

# **Legal Roundup - February 2022**

1.This legal round-up will focus on commonly encountered disclosure issues relating to police requests - when to disclose and when not to disclose documents from our files and other records from proceedings.

2.There can be serious consequences if we disclose information relating to proceedings without a lawful purpose. This can be by way of a breach of the Family Procedure Rules 2010 or by way of a Civil Claim made against Cafcass arising from a data breach where information has been provided to someone who was not entitled to receive it.

3.In the case of *Re B (A child) (Disclosure)* [2004] 2FLR 142 Mr Justice Munby (as he then was) set out the following definition of what did and what did not constitute 'information relating to proceedings.'

## **4. Information relating to the proceedings includes**

- (i) Accounts of what has gone on in front of the Judge sitting in private
- (ii) Documents from the proceedings i.e. statements, reports etc
- (iii) Extracts from those documents
- (iv) Summaries of those documents

## **5. Information which does not come within the definition of 'information relating to proceedings'**

- (i) Disclosure of the issues in a case
- (ii) The identity of experts and professionals for example the name of the social worker and children's guardian
- (iii) Description of any incident that has taken place outside court

## **6. Rule 12.73 of the FPR 2010 provides that information relating to the proceedings can be communicated 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 for the purposes of the proceedings

**(viii) a professional acting in furtherance of the protection of children**

(ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies

(b) where the court gives permission; or

**7. What does a 'professional acting in the furtherance of child protection mean?**

(i) An officer of a local authority exercising child protection functions

(ii) A police officer who is

Exercising functions under Section 46 of the CA 1989

OR

Serving in a child protection / child abuse unit of a police force

(iii) 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

(iv) Or an officer of the NSPCC

**(v) Could also include a Police officer;**

-removing a child from danger

-Seeking to impose appropriate bail conditions to make sure child does not come into contact with an offender

-investigating an offence against a child – but seek below

Please note the above is not an exhaustive list and can include other professionals. If in doubt, please contact legal for further advice.

### **8. Requests from police tend to fall into the following categories:**

1. Child abuse investigation team requesting information from our files
2. Investigating a criminal matter in relation to a parent known to us
3. Investigating a historic allegation of abuse in relation to a parent or a subject child who is now an adult
4. Requests for practitioner to write a statement for criminal proceedings

We would not provide information from our files e.g. contact logs, notes of interviews and reports unless we **are satisfied the police are acting in the furtherance of child protection**. This would not include police investigating an allegation of an offence with a view to prosecution. If unsure, please contact the legal team for advice.

If we are not satisfied that we can share the information sought, then the police should be advised to make an application to the Family court. We can provide them with the name of the court where the proceedings took place and the case number to assist them in making the application.

### **9. Providing statements to the police**

If permission has been granted by the family court, we can provide a statement to the police to assist in the prosecution of an accused – however practitioners will need to bear in mind whether this is appropriate if they are still working with the family. Becoming directly involved in the criminal process could compromise your ability to complete your assessment if it is ongoing. Depending on the individual facts practitioners may or may not consider it appropriate to assist the police in this way.

### **10. What if there is a marker on the PNC and a party is wanted by police?**

Cafcass has a national protocol with the police service which states that where Cafcass becomes aware of information that it reasonably believes would be important to another law enforcement user of the PNC (for example, a notification of wanted or missing on the record of the person being checked) the user '**shall take all reasonable endeavours' to notify that other law enforcement user**, i.e. their local police force.

This means we are able to share information with the police relating to a person / party if there is a marker against their name – limited to details we consider it necessary to be effective notification in compliance with the protocol. However, you must be careful not to provide **‘information relating to the proceedings’** (defined above) as to do so may be a breach of the Family Procedure Rules 2010.