and listed people. Disclosure in accordance with the table and paragraph (4) may be modified or restricted in any way by a direction of the court under paragraph (2)(b).

Paragraph (4) of rule 10.20A provides that a recipient of information pursuant to the table in paragraph (3) may only communicate that information for the purpose or purposes for which he received that information (set out in the table) or for the purpose of professional development or training. In the latter case, however, it is a requirement that the communication should not identify, or be likely to identify, any person involved in the proceedings unless that person has consented.

Paragraph (4) of these rules omits rule 4.23 (confidentiality of documents) from the FPR. Rule 10.20A applies to information and includes documents held by the court. In doing this it replaces rule 4.23.

Paragraphs (5) and (7) of these rules make consequential amendments to the existing Rules following the introduction of rule 10.20A and omission of rule 4.23.

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