

Neutral Citation No: [2025] NIFam 8	Ref: HUM12877
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	Delivered: 23/10/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

RA

Applicant

and

PS

Respondent

**RE DISCLOSURE OF COURT CHILDREN'S OFFICER REPORT FOR THE
PURPOSE OF CRIMINAL PROCEEDINGS**

Melanie Rice KC & Colin O'Kane (instructed by Brendan Kearney Solicitors) for the
Applicant

Grainne Murphy KC & Sarah Walkingshaw (instructed by Bannon Crawford Solicitors)
for the Respondent

HUMPHREYS J

This judgment has been anonymised as it involves children. The ciphers given to the parents are not their initials. Nothing must be published which would identify the children or their parents

Introduction

[1] This is an application brought by the father in ongoing private law children proceedings for leave to disclose part of the contents of the Court Children's Officer ('CCO') report for the purposes of parallel criminal proceedings.

[2] The father has been charged with offences of assault and domestic abuse against both the mother and one of the children. He has pleaded not guilty and asserts that the allegations against him are untrue. His case is that the mother has fabricated

these claims in order to bolster her position in the family proceedings. The matter is to be contested before the District Judge sitting in Derry Magistrates' Court.

[3] The father has identified parts of the CCO report as being relevant to the issue of the mother's credibility and seeks leave to have these disclosed to his legal representatives in the criminal case, and a direction that they be entitled to share the extracts with the PPS and, if permitted, with the court.

The CCO Report

[4] The father commenced proceedings under Article 8 of the Children (Northern Ireland) Order 1995 ('the Children Order') seeking a residence order and a prohibited steps order in respect of the subject children. The court directed a welfare report be produced by the CCO pursuant to Article 4 of the Children Order.

[5] In the report, reference is made to the mother's medical records which address alleged physical and sexual abuse occurring when the mother lived abroad with her ex-husband. Subsequently, the mother travelled to Northern Ireland in 2019 and successfully claimed asylum. When the CCO spoke to her in November 2024, it is recorded that:

"she conceded these details were all fabricated to achieve her citizenship..."

[6] The report goes on to say that the mother claims she was acting on legal advice to "create a backdrop of abuse to give her asylum application some weight." It also records that the mother was concerned that revealing this information would adversely affect her status but that "she felt she needed to be honest."

[7] The CCO found the exercise of analysing the parental capabilities of both the parties difficult, noting that the mother had previously fabricated allegations of domestic abuse to further her own agenda.

The legal framework

[8] The starting point for the legal analysis is section 12 of the Administration of Justice Act 1960 which provides:

"(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say –

(a) where the proceedings –

- (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
- (ii) are brought under the Children (Northern Ireland) Order 1995; or
- (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor.”

[9] Rule 4.24 of the Family Proceedings Rules (Northern Ireland) 1996 which states:

“(1) Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the court and relating to proceedings to which this Part applies shall be disclosed, other than to-

- (a) A party;
- (b) The legal representative of a party;
- (c) The guardian ad litem;
- (d) The Legal Aid Department; or
- (e) A welfare officer

without the leave of the judge”

[10] There is no dispute that the CCO report in this case falls within the ambit of the rule. Whilst most of the decisions in this area emanate from the field of public law, similar principles apply to the disclosure of documents which have been created in private law proceedings.

[11] In *Re EC (a minor) (Care proceedings: disclosure)* [1997] Fam 76, the Court of Appeal in England & Wales considered an application on the part of the police for disclosure of documents relevant to admissions made by a father of causing harm to a young baby. Swinton Thomas LJ set out a list of factors which a court will take into account in a disclosure application in what has become known as the ‘*Re EC* checklist’:

“(1) The welfare and interests of the child or children concerned in the care proceedings. If the child is likely to be adversely affected by the order in any serious way, this will be a very important factor.

(2) The welfare and interests of other children generally.

(3) The maintenance of confidentiality in children cases.

(4) The importance of encouraging frankness in children's cases. All parties to this appeal agree that this is a very important factor and is likely to be of particular importance in a case to which section 98(2) applies. The underlying purpose of section 98 is to encourage people to tell the truth in cases concerning children, and the incentive is that any admission will not be admissible in evidence in a criminal trial. Consequently, it is important in this case. However, the added incentive of guaranteed confidentiality is not given by the words of the section and cannot be given.

(5) The public interest in the administration of justice. Barriers should not be erected between one branch of the judicature and another because this may be inimical to the overall interests of justice.

(6) The public interest in the prosecution of serious crime and the punishment of offenders, including the public interest in convicting those who have been guilty of violent or sexual offences against children. There is a strong public interest in making available material to the PSNI which is relevant to a criminal trial. In many cases, this is likely to be a very important factor.

(7) The gravity of the alleged offence and the relevance of the evidence to it. If the evidence has little or no bearing on the investigation or the trial, this will militate against a disclosure order.

(8) The desirability of co-operation between various agencies concerned with the welfare of children, including the social services departments, the PSNI service, medical practitioners, health visitors, schools, etc. This is particularly important in cases concerning children.

(9) In a case to which section 98(2) applies, the terms of the section itself, namely that the witness was not excused from answering incriminating questions, and that any statement of admission would not be admissible against him in criminal proceedings. Fairness to the person who has incriminated himself and any others affected by the incriminating statement and any danger of oppression would also be relevant considerations.

(10) Any other material disclosure which has already taken place.”

[12] The reference to section 98(2) is to the provision in Children Act 1989 which states that, in public law proceedings, no admission made is admissible in evidence against its maker in proceedings for a criminal offence. The analogue provision in Northern Ireland is found in Article 171 of the Children Order. Neither has any application to private law proceedings.

[13] *Re EC* was followed in this jurisdiction by Gillen J in *Re A* (Disclosure to Third Party) [2003] NIFam 5 where he commented:

“[17] ...interdisciplinary and interagency work is an essential process in the task of attempting to protect children from abuse. There must be free exchange so far as possible between agencies in order to facilitate that work and protect children. This requires the sharing and exchange of relevant information between social workers of different areas. I regard child protection teams as an important component of interagency work to protect children.

[18] In deciding whether or not to grant permission for disclosure to third parties, the court has to exercise its discretion, in the process of which it has to carry out a balancing exercise of competing rights and interests. There must be real and cogent evidence of a pressing need for the requested disclosure to third parties.”

[14] Gillen J also recognised that the right to respect for privacy and family life enshrined in article 8 ECHR is likely to be engaged in an application of this nature. This is, of course, a qualified right which may be interfered with when it is in accordance with law, in the pursuit of a legitimate aim and when it is necessary in a democratic society.

[15] In the context of private law proceedings, the High Court in *Re D and M* (Disclosure: Private Law) [2002] EWHC 2820 (Fam) declined to allow disclosure to the police of admissions made by the father of criminal conduct but permitted disclosure to the relevant local authorities. Hedley J held that the father's frankness with the court weighed heavily in the context where the section 98(2) protection did not apply and the public interest did not require other factors against disclosure to be overridden.

[16] In *Re P (Children) (Disclosure)* [2022] EWCA Civ 495, the Court of Appeal rejected a claim that frankness always had an elevated status in the private law context given the absence of the protection from self-incrimination. Lord Burnett CJ stated:

“In the present case, the judge was urged to allow the father's application on the suggested principle that there is an elevated need for frankness in private law proceedings. Hayden J disagreed, saying that the absence of the protection afforded by s. 98(2) in private law proceedings might lead to a judge placing greater emphasis on frankness when determining a disclosure application, but that did not follow inevitably, nor had Hedley J suggested that it did. We agree and would add that the headnote to the law report inaccurately states that the need to encourage frankness ought to, rather than might well (as Hedley J said) be given greater weight in private law proceedings. The dicta in *D v M* add no support to the father's argument.”

[17] Given the nature of any proportionality exercise, it is always open to a court which orders disclosure to do so in a limited, edited or redacted form – see *Re X (Children)* [2008] 1 FLR 589, per Munby J.

Consideration

[18] The key considerations arising from the *Re EC* checklist in the instant case are the following:

- (i) The welfare of the children;
- (ii) Confidentiality and frankness in children's cases; and
- (iii) The public interest in the administration of justice.

[19] It is noteworthy that the preponderance of cases in this area arise out of applications made by law enforcement or regulatory agencies for disclosure of documents created in family proceedings. Such applications are for the purpose of the investigation of crime or some regulatory breach. This application is quite different in its nature, being for the purpose of seeking to undermine the credibility of a complainant in a criminal case.

[20] In *Re Z (Children) (Disclosure: Criminal Proceedings)* [2003] 1 FLR 1194, the father faced a charge of murder. His wife gave a statement to the police and was due to testify against him. It came to light that the wife had made a statement in family proceedings which contradicted her evidence in the criminal investigation. On the application for disclosure of this statement to the husband's legal representatives in the criminal case, Munby J found:

- (i) The statement might serve to undermine the wife's credibility and that sufficed to engage the balancing exercise;
- (ii) The interests of the proper administration of justice in the criminal trial pointed strongly in favour of the disclosure sought since refusal could lead to an unfair trial and a wrongful conviction;
- (iii) The important interests in the privacy and confidentiality of the family justice system carry little weight in these circumstances;
- (iv) It would be an exceptional case where the family court could properly deny an accused person access to material which might enable him to defend himself the more effectively against a charge as serious as murder or carrying the kind of sentence the husband is here facing if convicted;
- (v) The children themselves have a direct interest in ensuring that there was no miscarriage of justice in the criminal trial.

[21] In this case, it does not seem that disclosure of the material in the CCO report would have a material impact on the welfare of the children, save insofar as the outcome of the criminal prosecution may have an impact on the father's Article 8 applications before the family court. Essentially, therefore, the exercise of the court's discretion resolves to a balancing exercise between the demands of confidentiality and frankness on one hand and the promotion of the public interest in the administration of justice on the other. The court must, when exercising this discretion, bear in mind the requirement of real and cogent evidence of a pressing need.

[22] I take into account the nature of CCO reports and the circumstances in which they are compiled. Such reports are marked "confidential" and those who engage with CCOs are entitled to assume that their discussions will not be the subject of disclosure outwith the family proceedings. This assumption encourages frankness, indeed the mother in this case acknowledges that her statements may be against interest but that she felt the need to be honest with the CCO.

[23] The applicant stresses that the disclosure in this case is not to the world at large but only to the legal representatives of the father in the criminal proceedings. Furthermore, it is not of the whole report but only the identified sections. Whether the evidence is admissible in the criminal trial will be a matter for the District Judge trying the case.

[24] Credibility is often a central issue in cases involving domestic abuse. The fact that the mother previously fabricated allegations of violence within a relationship, for whatever reason, could serve to cast doubt on her credibility. If admitted, the evidence may be significant to the father's defence in the criminal proceedings.

[25] Weighing up these competing interests, I have concluded that the balance lies in favour of specific limited disclosure to the father's legal representatives in the criminal case. I do so bearing in mind the comments of Munby J in *Re Z* around the public interest in ensuring a fair trial and the proper administration of justice. I have concluded that the threshold of establishing real and cogent evidence of a pressing need for disclosure has been met in this case.

[26] In doing so, I have carefully considered the mother's article 8 rights, and those of the children, which are affected by the disclosure sought. These must be weighed in the balance with the father's article 6 right to a fair trial. I have determined that the interference is in accordance with law and is in the interest of the protection of the rights of others, namely the father.

[27] The limited nature of the disclosure ensures that the interference is only that which is necessary and proportionate in this case. The only part of the CCO report which I order to be disclosed is the paragraph on page 21 beginning with the words "[the wife] consented to the CCO reviewing her medical records" and ending with the phrase "she felt she needed to be honest." The other parts of the report referred to by the applicant are merely restatements of this together with comments made by the CCO which could not be of any probative value to the criminal trial.

Conclusion

[28] I therefore grant leave, pursuant to Rule 4.24, for the disclosure of that part of the CCO report to the father's legal representatives in the criminal case, and such permission extends to the disclosure of the document to the PPS and to the court for any purpose associated with the criminal proceedings. As I have already stressed, whether or not the evidence is admissible in the criminal trial will be a matter for the judge, applying the relevant tests. The court will also be cognisant of the need to treat such material sensitively and in a manner which ensures continued confidence in the important service provided in the family justice system by the CCOs.