Neutral Citation No: [2025] NIFam 17 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **HUM12911** *Delivered:* **21/11/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

Between:

AM

Applicant

and

A HEALTH AND SOCIAL CARE TRUST

and

BM

Respondents

RE: DISCLOSURE OF STATUTORY VISIT REPORTS

Louise Murphy KC & Paula McKernan (instructed by the Directorate of Legal Services) for the Trust
Moira Smyth KC & Lisa Casey (instructed by Haugheys Solicitors) for the Children's Court Guardian

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HUMPHREYS J

This is an open judgment relating to an ex parte application, certain factual details have been removed. 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] Before the court are two applications brought by the mother of two children, a boy, CM, aged 15, and a girl, DM, aged 13. Firstly, an application for contact with the

children in care pursuant to Article 53 of the Children (Northern Ireland) Order 1995 ("the Children Order") dated 22 November 2023 and secondly, an application to discharge a care order under Article 58 of the Children Order, dated 8 May 2024.

[2] In the context of these applications, the Trust has applied, by way of an ex parte C2, for directions in relation to the service of documents pursuant to rule 4.15(2) of the Family Proceedings Rules (Northern Ireland) 1996 ("FPR 1996").

[3] The two children are the subject of care orders made on 5 December 2022 and are in different placements. CM is in a Trust foster placement whilst DM is placed with her father, the second respondent.

[4] As a result, certain statutory obligations arise. Regulation 6 of the Foster Placement (Children) Regulations (Northern Ireland) 1996, which apply to CM, requires the Trust to supervise the placement by way of monthly visits and regulation 6(4) requires a written report to be made of each such visit. In the case of DM, regulation 9 of the Placement of Children with Parents etc Regulations (Northern Ireland) 1996 imposes a similar obligation, and by regulation 9(2) a written report must be made.

[5] By virtue of Article 61 of the Children Order, the Guardian has access to such records and was properly a party to this application.

[6] The mother has sought disclosure of the written reports and has stated in her position paper that this is required in the interests of fairness, transparency and compliance with human rights and data protection obligations.

[7] The application, as refined by the Trust, is to redact certain of these written reports, compiled pursuant to the statutory obligations, and to only provide disclosure of the redacted documents to the mother in these proceedings. The children have themselves been afforded access to the statutory reports and have made certain requests in relation to specific redactions.

The legal principles

[8] Rule 4.15(2) of the FPR 1996 states:

> "(2) In proceedings to which this Part applies the court may, subject to paragraph (3), give, vary or revoke directions for the conduct of the proceedings, including –
> …
>
> (e) the service of documents."

[9] In *Re D (Minors) (Adoption Reports: Confidentiality)* [1996] AC 593, the House of Lords considered whether statements made by children in adoption proceedings could be withheld from a parent. Lord Mustill stated:

> "(1) It is a fundamental principle of fairness that a party is entitled to the disclosure of all materials which may be taken into account by the court when reaching a decision adverse to that party …
>
> (2) … the court should first consider whether disclosure of the material would involve a real possibility of significant harm to the child.
>
> (3) If it would, the court should next consider whether the overall interests of the child would benefit from non-disclosure, weighing on the one hand the interest of the child in having the material properly tested, and on the other both the magnitude of the risk that harm will occur and the gravity of the harm if it does occur.
>
> (4) If the court is satisfied that the interests of the child point towards non-disclosure, the next and final step is for the court to weigh that consideration, and its strength in the circumstances of the case, against the interest of the parent or other party in having an opportunity to see and respond to the material. In the latter regard the court should take into account the importance of the material to the issues in the case.
>
> (5) Non-disclosure should be the exception not the rule. The court should be rigorous in its examination of the risk and gravity of the feared harm to the child and should order nondisclosure only when the case for doing so is compelling."

[10] In *Re T (Children: Non-Disclosure)* [2024] EWCA Civ 241, the Court of Appeal in England & Wales, in the context of private law contact proceedings, considered an appeal from a decision to withhold the mother's statement and related exhibits from disclosure to the father. Peter Jackson LJ identified the following questions which the court should ask when considering an application to authorise non-disclosure:

> "(1) Is the material relevant to the issues, or can it be excluded as being irrelevant or insufficiently relevant to them?

(2) Would disclosure of the material involve a real possibility of significant harm to the child and, if so, of what nature and degree of probability?

(3) Can the feared harm be addressed by measures to reduce its probability or likely impact?

(4) Taking account of the importance of the material to the issues in the case, what are the overall welfare advantages and disadvantages to the child from disclosure or non-disclosure?

(5) Where the child's interests point towards non-disclosure, do those interests so compellingly outweigh the rights of the party deprived of disclosure that any non-disclosure is strictly necessary, giving proper weight to the consequences for that party in the particular circumstances?

(6) Finally, if non-disclosure is appropriate, can it be limited in scope or duration so that the interference with the rights of others and the effect on the administration of justice is not disproportionate to the feared harm?" (para [22])

[11] In *Re B (Disclosure to Other Parties)* [2021] 2 FLR 1017 Munby J discussed the human rights issues which may arise in an application of this nature, noting that Lord Mustill's analysis predated the incorporation of the ECHR into domestic law. The article 6 right to a fair trial is an absolute one, and prima facie will entail a right to disclosure of all materials taken into account by a court in reaching a decision adverse to a party. However, it does not follow that this right to disclosure of documents is unqualified. The article 6 rights must be considered alongside the article 8 rights of other parties and children affected by such disclosure. The learned judge stated:

"So, a limited qualification of R's right to see the documents may be acceptable if it is reasonably directed towards a clear and proper objective – in other words, if directed to the pursuit of the legitimate aim of respecting some other person's rights under Art 8 – and if it represents no greater a qualification of R's rights than the situation calls for. There may accordingly be circumstances in which, balancing a party's prima facie Art 6 right to see all the relevant documents and the Art 8 rights of others, the balance can compatibly with the Convention be struck in such a way as to permit the withholding from a party of

> some at least of the documents. The balance is to be struck in a way which is fair and which achieves a reasonable relationship of proportionality between the means employed and the aim sought to be achieved, having regard to the nature and seriousness of the interests at stake and the gravity of the interference with the various rights involved." (para [67])

[12] However, he also cautioned:

> "Although, as I have acknowledged, the class of cases in which it may be appropriate to restrict a litigant's access to documents is somewhat wider than has hitherto been recognised, it remains the fact, in my judgment, that such cases will remain very much the exception and not the rule. It remains the fact that all such cases require the most anxious rigorous and vigilant scrutiny. It is for those who seek to restrain the disclosure of papers to a litigant to make good their claim and to demonstrate with precision exactly which documents or classes of documents require to be withheld. The burden on them is a heavy one. Only if the case for non-disclosure is convincingly and compellingly demonstrated will an order be made. No such order should be made unless the situation imperatively demands it. No such order should extend any further than is necessary. The test, at the end of the day, is one of strict necessity. In most cases the need for a fair trial will demand that there be no restrictions on disclosure. Even if a case for restrictions is made out, the restrictions must go no further than is strictly necessary."

The statutory visit records

[13] In accordance with established Trust policy, the wishes and feelings of the children concerned were sought on the question of the disclosure of the written records in this case. Both have expressed a significant degree of anxiety about these documents being disclosed to their mother. The children feel that there may be adverse consequences to them if their mother becomes aware of the detail of some of the things which they have said to social workers. In the Guardian's report to the court, CM is recorded as saying:

> "… he is not in agreement with Trust records being shared with AM. He feels that his mother will 'find fault' with him and DM. He has also stated that he does not want AM to have access to specific information regarding his foster

> carers and their circumstances as he worries she will complain about them and cause his carers worry."

[14] Similarly, DM has said that she:

> "… is anxious that her mother will 'use what I have said' to make complaints. She has expressed that she feels her interactions with social work staff and contact workers are a safe space for her to 'vent' and 'debrief' and that sharing these records with AM would potentially cause AM to complain to DM about any comments she has made and 'get the wrong idea' or 'take things out of context."

[15] The Trust also makes the case that unqualified disclosure may serve to undermine the open and honest relationship which has developed between the children and the social workers.

[16] As a result, certain redactions from the written reports have been proposed and placed before the court. It will be necessary to consider each of these individually:

(i) Re DM 23 April 2024:

[*description by DM of her feelings around contact with AM]*

DM's feelings around the contact visits are clearly expressed by the Guardian in her report at paras 5.16 to 5.19. The issue is of relevance to the applications before the court. There can be no viable argument made in relation to a risk of significant harm given the fact the information has been known to the mother for many months without any reported adverse consequences.

[*report by BM in relation to boundaries and DM's response]*

An unredacted LAC report of 26 June 2024 makes specific reference to DM pushing boundaries within the home and the Trust papers are replete with comments relating to the family dynamic and advice being given. This is pertinent to the issues before the court and the threshold for risk of significant harm has not been met in these circumstances.

[*summary assessment of placement*]

This is important and relevant information in relation to the placement and no credible argument could be made that it gives rise to any risk of harm.

(ii) Re DM 30 May 2024:

> [*further description of DM's attitude to boundaries*]

The same analysis applies to this proposed redaction. No case has been made that any real possibility of significant harm arises. The fact that DM remains happy residing with her father is a very important assertion in the context of future care planning.

(iii) Re DM 8 October 2024:

> [*discussion by DM in relation to family dynamics*]

There are a series of proposed redactions which relate to DM's relationship with her father's new partner and her stepsisters. These relationships, and DM's feelings, are relevant to the issue of the placement and its future. One can understand that she may well feel anxious about such disclosures and the potential for her mother to use this information to criticise the wider family in the context of these proceedings. Even if the threshold of real possibility of significant harm were met, however, it could not be said that this compellingly outweighed the rights of the party who would be denied disclosure. The mother ought to be entitled to address this issue with the benefit of all the relevant material. To redact these extracts would potentially cause unfairness in that this is an important issue and other information in the reports points towards the successful nature of the placement.

(iv) Re DM 27 January 2025:

> [*further discussion by DM in relation to family dynamics*]

This material is of the same nature as that in (iii) above, relating to the family and the placement, and the same analysis applies.

(v) Re DM 12 February 2025:

> [*record of DM's discussion of family dynamics and outline of social work action in relation to same*]

This material is in the same territory as that in (iii) above and the same analysis applies.

(vi) Re DM 3 March 2025:

> *[updated discussion about family dynamics]*

This also relates to the family life in the placement and the same analysis applies.

> [*record of proposed holiday plans and analysis of placement longevity*]

The mother was aware of the family trip to Morocco and the fact that DM was being cared for by her stepsister. There can therefore be no basis for redaction. It is wholly unclear why the last sentence would attract any form of redaction.

(vii) Re CM 3 June 2024:

> [*record of CM's views about trips with his foster carer*]

This comment was made in the course of an expression by CM of anxiety about his mother's reaction to certain things. However, the Trust is aware that the mother knows about the trips to Portballintrae but not the frequency of same. The information in the proposed redaction does not actually state how often these trips occur. Applying the questions from *Re T*, this is information which is relevant to the question of where CM should reside and it could not be said that the threshold of a real possibility of serious harm could be met in all the circumstances.

(viii) Re CM 29 August 2024:

> [*Update about CM in placement and his attendance at a recent wedding*]

The fact that CM presented as comfortable is relevant to the issues which the court will have to determine, and disclosure could not be harmful. His attendance at the wedding is known to his mother so the disclosure of this could not occasion any harm. In any event, it is addressed at paragraph 5.13 of the Guardian's report dated 13 December 2024 and there is no suggestion that this disclosure, which occurred nearly a year ago, has led to any adverse consequences.

A partial redaction of this record is approved as it is not relevant and does engage the rights to privacy of the foster carer's other children.

(ix) Re CM 26 September 2024:

> [*record of CM's wishes in relation to arrangements for contact*]

CM's feelings regarding his mother and the contact visits are clearly relevant and have been the subject of comment in the Guardian's report. At paragraph

5.3 of that report, he is quoted as saying that he wishes contact to remain supervised since if it were not, his mother would ask questions about coming home. In light of this information being known, it could not be said that there is any risk of significant harm attendant upon this disclosure.

[*update in relation to contact between CM and BM*]

The walk in the Mournes is specifically referenced at para 4.6 of the Guardian's report and therefore no sustainable case could be made for this redaction.

[*record relating to holiday plans of the foster carers*]

The arrangements for the care of CM whilst his foster carers are on holiday are of potential relevance. These events have already occurred and it is difficult to see how such holiday arrangements could possibly be seen to cause a risk of harm.

(x) Re CM 28 October 2024

[*record that updates CM's relationship with paternal family and arrangements within placement*]

The re-establishment of a relationship between CM and his paternal grandmother is detailed in the Guardian's report. Disclosure could not give rise to any risk of significant harm. Anonymous information in relation to a family friend staying in a granny flat could equally not meet the compelling test set out in *Re T* nor are any article 8 rights engaged.

(xi) Re CM 23 December 2024:

[*CM's views around a discussion with AM at contact*]

This issue around contact and a playstation for Christmas is referenced in the Guardian's report at para 4.15. Disclosure of this part of the report could not meet the risk of significant harm test.

(xii) Re CM 23 March 2025

[*record of CM contact with his paternal grandmother*]

The fact of the relationship with the paternal grandmother is known to the mother as a result of the Guardian's report (if not otherwise). This could not therefore be a realistic candidate for redaction.

Consideration

[17] It will be evident therefore that, save for one redaction of wholly irrelevant material, none of the proposed redactions ought to be made on proper application of the established legal principles.

[18] This conclusion accords with the professional opinion of the Guardian. She recognises that both children are hyper-vigilant regarding possible reactions their mother may have in relation to comments made about her or their respective placements. However, she concludes that disclosure would not meet the threshold of the real possibility of significant harm. Indeed, the concerns expressed by the children could relate to any case where conversations with social workers and professionals are disclosed to parents. There is nothing to indicate any compelling basis for non-disclosure nor does this case fall into a category of exceptionality.

[19] The rules around disclosure in family cases exist for good reason. Litigants who are pitched against state agencies in cases regarding the future care of their children are entitled to call evidence, make representations and challenge the case advanced against them. In order to do so effectively, full disclosure of all relevant material is a necessary part of the litigation process. Such proceedings will always cause distress and worry to those who are affected by their outcome but it can only be in rare cases, where there is a risk of significant harm which outweighs the right of a party to a fair trial, that this can be interfered with. It follows therefore that these applications ought to be rare and Trusts and their advisors should carefully consider the legal tests laid down before bringing such a matter before the court. Responsibility for making this type of application rests with the Trust and ought not to be ceded to individuals affected, however genuine their concerns.

[20] The application to redact the statutory reports prior to disclosure is therefore refused, save for the one minor matter relating to irrelevant material.

[21] AM, as a litigant in person, should therefore be provided with the documents by way of disclosure, on condition that she signs an undertaking in the form of Annex 2 to the judgment of McFarland J in *A Health and Social Care Trust v A Mother and A Father* [2024] NIFam. This undertaking should contain a specific promise on the part of AM not to discuss the contents of any of the disclosed documents with the children. This ought to alleviate some of the concerns expressed and ensure that the documents are used exclusively for the purposes of the litigation.