

**Response to Department of Constitutional Affairs  
Consultation:**

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

**March 2004**

1. The British Association for Adoption and Fostering (BAAF) is the leading charity membership organisation for fostering and adoption in the UK. It has several special interest groups and this response has been informed by discussions with its Legal Group Advisory Committee which consists of lawyers in both private practice and local authorities and children's guardians. Most members of the Committee are involved in their day to day work in public law children's proceedings.
2. We welcome this consultation exercise and appreciate the clarity with which the paper sets out the issues. There is one preliminary point we would wish to make about the wording of the legislation itself. Section 97(2) of the Children Act 1989 talks, even in amended form, of the publication of material which would identify a child "as being involved in family court proceedings". A member of the Committee has had experience of an unsuccessful attempt to prevent or complain about publication of material about a child who was the subject of care proceedings. This was a case ("the internet baby case") where considerable public interest had been aroused by the proposed prosecution of a mother for accepting money for the transfer of her baby to would-be adopters. The newspaper concerned sought to justify its publication of a photograph of the baby and other materials by the argument that it did not in the article disclose the fact that the child was the subject of care proceedings – i.e. it did not identify the child as "being involved" in family court proceedings.

In the event, the case did not proceed to trial but the line put forward by the newspaper is at least arguable. If the statute does not clearly reflect the intention of Parliament, then consideration needs to be given to amending it.

### **3. Answers to the consultation questions**

#### **1. The list of people identified at Annex B**

By and large we agree with this but we have the following comments and concerns:

- **Lay advice sector**

To the extent that this remains unregulated, there must be some concerns about disclosure here. Unfortunately it cannot be safely assumed that all those individuals involved in this sector could be trusted with what might be extremely sensitive material. In extreme circumstances, disclosure could pose a risk to children.

- **Local authorities and government departments and agencies**

These are very wide categories. Although generally it would appear desirable for information to be able to be disclosed, there could be concerns about the purpose for which disclosure was made. While, for example, it would be appropriate for a mother approaching her local authority for housing assistance to produce a judgment relating to her partner's domestic violence, it is more questionable whether information disclosed in judgments should, without specific authority, be disclosed, for example, to the benefits agency where the person making the disclosure was motivated by malice.

- **Police and CPS**

Our concerns here relate more to the nature of the information disclosed although, again, disclosure for malicious purposes cannot be ruled out. Some judgments may also contain information about individuals who are not parties to the proceedings.

- **CAFCASS**

We are puzzled as to the circumstances in which it might be necessary for an elected representative to make a disclosure to CAFCASS.

Additions:

- Where a CAFCASS officer is involved in proceedings but is not a party, arguably rules should permit certain disclosures without specific court authority.
- Adoption panels:  
Adoption panels are hybrid bodies many of whose members are required to be independent of the agency concerned. It is often the case that a panel will be required to make a recommendation about the interests of a child who is or has been the subject of care proceedings and materials acquired in those proceedings are likely to be relevant. The rules should

allow for disclosure by a local authority that is a party to the proceedings to the adoption panel. This would need to cover more than orders and judgments since, for example, the children's guardian's report or other experts' reports to the court might also contain relevant material.

- **Research**

The proposals in respect of disclosure for the purposes of research are too restrictive. We strongly support the response submitted by Professor Judith Masson and others.

## **2. The range of information that could be disclosed**

Again, by and large, we are in agreement, but have the following comments and concerns.

- **Police and CPS**

There are concerns that what is proposed might be, in different circumstances, either too narrow or too broad. Where there is a common purpose in pursuing possible child protection concerns, it may often be the case that more than orders and judgments would be needed – for example, a medical report relating to a non-accidental injury. On the other hand, there may be some concerns that such a report would disclose information that a parent had given to the doctor that he or she would not have disclosed to the police, and while not evidence given within proceedings as such, this would come close to falling within the non-admissibility provisions of section 98 of the Children Act 1989. Where information in a judgment relates to criminal matters outside child protection or child welfare generally, for instance, fraud or burglary, is it appropriate for such information to be given to the police?

- **Disclosure to a professional body for quality assurance reasons**

Could this not also be anonymised as in disclosure for the purposes of accreditation?

- **Research**

Again the range of information suggested for disclosure is too narrow and we would support the submission of Professor Judith Masson. There is an additional point to add here about statistical information. Consideration needs to be given to the disclosure of information for the compilation of statistical data. Justice Munby's judgment in *Re B* was given as the reason for a change of policy on the collection of adoption statistics. It had been proposed that this would involve the passing to the Office of National Statistics, via the Registrar General when an adoption order was sent to him, of relevant factual information from the report to the court (for example, age sex and ethnic background of adopters, birth parents and the child, marital status and employment of the adopters and birth parents.) This would have enabled the

collection of much significant information not otherwise easily available. Instead, it is proposed that the statistical information collected by the Department for Education and Skills from local authorities will include some adoption information but this will not include obviously any information about non-agency adoptions, and it is unlikely to include information about the adopters or the birth parents.

### **3. Select Committees**

It is not easy to see why identifying information should be able to be disclosed to or by select committees.

***Please contact***

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