

2005 No. 1977 (L. 19)

MAGISTRATES' COURTS, ENGLAND AND WALES

**The Family Proceedings Courts (Miscellaneous Amendments)
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>

The Lord Chancellor, in exercise of the powers conferred upon him by sections 144 and 145(1)(ga) of the Magistrates' Courts Act 1980(a), after consultation with the Rule Committee appointed under the said section 144, hereby make the following Rules:

Citation and commencement

1. These rules may be cited as the Family Proceedings Courts (Miscellaneous Amendments) Rules 2005 and shall come into force on 31st October 2005.

Amendments to the Family Proceedings Courts (Children Act 1989) Rules 1991

2. The Family Proceedings Courts (Children Act 1989) Rules 1991(b) are amended in accordance with rules 3 to 5.

3. In the Arrangement of Rules after the entry for rule 23 insert "23A. Communication of information relating to proceedings".

4. At the beginning of rule 23 insert "Subject to rule 23A".

5. After rule 23 insert—

"Communication of information relating to proceedings

23A—(1) For the purposes of the law relating to contempt of court, information relating to relevant proceedings held in private (whether or not contained in a document filed with the court) may be communicated—

- (a) where the justices' clerk or the court gives permission;
- (b) subject to any direction of the justices' clerk or the court, in accordance with paragraphs (2) or (3) of this rule; or

(a) 1980 c.43; section 144 was amended by sections 109 and 110 and paragraph (245) of Schedule 8 and Schedule 10 to the Courts Act 2003 (c.39), section 90 and Schedule 13 to the Access to Justice Act 1999 (c.22) and by section 125 and Schedule 18 to the Courts and Legal Services Act 1990 (c.41); section 145(1) was amended by section 62 of the Children Act 2004 (c.31), section 109 and Schedule 8 to the Courts Act 2003 and by section 80 to the Access to Justice Act 1999.

(b) S.I. 1991/1395 amended by S.I. 1997/1895, S.I. 2001/818 and S.I. 2005/585; there are other amending instruments but none is relevant.

- (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.

(2) 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 designated 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.

(3) 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.

(4) 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,
- (c) conducted under section 83, or
- (d) conducted under 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^(b)) 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) member of the Law Society’s Family Mediation Panel;

^(a) 2000 c.43.
^(b) 1990 c.41.

“peer” means a member of the House of Lords as defined by the House of Lords Act 1999(a);

“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, 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.”

Amendment to the Family Proceedings Courts (Child Support Act 1991) Rules 1993

6. The Family Proceedings Courts (Child Support Act 1991) Rules 1993(b) are amended in accordance with rule 7.

7. In rule 5 after “rule 23” insert “(confidentiality of documents) or rule 23A (communication of information relating to proceedings)”.

Falconer of Thoroton, C.

18th July 2005

(a) 1999 c.34.
(b) S.I. 1993/627.

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules amend the Family Proceedings Courts (Children Act 1989) Rules 1991 (“FPC (CA89)”) and the Family Proceedings Courts (Child Support Act 1991) Rules 1993 (“FPC (CSA)”). These rules 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 (5) of these rules introduces a new rule (rule 23A) entitled, “Communication of information relating to proceedings”. This rule will apply when the court elects to sit in private under rule 16(7) of the FPC (CA89). In all other cases rule 23 (confidentiality of documents) will continue to apply.

Paragraph (1) of rule 23A 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 justices’ clerk or the court gives permission; (2) in the circumstances provided for in the table in paragraph (2) and the onward disclosure rule in paragraph (3); 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 (1)(b).

Paragraph (3) of rule 23A provides that a recipient of information pursuant to the table in paragraph (2) 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 (7) of these rules makes a consequential amendment to the FPC (CSA) following the introduction of new rule 23A.

STATUTORY INSTRUMENTS

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