

East Anglian Chambers Family Team



Information from Family Proceedings: Who can I tell and what can I tell them?

The fact that there are restrictions on the sharing of information and reports from family cases is well known to us all; however, what might have come in under your radar is the fact that the rules have been substantially revised.

These revisions came into effect on 27th April 2009. The new provisions are to be found in the Family Proceedings Rules 1991, Rule 11.2 to 11.8 (similar amendments were made to the Family Proceedings Courts (Children Act 1989) Rules 1991, rule 21Q to 21Y for use in the family proceedings court). The provisions themselves will reward detailed study (for those who have time!) but the most common questions can be answered as follows;

What information is covered by the rules? The answer is everything! It is tempting to apply the rules only to those documents which are contained in the Court bundle, but the Rules make clear that the provisions apply to "information relating to proceedings held in private (whether or not contained in a document filed with the Court)" (Rule 11.2 (1). Therefore documents such as the case conference minutes or contact recordings are covered even if they have not been filed within the proceedings.

Can I put information into the public domain? Despite the ending of the absolute prohibition on newspaper reporting, the basic rule remains the same "Nothing in this Part permits the communication to the public at large, or any section of the public, of any information relating to the proceedings"; Rule 11.2 (2).

Can I give the information to an expert? The need for permission to provide information to an expert was removed some years ago; however, it is important to note that the ability to provide information to an expert is restricted to an "expert whose instruction by a party has been authorised by the Court for the purposes of the proceedings" (Rule 11.2 (1)(a)(vii)). If, therefore, you wish to give details to proposed experts for the purpose of finding out if they will be able to assist you will need to seek leave.

Can I provide information to the grandparents' solicitor? It has been a common problem for those who represent grandparents or other family members who are seeking party status that no information can be received until leave has been granted. The new rules do not solve this problem. Although the provisions permit communication with "a professional legal adviser", that term is defined as "a barrister or solicitor (or solicitors employee etc) who is providing advice to a party but is not instructed to represent that party in the proceedings" (see Rule 11.2 (1)(a)(iii) and Rule 11.9).

Can I provide information to my client's criminal solicitors?. It is often the case that there are concurrent criminal proceedings where your

client is being represented by another member of your firm or indeed by another firm altogether. In these circumstances the Rules allow for the sharing of information under the "professional legal adviser" exception.

Can I share information with my client's mother, advocate, or refuge worker? The answer to this is yes: "A party or legal representative of a party, on behalf of and on the instructions of that party may communicate information relating to the proceedings to a person where necessary to enable that party by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings" (Rule 11.4 (1)(a)). However, that person is then prohibited from passing that information on to anyone else under Rule 11.4(2).

Can I pass information to my client's psychotherapist? Not necessarily! Rule 11.5 provides for the provision of information by a party "to 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". However, Rule 11.9 defines "health care professional" as "a registered medical practitioner, a registered nurse or midwife, a clinical psychologist or a child psychotherapist".

What information can I pass to the Police or CPS? Rule 11.5 permits a party to provide the "text or summary of the whole or part of a judgment given in the proceedings" to the police "for the purpose of a criminal investigation" or to CPS "to enable the Crown Prosecution Service to discharge its functions under any enactment". However, your note (or Counsel's note) of a Judgment is insufficient as Rule 11.2(3) does not permit the disclosure of "an unapproved draft judgment handed down by any Court".

Can information be shared with the child's school teacher? The provisions allow for communication with "a professional acting in furtherance of the protection of children" (Rule 11.2 (1)(a)(viii)). Arguably this will include a head teacher or the child's GP. Any professional who attends a child protection conference is entitled to receive the information by virtue of Rule 11.9, as is an officer of the NSPCC.

What can the information be used for? Information may only be used for the purpose for which it was received. However, any information may be used for professional development or training provided that "any communication does not, or is not likely to, identify any person involved in the proceedings without that person's consent" (Rule 1.8 (2)).

And Finally; information can also be provided to "a person or body responsible for investigating or determining complaints in relation to legal representatives or professional legal advisors"(Rule 11.5) but lets hope we don't have to use this provision too often!

About Caroline Bryant:

Caroline Bryant was called to the Bar in 1976 and is a member of the Family Team at East Anglian Chambers, dealing with financial disputes and Children Act cases. She undertakes both private and publicly funded work and is particularly known for a sympathetic approach to vulnerable clients.