

JOINT PROTOCOL MINISTRY OF JUSTICE AND DEPARTMENT OF CHILD, YOUTH AND FAMILY, 1 JULY 2000

NOTE This protocol has been updated to account for the following changes:

- (a) the Department for Courts is now the Ministry of Justice;
- (b) Child, Youth and Family Services is now Child, Youth and Family; and
- (c) the Care of Children Act 2004 and the Family Courts Rules 2002 have been passed.

No substantive changes have been made.

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REFERRAL BY THE FAMILY COURT TO CHILD, YOUTH AND FAMILY

Introduction

This protocol details the service requirements to ensure that there is an effective and efficient child protection network for vulnerable and at risk children, young people and families.

This protocol specifies three tracks for referral by the Family Court to Child, Youth and Family. The fourth track details the reciprocal arrangements for the lawful exchange of information between the Department and the Ministry and between the Court and Child, Youth and Family.

The tracks are:

1. Section 15 CYP&F Act 1989 reporting of ill-treatment or neglect of child or young person.
 2. Section 19(1)(b) CYP&F Act 1989 referrals of care or protection cases to the Care and Protection Co-ordinator.
 3. Section 132 Care of Children Act 2004 reports from Director-General for social work report.
 4. Requests for information.
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Liaison

The Ministry of Justice liaison person in each location will be the Family Court Co-ordinator. Each Child, Youth and Family site will identify a Court liaison person.

The liaison role will be to jointly monitor timeliness, quality of referrals and reports, and to facilitate regular meetings, including the judiciary and other relevant parties, to ensure that the protocol is working effectively in each area.

Process for referral

The Family Court has a number of legislative options for requesting either information to assist the Court or requiring care and protection action by Child, Youth and Family.

Child, Youth and Family may approach the Court to review the track option chosen by the Court or the timeframes, if either appears to be inappropriate.

The Court will make referrals to Child, Youth and Family on the appropriate form:

- Form 001, Track 1, S 15 Referral to Child, Youth and Family
- Form 002, Track 2, S 19 Referral to Care & Protection Co-ordinator
- Form 003, Track 3, S 132 Referral for Social Work Report

See *Appendix A: Table for a summary of the referral tracks*

Appendix D: For a table of forms

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SECTION 15 CYP&F ACT 1989 REPORTING OF ILL-TREATMENT OR NEGLECT OF CHILD OR YOUNG PERSON: TRACK 1

Referrals

If the Court in any proceedings before it believes that any child or young person may have been, has been, or is likely to be harmed (whether physically, emotionally or sexually), ill-treated, abused, neglected or deprived, a s 15 referral may be made to Child, Youth and Family by the Court for an investigation under s 17.

This referral will be made to the National Call Centre or Duty Social Worker not the Care and Protection Co-ordinator.

This referral will be made on Form 001, and on judicial direction will include copies of relevant affidavits, orders and reports.

Any request by a third party to Child, Youth and Family for the information provided by the Court should be referred to the Court.

If a critical or very urgent risk is suspected, the notification should be immediately phoned to the National Call Centre or Duty Social Worker and the forms faxed.

Child, Youth and Family action

1. On receipt of the notification, the receiving Child, Youth and Family site will advise the Court **preferably within one working day** or as soon as possible:
 - the date the notification was received;
 - the response time assigned to it (see 2 below);
 - if there is a current investigation; and
 - the allocated social worker (where possible).

(See s 15 response form 001: Initial report)

2. Child, Youth and Family will prioritise cases according to the time within which an investigation will commence.

Initial response requirements are:

- critical (same day);
- very urgent (same day plus 1);
- urgent (within 7 days);
- low urgency (within 28 days); or
- no further action.

3. When the investigation into the s 15 notification is completed Child, Youth and Family will provide the Court with a brief **written** report, **as soon as is practicable**, conveying the outcome of the investigation and any further actions planned (s 17(3)).

If the Court requires substantive details regarding the outcome of the case the Court will request a s 132 (Care of Children Act 2004) report to provide such details.

(See s 15 response form 001: Outcome of investigation)

**Information
sharing with
section 15
notifications**

Communication and relationship building between the Department and the Ministry is seen as the key to ensuring that s 15 notifications are effectively managed. Child, Youth and Family and Courts staff are encouraged to keep in touch about the progress of the case.

Until a case has been allocated the liaison person will ensure that the Court is kept informed of the progress in allocating the case and the expected final response time from Child, Youth and Family to Courts.

The allocated social worker in Child, Youth and Family and the Family Court Co-ordinator in Courts should ensure that the Department and the Ministry are kept fully informed, as soon as possible, of any changes in the child's circumstances or significant events – such as care arrangements, related orders, family/whanau meetings or Family Group Conferences.

SECTION 19(1)(b) CYP&F ACT 1989 REFERRALS OF CARE OR PROTECTION CASES TO THE CARE AND PROTECTION CO-ORDINATOR BY COURT: TRACK 2

Referrals

Where in any proceedings the Court **believes** that any child or young person is in need of care or protection on one or more of the grounds specified in s 14(1) of the Act, the Court may refer the matter to a Care and Protection Co-ordinator under s 19(1)(b) of the CYP&F Act.

The referral will be made on **Form 002**, and upon judicial direction will include copies of all relevant affidavits, orders and reports.

Any request by a third party to Child, Youth and Family for the information provided by the Court should be referred to the Court.

Child, Youth and Family action

The Child, Youth and Family C&P Co-ordinator will provide a report to the Court to indicate **intended** action within **seven days**.

(See s 19 Form 002: Initial report to be completed)

1. When the referral has been accepted and an FGC is to be convened, an invitation will be extended to counsel for the child or, in the case of an application under the Domestic Violence Act, counsel to assist the Court, to attend the FGC, pursuant to s 22(1)(h) of the Act.
 2. The Co-ordinator will advise the Court if a social work report has been requested and the expected timeframe for the completion of that report.
 3. The Care and Protection Co-ordinator must report to the Court **within 28 days** (s 19(4)(a) or (b) CYP&F Act).
 4. The final written report will meet the timeframes established by/or negotiated subsequently with the Court.
 5. Where an FGC has been held a copy of the FGC recommendations, decisions and plans will be provided to the Court.
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Response times

1. Receipt of referral: report to Court on intended action within seven working days.
 2. Statutory requirement for report to Court is 28 days, (ss 19(4)(a) or (b)).
 3. Final report to Court by agreed date.
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SECTION 132 CARE OF CHILDREN ACT 2004 REPORTS FROM CHIEF EXECUTIVE: TRACK 3

Referrals

Requests for reports under s 132 Care of Children Act 2004 are specific to day-to-day care and contact issues and are confined to the parties to those proceedings.

Section 132 requests will not be used to activate general care or protection investigations in place of s 15 or s 19(1)(b) CYP&F Act, or to investigate placement options for a child other than with the parties to the proceedings.

The referrals will be made on **Form 003**, and upon judicial direction will include copies of relevant affidavits, orders and reports.

Any request by a third party to Child, Youth and Family for the information provided by the Court should be referred to the Court.

Referrals will be forwarded to the Duty Social Worker, or designated person at the relevant site.

S 132 reports

The following table identifies two types of s 132 reports:

Report	Information included
Limited report	<p>A report with a specific brief from the Court as to the issues to be reported on, e.g:</p> <ul style="list-style-type: none">• whether the family is known to Child, Youth and Family, as per Track 4, this may include details of any previous/current notifications/history with Child, Youth and Family, i.e, a file search.• specific details for access arrangements. <p>Where such a brief is given a short and focussed report will be expected back rather than a lengthy assessment.</p> <p>Whatever the brief the report should always include additional information which may be relevant to the proceedings, for example, an acknowledgement that there is a current investigation being undertaken, the parties are known to Child, Youth and Family, etc.</p>
General report	<p>A general s 132 report will include:</p> <ul style="list-style-type: none">• details of any current or previous notifications/history with Child, Youth and Family;• information regarding dates of interviews/contact with the parties, child(ren), other significant adults involved;• background information;• present circumstances;• parenting ability;• relationship to the child;• future plans;• extent of co-operation with other parties. <p>The report must also address any specific issues identified by the Court.</p>

Note

1. If a social worker forms a suspicion in preparing a report that there are care or protection issues, they must take the appropriate action under s 15 and advise the Court as soon as possible..
2. Section 132 reports remain the property of the Court and cannot be provided to third parties. Any request for access to the s 132 report must be referred to the Court.

Response time

The specific time for reporting back will either be established in the brief or negotiated and recorded subsequently.

A general report would be expected to take six weeks to prepare but it is expected that a limited report would be able to be provided within a much shorter timeframe.

(See Track 4 for additional information)

REQUEST FOR INFORMATION: TRACK 4

Introduction

These are the processes that will establish the arrangements for the lawful provision of information between the Ministry of Justice, the Court and Child, Youth and Family. Child, Youth and Family may also use this track to get information from the Court as part of a care or protection investigation.

Child, Youth and Family will provide the Court with information under s 132 of the Care of Children Act 2004.

The Ministry of Justice will provide information to Child, Youth and Family in accordance with any requests under s 66 of the CYP&F Act 1989.

Court records can be addressed by Child, Youth and Family in accordance with the relevant search rules.

(See Appendix B)

Making requests

The following details the procedures for accessing information from:

1. Child, Youth and Family to the Court.
 2. The Ministry of Justice to Child, Youth and Family.
 3. The Court to Child, Youth and Family.
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1. Information provided by Child, Youth and Family to the Court by a section 132 report

The Court may request a s 132 report from Child, Youth and Family specifically to determine whether Child, Youth and Family has had:

1. previous, or current involvement with the family named in the request; and
2. whether there are any current orders.

It is not expected that this report will provide the substantive details of Child, Youth and Family's involvement. If this information is later required by the Court an additional report may be requested.

Response times

A specific and limited report could be provided in one working day.

(See s 132 Form 003: CYF response)

The timeframe for a more detailed report will either be established in the brief or negotiated and recorded subsequently.

2. Information provided by the Ministry of Justice to Child, Youth and Family under section 66 CYP&F Act

Access to Ministry of Justice information

Child, Youth and Family can request information held by **Ministry of Justice**, not the Court, pursuant to its specific statutory powers, under s 66 CYP&F Act.

The Ministry of Justice will provide Child, Youth and Family with information held by the **Ministry**, not the Court, in accordance with s 66 of the CYP&F Act. Ministry of Justice information would include information held on the Family Court database or the equivalent manual registers. This could include information about current proceedings, orders etc, but not substantive details.

3. Information provided by the Court to Child, Youth and Family: Search rules

Access to Court files

Child, Youth and Family may request the Registrar for access to the Court files in accordance with the appropriate search rules.

The most relevant rules for the purposes of this protocol are as follows:

- (a) Rule 8 of the Family Proceedings Rules generally governs access to information concerning proceedings under the Family Proceedings Act 1980 and Care of Children Act 2004 in the Family Court and where a proper interest has been established in the proceedings.
- (b) Rule 95 of the Domestic Violence Rules governs access to information concerning proceedings under the Domestic Violence Act.

(See Appendix B for a summary of search rules)

Response time

Information from local **Ministry of Justice** records could be provided within one working day.

Timeframes for access to **Court files** will be negotiated with the Court by Child, Youth and Family.

**APPENDIX A:
REFERRALS FROM COURTS FOR SERVICES FROM CHILD, YOUTH AND FAMILY**

The following table summarises the legislative criteria for each referral track, including its purpose, the action required by Child, Youth and Family, and possible outcomes.

Track	Criteria	Purpose	Action by CY&F	Outcome
Section 15 CYP&F Act	Belief that a care or protection issue may exist (s 14 grounds).	Statutory Child, Youth and Family investigations to determine care or protection issues.	<ul style="list-style-type: none"> • Referral accepted. Court advised within one working day of priority assigned to case. • Consult with Care and Protection Resource Panel (CPRP). • Possible SAT/CAT (i.e. joint investigation with police). • SW assessment – formulation of belief (s 14 grounds). 	<ul style="list-style-type: none"> • Social work investigation and assessment completed, identifying any further action required. • Brief written report to Court of outcome of investigation.
Section 19(1)(b) CYP&F Act	<p>Belief (s 14 ground) formed by Court (including counsel) that a care or protection issue exists.</p> <p>Note: All information relevant to this belief needs to be supplied as per the protocol to reduce the necessity for a Child, Youth and Family investigation.</p>	Care and Protection Co-ordinator (CPC) to consider and, if appropriate, holds family group conference (FGC) to resolve care or protection issues, or to suggest alternative action.	<ul style="list-style-type: none"> • CPC reports to Court of intended action, within seven days of receiving referral. • CPC may ask for s 19(3) social work investigation (outcome to CPC, not Court). • CPC consults Care & Protection Resource Panel. • CPC convenes FGC (counsel for child attends FGC). • CPC must report back to Court within 28 days. 	<ul style="list-style-type: none"> • FGC Plan. • Copy of recommendations, decision and/or plan sent to Court. • Court orders possible. • A report to the Court on action taken.
Section 132 Care of Children Act 2004	Caregiver dispute (proceedings on guardianship/day-to-day care/contact). Court requires information as specified, or a general report. The report must include any prior or current Child, Youth and Family involvement with family.	<p>Advice as to applicant/respondent parties' ability to provide care.</p> <p>Note: If the social worker forms a suspicion or belief there are care or protection issues, s/he must make a s 15 notification under s 17 of the CYP&F Act. The Court is to be advised if this occurs.</p>	<ul style="list-style-type: none"> • Social work report prepared for Court as per Judge's direction within agreed timeframe. 	<ul style="list-style-type: none"> • Court makes decision about orders under Care of Children Act 2004.

Track	Criteria	Purpose	Action by CY&F	Outcome
Information request	<p>Court requires information as specified under s 132 request.</p> <p>Child, Youth and Family may seek information from Ministry (s 66 CYP&F Act), and/or require access to Court records as specified under the search rules.</p>	<p>The Court has information relevant to any proceedings to ensure the care or protection needs of a child/young person are met.</p> <p>Child, Youth and Family has information relevant to a current investigation.</p>	<ul style="list-style-type: none"> • Information requested by Court is provided in s 132 report. • Information made available as per protocol. 	

**APPENDIX B:
SUMMARY OF SEARCH RULES**

Requests for access to Court records

Child, Youth and Family may request access to Court files in accordance with the appropriate search rules.

Family proceedings

- (i) Rules 426-434 of the Family Courts Rules generally govern access to information concerning family related proceedings in the District Court that have been determined and where a genuine or proper interest has been established.
- (ii) Part 3 subpart 2 of the High Court Rules generally governs access to information concerning family related proceedings in the High Court and Court of Appeal that have been determined and where a genuine or proper interest has been established.
- (iii) Rule 8 of the Family Proceedings Rules governs access to information concerning proceedings under the Family Proceedings Act 1980 and Care of Children Act 2004 in the Family Court and where a proper interest has been established.
- (iv) Other relevant search provisions are rule 95 of the Domestic Violence Rules and s 23 of the Adoption Act 1955.

Criminal proceedings

- (i) Section 71 of the Summary Proceedings Act permits a certified copy of convictions to be provided to any person with a genuine or proper interest in respect of summary criminal proceedings in the District Court.
 - (ii) The Criminal Proceedings (Access to Court Documents) Rules 2009 govern access to files, by application to a Judge, in respect of criminal proceedings in the High Court and in respect of Jury trials in the District Court.
 - (iii) Rule 9 of the Children, Young Persons, and Their Families Act 1989 Rules governs access to criminal proceedings in the Youth Court where a proper interest has been established.
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**APPENDIX C:
MEMORANDUM OF UNDERSTANDING
DEPARTMENT FOR COURTS AND DEPARTMENT OF CHILD, YOUTH AND
FAMILY SERVICES
1 JULY 2000**

**SECTION 19(1)(B) CYP&F ACT 1989 REFERRALS OF CARE OR PROTECTION CASES TO THE
CARE AND PROTECTION CO-ORDINATOR BY COURT: TRACK 2**

Background

This protocol was piloted at four Courts and the Courts' associated five Child, Youth and Family sites. An evaluation of the pilot found that:

- There was no demonstrated capacity by pilot sites for the Family Court to reduce professional service costs as a result of the pilot.
 - Child, Youth and Family funding levels were sufficient to meet the demand for s 29 Court reports, except in Christchurch where the Court did fund additional reports.
 - In sites where there was a dedicated resource, either a staff member or a contracted worker, employed to complete s 29 reports, the Court was generally satisfied with the quality of the reports.
 - The protocol resulted in improved relationships between the Courts and Child, Youth and Family sites and greater effectiveness in service delivery in three of the four areas involved in the pilot.
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Outcomes and objectives of the joint protocol

The intended outcome of this protocol is to provide an improved model for the delivery of the reporting services Family Courts need from Child, Youth and Family so that complete and accurate information is available to Judges when making decisions which involve the welfare and safety of children.

All Family Courts and Child, Youth and Family sites will implement the protocol from 1 July 2000.

Approach and plan

The implementation plan will progressively roll out the protocol to provide consistent delivery of Child, Youth and Family services to Family Courts.

The implementation plan is scheduled to meet the following milestones:

Continued on next page

Milestone	Date
Protocol agreed	1 March 2000
Locations and timetable agreed	20 March 2000
Managers' sign off timetable for briefings	20 March 2000
Training for implementation starts	22 March 2000
Memorandum of Understanding signed	26 June 2000
Implementation of protocol	1 July 2000
Interim Report on implementation to Group Managers in both Departments	30 July 2000
Annual Report on implementation to Group Managers in both Departments	30 July 2001

Implementation management

Sponsors

The implementation is jointly sponsored by the representatives of the Chief Executives of the Department for Courts and the Department of Child, Youth and Family Services.

Project Co-ordinators

Carmel McKee, Advisory Officer, Child, Youth and Family, and Judy Moore, Family Account Manager, Department for Courts have been appointed by each department to implement the protocol nationally.

The Project Co-ordinators will be responsible for setting the implementation plan up and co-ordination of its operation within their respective agencies.

They will share tasks and undertake responsibilities in their area of expertise. This will include training for staff in both departments and for any new data capture required to meet operational requirements.

They will also act as advisors to front-line staff in the operation of the protocol.

Judy Moore will be responsible for liaison with judiciary.

Benefits and risk management

The **benefits** of implementing this protocol are expected to be:

- improvements to the quality, timeliness and quantity of reports available to Family Courts from Child, Youth and Family;
- improvements to the specificity and quality of referrals received from Family Courts to Child, Youth and Family.
- improved communication between Courts and Child, Youth and Family.

The **risks** are that:

- there will be no perceived improvement in the timeliness and quality of reports provided by Child, Youth and Family;
 - work volumes for both departments will grow beyond current funding and service capacity;
 - inappropriate referrals will be made by Department for Courts.
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**PROTOCOL BETWEEN
THE DEPARTMENT OF CHILD, YOUTH AND FAMILY SERVICES
AND THE FAMILY COURT**

1 JULY 2000

1. Purpose of agreement

The Chief Executive, Department for Courts and the Chief Executive, Department of Child, Youth and Family Services have agreed to enter into a Memorandum of Understanding in relation to the services which Child, Youth and Family provides to the Family Court.

2. Memorandum of Understanding

Signatories to the Memorandum of Understanding - Operational Managers in each agency, namely Fiona Saunders-Francis, Manager Operational Policy, Department for Courts and Ken Rand, General Manager Service Delivery, Child, Youth and Family.

Period covered by the Memorandum of Understanding - The Memorandum will come into force on 1 July 2000 and continue at the discretion of the Operational Managers.

Dispute resolution - The departments agree that any disputes between them, which cannot be resolved, will be taken to the relevant Operational Managers in the first instance and then to Chief Executives.

Request for reports from Child Youth and Family - All judicial requests for s 29 reports under the Guardianship Act 1968, notifications under s 15 or referrals under s 19 Children, Young Persons, and Their Families Act 1989 will be forwarded to the local Child, Youth and Family Duty Social Worker, or the National Call Centre on the forms identified in Appendix D.

3. Funding for services

Funding - Referrals from the Courts under s 15 and s 19 Children, Young Persons, and Their Families Act 1989 and s 29 Guardianship Act 1968 are included in the service level agreement and will all be funded from Vote: Child, Youth and Family.

Signed on behalf of the Department for Courts by

Fiona Saunders-Francis, Manager Operational Policy

Acting under delegation pursuant to the State Sector Act 1988

Signed on behalf of the Department of Child, Youth and Family Services

by **Ken Rand**, Group Manager Service Delivery

Acting under delegation pursuant to the State Sector Act 1988

Date:

**APPENDIX D:
FAMILY COURT REFERRAL FORMS FOR SERVICES FROM
CHILD, YOUTH AND FAMILY**

TABLE OF FORMS

These forms are available from local Family Courts or the local office of Child, Youth and Family.

Court/CYF 001	Track 1 Section 15 CYP&F Act 1989 Court Referral to Child, Youth and Family Child, Youth and Family Interim and Final Report forms
Court/CYF 002	Track 2 Section 19(1)(b) CYP&F Act 1989 Court Referral to Care and Protection Co-ordinator Care and Protection Co-ordinator Interim Report form
Court/CYF 003	Track 3 Section 132 Care of Children Act 2004 Referral for Social Work Report Child, Youth and Family Report for s 132 Information Request

**APPENDIX E:
SECTION 14(1) DEFINITION OF CHILD OR YOUNG PERSON IN NEED OF
CARE OR PROTECTION, CHILDREN, YOUNG PERSONS,
AND THEIR FAMILIES ACT 1989**

- (1) A child or young person is in need of care or protection within the meaning of this Part of this Act, if –
- (a) The child or young person is being or is likely to be, harmed (whether physically or emotionally or sexually), ill-treated, abused, or seriously deprived; or
 - (b) The child's or young person's development or physical or mental or emotional wellbeing is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable; or
 - (c) Serious differences exist between the child or young person and the parents or guardians or the other persons having the care of the child or young person to such an extent that the physical or mental or emotional wellbeing of the child or young person is being seriously impaired; or
 - (d) The child or young person has behaved, or is behaving, in a manner that:
 - (i) Is, or is likely to be, harmful to the physical or mental or emotional wellbeing of the child or young person or to others; and
 - (ii) The child's or young person's parents or guardians, or the persons having the care of the child or young person are unable or unwilling to control; or
 - (e) In the case of a child of or over the age of 10 years and under 14 years, the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child; or
 - (f) The parents or guardians or other persons having the care of the child or young person are unwilling or unable to care for the child or young person; or
 - (g) The parents or guardians or other persons having the care of the child or young person have abandoned the child or young person; or
 - (h) Serious differences exist between a parent, guardian, or other person having the care of the child or young person and any other parent, guardian, or other person having the care of the child or young person to such an extent that the physical or mental or emotional wellbeing of the child or young person is being seriously impaired; or
 - (i) The ability of the child or young person to form a significant psychological attachment to the person or persons having the care of the child or young person is being, or is likely to be, seriously impaired because of the number of occasions on which the child or young person has been in the care or charge of a person (not being a person specified in subsection (2) of this section) for the purposes of maintaining the child or young person apart from the child's or young person's parents or guardians.