

Legal Blogging in the Family Court



Transparency Project

MAKING FAMILY JUSTICE CLEARER

The Transparency Project

2 February 2023



- We can't cover everything - see pack for more info/signposts
- We will record the talk NOT the Q&A
- No such thing as a silly question
- Please email after with any remaining queries



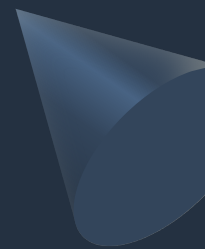
What you need to know

- Who can be a legal blogger – and why would you want to bother?
- How do I work out which cases to observe?
- Am I allowed to attend?
- How should I behave when blogging?
- Will I need / how do I get permission to report?
- What difference will the new pilot make?
- The role of the Transparency Project



What is a legal blogger?

And what is legal blogging?



Not all bloggers about law are 'legal bloggers'

- Anyone can blog (write online) about law
- Anyone can write about cases or law without attending the hearing to observe
- This may be in the form of legal or other comment, explanation, legal journals, marketing etc.
- 'Duly authorised lawyer' AKA LEGAL BLOGGER:
 - Attending (private) hearings to observe in capacity as 'duly authorised lawyer'
 - Only for journalistic, research or public legal educational purposes
 - NOT otherwise involved in the case
 - Permission to report may still be required



Why on earth...? (pros and cons)

- Unpaid and on my day off!
- Out of comfort zone
- Uncomfortable critiquing colleagues / peer or judicial disapproval
- I might have to apply for permission to report
- What if I do a contempt?
- It won't make a difference / what I have to say isn't interesting
- Perspective shift
- Personal professional development (advocacy, client care, legal knowledge, writing & communication skills)
- Blogging AND pilot endorsed by senior judiciary
- Complements mainstream media - your perspective and knowledge are valuable
- It does make a difference - gaining critical mass

The bare bones of the legal framework

Most family proceedings
in private (r 27.10)
NB PD 30B re appeals to
FamDiv

Media right of
attendance at most
hearings (27.11 / PD27B)

Includes 'legal bloggers'
(duly authorised lawyers
attending for journalistic,
legal education or
research purposes)

Publication of judgments
- encouraged via
guidance in 2014, limited
impact. Publication now
via The National Archives

Children cases - default
position : very little can
be reported without
permission

Money cases - default
position i.e. how much
can be reported without
permission : in need of
clarification



RIGHT OF ATTENDANCE : FPR 27.11(2) / PD27B

- **Journalists** = (f) duly accredited representatives of news gathering and reporting organisations (since 2009)
- **Legal bloggers** = (ff) a duly authorised lawyer attending for journalistic, research or public legal educational purposes (since 2018)
- Duly authorised = i) practising cert; ii) lawyer with a HE institution; iii) lawyer working with educational charity registered with President (i.e. TP)
- Lawyer = QLD, CPE, GDL, SQE, PG legal qualification or CILEX L6 diploma/fast-track diploma

FPR 27.11(2) / PD27B

- Applies to almost all hearings held in private (not FDR or conciliation type hearings, not adoption/HFEA)
- Reporters do not need to 'apply' – parties must raise objections w/ref to r27.11 (or court can exclude of own motion)
- Reporter has right to make representations (r27.11(4))
- Exclusion may be for whole or part of hearing



27.11(3) – exclusion of reporters

At any stage of the proceedings the court may direct that persons within paragraph (2)(f) and (ff) shall not attend the proceedings or any part of them, where satisfied that –

(a) this is **necessary** –

(i) in the interests of any child concerned in, or connected with, the proceedings;

(ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or

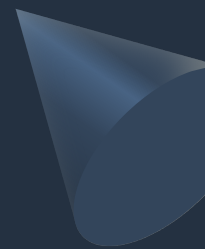
(iii) for the orderly conduct of the proceedings; or

(b) justice will otherwise be impeded or prejudiced.



Children Cases

A bit more detail about the law



S97 Children Act 1989

Protects identity of subject child AS subject child (name, pic, address) to public at large or any section of public (template order is too broad)


Applies only during proceedings (unless extended)

Can be relaxed (s97(4)) where 'welfare requires' (which may include where necessary to properly balance Art 10/8 rights)

Criminal offence if breached



S12 Administration of Justice Act 1960

- The publication of “information relating to proceedings before any court sitting in private” isn’t a contempt, except when it is:
 - All CA 1989 (incls sch 1) / ACA 2002 / IJ children cases
 - Any other case wholly or mainly concerned with the maintenance or upbringing of a child
 - But not a contempt if authorised by rules of court (FPR 12.73, 12.75, PD12G)
 - The FPR create many types of permitted disclosure but expressly do not permit ‘communication to the public at large, or any section of the public, of any information relating to the proceedings’ (12.73(1)(b))
- 

Definitions – “Information relating to the proceedings”

Prohibited (non exhaustive):

- accounts of what has gone on in front of the judge sitting in private,
- documents such as affidavits, witness statements, reports, position statements, skeleton arguments or other documents filed in the proceedings, transcripts or notes of the evidence or submissions, and transcripts or notes of the judgment,

Kent County Council v B, sub nom Re B (A Child) (Disclosure) [2004] EWHC 411 (Fam);
[2004] 2 FLR 142 (pa 66)



Definitions – “Information relating to the proceedings”

Not prohibited (subject to s97 CA):

- the fact that a child is the subject of proceedings of the sort described in s12
- the name, address or photograph of such a child
- the name, address or photograph of the parties (or, if the child is a party, the other parties)
- the date, time or place of a past or future hearing of such proceedings
- the nature of the dispute in such proceedings
- anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing in private is taking place
- the text or summary of the whole or part of any order made in such proceedings
- *Kent County Council v B, sub nom Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam); [2004] 2 FLR 142 (pa 65)

Definitions - "Publication"

S12 AJA

- ...there is a "publication" for the purposes of section 12 whenever the law of defamation would treat there as being a publication.
- ...this means that most forms of dissemination, whether oral or written, will constitute a publication
- *Kent County Council v B, sub nom Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam); [2004] 2 FLR 142 (pa 71)

S97 CA 1989

- Note narrower definition of publication for these purposes - 'public at large or any section of the public'.

Definitions - "Publication"

Importance of FPR/PDs

- At the time of *Kent CC v B [2004]*, dissemination of information or documents to a journalist, MP, a Minister, a Law Officer, the DPP, the CPS, the police (except when exercising child protection functions), the GMC, or any other public body or public official were prohibited.
- Note subsequent relaxation of some of the bite of s12 via FPR 12.73/12.75 and PD12G / 12E which render many of those sorts of 'publications' permissible and thus not a contempt for the purposes of s12 - usually dependent on there being a permitted purpose, disclosure to a specified person or body and restricted onward distribution.



Combined effect of s97 and s12

- V little can safely be reported
- Permission is usually required prior to publication of meaningful report of a hearing
- Primary reason why media only rarely make use of their right of attendance since 2009
- One of the major barriers to transparency which the pilot is designed to tackle
 - by relaxing s12



Adjusting the default provisions

FPR empowers court to adjust default provisions:

12.73(1)(b) and (c) authorise the court to permit other disclosure or adjust default permissions in 12.75 / PD12G

Not a contempt to publish the text or a summary of the whole or part of an order made by a court sitting in private unless expressly prohibited (but NB s97 CA 1989)

Where case concerns potential publication of information to world at large the court may need to consider matters using IJ / HRA approach



Lord Steyn's four propositions

First, **neither article has as such precedence** over the other. [Art 8 / 10]

Secondly, where the values under the two articles are in conflict, an **intense focus on the comparative importance of the specific rights being claimed in the individual case** is necessary.

Thirdly, the **justifications for interfering with or restricting each right must be taken into account.**

Finally, the **proportionality** test must be applied to each. For convenience I will call this the **ultimate balancing test.**

(Re S [2004] UKHL 47, pa 17)



The four propositions

- "There is express approval [in *Re S*] of the methodology in *Campbell* [*v MGN Ltd* [2004] 2 WLR 1232] in which it was made clear that each Article propounds a fundamental right which there is a pressing social need to protect. Equally, each Article qualifies the right it propounds so far as it may be lawful, necessary, and proportionate to do so in order to accommodate the other. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither Article has precedence over or trumps the other. The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. **It is not a mechanical exercise to be decided on the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual cases is necessary before the ultimate balancing test in the terms of proportionality is carried out.**" (per Wall J in *Re W* [2005] EWHC 1564 (Fam))
- Fact specific parallel analysis should be a familiar exercise for family lawyers & judges (*Re BS* holistic analysis)
- Welfare is important but NOT paramount because the decision is not about upbringing of a child. It is a primary consideration (not THE primary consideration - *ZH (Tanzania) v SSHD* [2011] UKSC 74)
- Welfare is a component of a child's Article 8 rights
- See *Griffiths v Tickle & Ors* [2021] EWCA Civ 1882 for a recent e.g. of a highly fact specific application of the parallel analysis

President's Reporting Pilot

Launching 30 Jan 2023 for 12 months in Cardiff, Leeds & Carlisle (Initially, only public law children cases and only DJ and above - will be extended)

Effectively reverses the presumption against reporting created by s12 AJA and permits anonymised reporting by means of a 'Transparency Order', similar to CoP

Court still sits in private, parties not allowed to publish, but reporters (incl bloggers) may attend & report without application (subject to TO)

Reporting usually allowed from end of the hearing in question, once terms of TO finalised

Pilot explicitly permits parties to talk to journalists, and sharing for editorial purposes

Judge always retains ultimate control - some cases may not be suitable for reporting

Pupils, trainees and non-practising lawyers

- If you do not have a PC but you DO have a relevant qualification (QLD, CPE, GDL, SQE, PG legal qualification or CILEX L6 diploma/fast-track diploma) you can attend under FPR 27.11 IF:
 - Your HEI provides a letter of authorisation OR
 - The Transparency Project provides a letter of authorisation
 - TP requirements:
 - Completion of a case / article write up on a family court case for lay reader in accordance with our editorial guidelines
 - Satisfied you have the legal skill to ensure adherence to rules and limits of permission
 - Publication on TP site (allows editorial oversight)



Legal blogging & reporting pilot materials

President's Guidance (NB various iterations, most recent is 26 Jan 2023 version)

Transparency Order (.dotx format NOT the version appended to November guidance)

Pilot explanatory leaflet for families

Re: BR and others (Transparency Order: Finding of Fact Hearing) [2023] EWFC 9, Poole J

Transparency Project Guidance for judges and lawyers - What to do if a reporter attends (or wants to attend) your hearing

Legal bloggers page (including TP legal bloggers leaflet)
www.transparencyproject.org.uk/legalbloggers

Training videos on TIG site www.thetig.org.uk

Finding and choosing a case

- Check the lists the afternoon before (decipher case numbers)
- Turn up on the day and check list / ask usher / take pot luck!
- Let friendly judiciary know of interest in cases on a particular topic?
- Via published judgment - enquire of court / judicial press office if you identify a case remitted post appeal
- Sign up to TP email list to be notified if we have been told about a case of interest

Conduct and boundaries



Exclusion:

Right of attendance \neq right to report.
Concerns about identification or what might be reported \neq a basis for your exclusion.

'Family proceedings are heard in private' is not a reason to exclude (if it was the rule would be redundant)

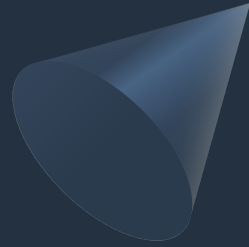


Etiquette:

You don't have to reveal your journalistic source - just say no
Give notice if you can (not always possible)
Be proactive - ask for docs, flag issues, check terms, suggest solutions
Leave no footprints

Suggestions for non-pilot cases





Questions?



Find out more

- Website: transparencyproject.org.uk
- Twitter: [@seethrujustice](https://twitter.com/seethrujustice)
- Mastodon: seethrujustice@mas.to
- LinkedIn: linkedin.com/company/the-transparency-project
- Facebook: www.facebook.com/transparencyproject/
- Email: info@transparencyproject.org.uk



Transparency
Project

THE TRANSPARENCY REPORTING PILOT

GUIDANCE FROM THE PRESIDENT OF THE FAMILY DIVISION

INTRODUCTION TO THE TIG

1. In October 2021, I published Confidence and Confidentiality: Transparency in the Family Court, a review of the issue of transparency in family justice. I made several recommendations for achieving better and purposeful transparency in the family justice system.
2. In November 2021, I set up the Transparency Implementation Group. The aim of the TIG is to pilot and oversee implementation of the recommendations within my report. The TIG had its first meeting in December 2021 and has been working to implement the recommendations since, mainly in sub-groups with allocated responsibilities.
3. In the report, I said:

“My overall conclusion is that the time has come for accredited media representatives and legal bloggers to be able , not only to attend and observe family court hearings , but also to report publicly on what they see and hear. Reporting must be subject to very clear rules to maintain both the anonymity of the children and family members who are before the court, and confidentiality with respect of intimate details of their private lives. Openness and confidentiality are not irreconcilable, and each is achievable. The aim is to enhance public confidence significantly, whilst at the same time firmly protecting continued confidentiality.”

4. Since December 2021, a sub-group led by Mrs Justice Lieven and consisting of a litany of different stakeholders from the TIG has been designing a pilot scheme to allow reporting of family proceedings as the default position.
5. I have invited three DFJ areas in England and Wales to road test what is known as the Reporting Pilot (“RP”). The areas have been carefully chosen to ensure a representative mix for sampling and evaluation, a mix of rural and urban communities. The areas that will take part in the RP are Cardiff, Leeds and Carlisle. The pilot will run from January 2023 – January 2024.
6. This document sets out the basis of the pilot and the rules. It is intended to be authoritative guidance for all those who take part in the pilot.

AIMS OF THE PILOT

7. The pilot will run over a period of 12 months and be subject to independent evaluation. The pilot will launch on 30 January 2023.
8. The aim of the RP is that in the designated courts, accredited journalists and 'legal bloggers' (i.e. 'duly authorised lawyers' for the purposes of Family Procedure Rules 2010, r.27.11) will be allowed to report on what they see and hear in court ("the transparency principle").
9. All reporting will be subject to the principles of protection of the anonymity of any children involved unless the Judge orders otherwise ("the anonymity principle").
10. The Court may depart from the transparency principle in any case. In deciding whether to restrict reporting, the Court must ensure the rights of the family and parties to a fair trial under Article 6 ECHR and must balance the rights to a private and family life under Article 8 ECHR, and the rights of the press, public and parties under Article 10 ECHR (or any other relevant rights which may be engaged).

WHO MAY ATTEND AND REPORT ON FAMILY PROCEEDINGS IN THE PILOT?

11. Only "pilot reporters" may attend and report on proceedings taking place in a designated RP Court.
12. The meaning of "pilot reporters" is any duly accredited representative of a news gathering or reporting organisation or duly authorised lawyer (legal blogger) who may attend a hearing under FPR r.27.11. Terms defined in, or under, FPR r.27.11 will have the same meaning in the RP.
13. At present, a duly accredited journalist, which means a journalist who carries a UK Press Card, or a legal blogger may attend a family court hearing as of right. The right of a journalist or blogger to do so in any pilot court is unchanged.
14. The Court retains a discretion to permit attendance by a person other than a pilot reporter pursuant to FPR r.27.11(2)(b), including but not limited to non-UK Press Card Authority accredited media (FPR Practice Direction 27B, para 4.3).
15. Where a pilot reporter attends a hearing, their name and contact details should be recorded on the case management order from the hearing.

THE TRANSPARENCY ORDER

16. The Court will consider whether to make a Transparency Order in any case where a pilot reporter attends a hearing (remotely or in person). The Court retains a discretion to direct that there should be no reporting of the case.
17. There will be a standard form of Transparency Order, but the Court may modify the terms of the standard order as appropriate on the facts of the case. The Court may do so of its own motion, or by invitation. The Court retains a discretion to (later) vary or discharge the Transparency Order or to direct that there should be no (further) reporting of the case. This discretion may be exercised of the Court's own motion or on application by a party or a pilot reporter.
18. The standard Transparency Order will state that it remains in place until any child to whom the proceedings relate reaches the age of 18.
19. The standard Transparency Order will provide that, in any reporting about the proceedings, the following must not be reported to the public at large, or a section of the public, without the express permission of the Court:
 - a. The name or date of birth of any subject child in the case;
 - b. The name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the child(ren) being identified;
 - c. The name of any person who is a party to, or intervening in, the proceedings;
 - d. The address of any child or family member;
 - e. The name or address of any foster carer;
 - f. The school/hospital/placement name or address, or any identifying features of a school of the child;
 - g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings. This includes photographs of the parents or other parties leaving the Court building;
 - h. The names of any medical professional who is or has been treating any of the children or family member;
 - i. In cases involving alleged sexual abuse, the details of such alleged abuse;
 - j. Any other information likely to identify the child as a subject child or former subject child.
20. For the avoidance of doubt the Transparency Order does not prevent publication by a parent of information that they would ordinarily be permitted to publish, for example information concerning their child, if it does not relate to or refer to the proceedings,

the child's involvement in those proceedings or the evidence concerning that child within the case.

21. Unless the Court orders otherwise the following agencies or professionals may be named:
 - a. The local authority/authorities involved in the proceedings;
 - b. The director and assistant director of Children's Services within the LA (but usually not the social workers working directly with the family, including the Team Manager, unless the Court so orders);
 - c. Senior personnel at Cafcass but not normally the reporting officer, or children's guardian named in the case;
 - d. Any NHS Trust;
 - e. Court appointed experts;
 - f. Legal representatives and judges;
 - g. Anyone else named in a published judgment.

22. In accordance with FPR r.27.11(3), the Court has a discretion to exclude pilot reporters from a particular hearing, or part of a hearing, but this should only be done for specific reasons, and these should be recorded in the case management order. The Court may also determine that there should be no reporting, or restricted or delayed reporting of all, or part, of the proceedings (see paragraphs above relating to the content of a Transparency Order). The Court may also consider whether reporting should be restricted for a certain period or up to an event, for example a criminal trial.

23. The Transparency Order will permit the parties to discuss the proceedings with a pilot reporter (see below) and subject to the terms of the Transparency Order, permit the reporter to quote parties in their reporting. It **will not permit the parties** to themselves publish information from the proceedings where this would be restricted by section 12 AJA1960 and/or the Rules of Court. This includes re-publishing any media articles or blogs written about the case under the pilot, where accompanied by comment that may identify the child concerned.

24. Through the means of the Transparency Order the restrictions on publication contained within s.12 Administration of Justice Act 1960 are varied. No contempt of Court will be committed so long as the terms of the Transparency Order are complied with.

25. In any event, s.97 Children Act 1989, protecting the anonymity of the child, will continue to apply for the duration of the proceedings. The effect of the transparency

order, where made, is to extend that protection until the child's 18th birthday.

26. The fact that the media are aware of the existence and terms of the pilot (which are publicly available), are able to identify the cases to which it applies from the published list, and know in general terms what the terms of a Transparency Order are likely to involve, and that the media may if they wish attend such hearings and make representations about the terms of any individual order are, in combination, sufficient to meet the notice requirements of s12(2) Human Rights Act 1998, and prior notice of the court's intention making of making a Transparency Order is therefore not required.
27. The standard Transparency Order is attached to this guidance. Whether the Order is made in the standard form or in amended form by the judge, the Order needs to be specific, so those to whom it applies know exactly what it permits. This gives everybody clarity, and ensures that the Court will be able to act on any alleged contempt.
28. In a complex case with a number of parties or children, the Court may consider adding a schedule to the Transparency Order to include a form of anonymisation that may be permitted (e.g. Family A, Child BB etc).
29. The Transparency Order and this guidance is available in Welsh. Orders will be made in Welsh if the application is submitted in Welsh and/or if directed by the judge. HMCTS' Welsh Language Unit can be contacted by email, Welsh.Language.Unit.Manager@justice.gov.uk. Any questions about the use of Welsh are to be directed to the Unit in the first instance and may be referred to the Welsh Language Liaison Judge, HHJ Mererid Edwards.

CASES WITHIN THE RP

30. The following cases will be part of the RP:
 - a. All applications for public and private law Orders under Parts II and IV Children Act 1989, including FDAC cases, and applications to discharge, vary or enforce existing Orders.
 - b. All applications for placement orders where the application is made within care proceedings, up to the point at which any placement order is made or the application for a placement order or otherwise is concluded.

- c. All applications under the inherent jurisdiction of the High Court, including applications to authorise the deprivation of a child's liberty.
31. The pilot will commence with public law cases and shortly thereafter extend to private law cases.
 32. Some of the pilot courts run special 'compliance courts', where several cases are block listed before a judge to deal with episodes of non-compliance by a party. Contact the pilot courts for more details.
 33. The pilot does not apply to financial remedy cases or applications under Family Law Act 1996. Section 12 Administration on Justice Act 1960 does not usually apply to such hearings except where the application is wholly or mainly about the upbringing of a child. Section 97 Children Act 1989 does not apply unless those proceedings are consolidated with proceedings under that Act (or insofar as publication of information relating to the FLA/FR proceedings might identify the child as a subject of current but separate children act proceedings). The issue of transparency in financial remedy cases is being looked at by another sub-group of the TIG and does not form part of this guidance.
 34. Rule 27.11 FPR in its current form will continue to apply even in pilot courts, so pilot reporters will not be able to attend hearings currently excluded from r27.11, unless permitted by the Court pursuant to rule 27.11(2)(g).
 35. The RP will apply to all the above categories of case heard by any level of judge of the family court, or in the Family Division of the High Court, save that initially the RP will begin with district, circuit, and High Court judges, and then will be phased to include magistrates at an appropriate point. Depending on the Court centre and the level of interest, the types of cases within the pilot may be phased in.
 36. Rule 27.11 FPR in its current form will continue to apply in pilot courts, so reporters (including pilot reporters) will still be able to attend the specified hearings before magistrates in the family court. If there is a request in those proceedings to report on the case, the magistrates will have to consider whether a Transparency Order should be made, and the reporting allowed. It is not considered that this would justify re-allocating the case to district or circuit judge level. Until the pilot is rolled out to include the magistrates, it is expected that a judge should discharge a Transparency Order if at any time they re-allocate the matter to the magistrates.
 37. The RP does not apply to the Court of Appeal (Civil Division).

CASES THAT REQUIRE SPECIAL CONSIDERATION

38. When deciding whether to make, or vary, a Transparency Order the following categories of case will require careful consideration:

- a. Cases where matters relevant to the case are subject to criminal charges, investigation or proceedings, where reporting may cause prejudice to those proceedings;
- b. Applications that are made without notice, where reporting and or/publication of the hearing or facts would cause prejudice to the applicant.
- c. Cases where it is particularly difficult to achieve anonymity for the child.
- d. FDAC cases, and in particular hearings where there is no legal attendance.

39. Where a pilot reporter would wish to report on a without notice application, the appropriate course of action is to postpone a decision on permission to report, or making a Transparency Order, until a hearing where the parties are on notice.

ACCESS TO PAPERS AND DOCUMENTS

40. The standard Transparency Order should provide that pilot reporters attending any hearing must be given a copy of the Transparency Order. It should also provide that, on request, pilot reporters are entitled to be provided with copies of, see, and quote from:

- a. Documents drafted by advocates or the parties if they are litigants in person: Case outlines, skeleton arguments, summaries, position statements, threshold documents, and chronologies.
- b. Any indices from the Court bundle.

41. Any requests for such documents by pilot reporters must be made at or before a hearing that the pilot reporter is attending in accordance with r.27.11 FPR.

42. Any requests for copy documents must be made to, and complied with, by the party who, or whose advocate, drafted the document in question. The copy documents must be provided to the pilot reporter at a hearing that the pilot reporter is attending in accordance with r.27.11 FPR or within a reasonable time thereafter. Pilot reporters should be prepared to offer a secure email address for digital transmission of

documents by lawyers or lay parties. As the pilot courts are paperless, hard copy documents will not be provided and lawyers, or the Court, are not expected to provide these.

43. As it is not envisaged that documents will be redacted, any quotes from these documents must not breach the requirements for anonymity (see above).
44. Where any document referred to above quotes from a document which the pilot reporter would not automatically be entitled to see (such as source evidence), the passage quoting may not be reproduced or reported without permission of the Court.
45. Any pilot reporter wishing to see any other document from the proceedings must apply to the Court for permission. Such other documents may not be disclosed to pilot reporters without that permission, even if the parties consent to its disclosure.
46. Even if a document is referred to in the hearing, that does not entitle the pilot reporter to see that document in its entirety, although an application may be made at the hearing for access to the document in question. The normal rule in civil proceedings (see CPR1998 r.31.22) does not apply to family cases to which the pilot applies.
47. The Court may permit disclosure to reporters at the outset of a hearing to assist the reporter to understand and follow the proceedings, even though reporting of the contents of the document may be restricted.

PROCEDURE IN PILOT COURTS

48. The Court will consider whether to make a Transparency Order in any proceedings where a pilot reporter attends a hearing (in accordance with rule 27.11 FPR). The Transparency Order will contain provision for parties to make representations if they seek any amendment to the standard order.
49. The Transparency Order will apply to pilot reporters who attend a hearing, and any further reporting of the proceedings. The Court should recite the details of the reporter who requests the making of the Order in the case management order.
50. The Court may at any time, either on application or of its own motion, vary or remove the Transparency Order.
51. Although a pilot reporter may attend the Court hearing without giving notice to the Court or the parties, pilot reporters are strongly encouraged to inform the Court and

(if known) the parties of their plans to attend and report on a particular hearing. This can be done by emailing the general family inbox or telephoning the Court.

52. In considering whether to facilitate remote attendance of an attended hearing by a pilot reporter, the Court should specifically consider Section 85A of the Courts Act 2003; the Remote Observation and Recording (Courts and Tribunals) Regulations 2022 (SI 2022/705); and the Practice Guidance (Open Justice: Remote Observation of Hearings) [2022] 1 WLR 3538. For the duration of the pilot, however, pilot reporters should not expect additional provision to be made, particularly if such requests are made on the day of the hearing.
53. Pilot reporters are asked to attend the hearing at or before the listed start time of the hearing if possible. If a pilot reporter arrives once the hearing is underway, this may be disruptive, and may be a reason for the judge to refuse or defer a decision about reporting.
54. All parties must assist the Court in furthering the Overriding Objective: FPR r.1.3. Parties and their advocates are expected to be prepared to address the Court on whether a Transparency Order should be made, and to what extent at the start of the hearing. The draft Transparency Order sets out the default position, and advocates should therefore raise any issues with reference to the draft.
55. Parties and advocates must consider the issue of transparency prior to the hearing. Transparency should form part of the agenda for every advocates meeting or pre-hearing discussion. Requests for adjournments on the basis that the advocates have failed to consider this issue prior to a hearing may not be granted.
56. For each hearing, the Court order must record the name and contact details of any pilot reporter who attended, and that the pilot reporter has seen the Transparency Order. **The pilot reporter must complete form FP301 if a legal blogger, or produce ID at the outset of the hearing if a member of accredited media:** https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748313/FP301-1018.pdf.

REPORTING PRINCIPLES

57. Pilot reporters are bound by the terms of the Transparency Order; s.97 Children Act 1989 and their professional rules and codes of conduct.

58. The TIG has agreed the following principles by which pilot reporters and professionals involved in pilot cases are asked to abide:

- a. Assist the Court to achieve the Overriding Objective in FPR r.1.1., which is to resolve cases justly having regard to the welfare issues involved.
- b. To minimise disruption to the proceedings, and by raising issues in advance of hearings in writing with the Court and the parties, where possible.
- c. To work constructively with the parties.
- d. To be sensitive to the feelings and possible vulnerabilities of parties in the family court and at all time act with appropriate discretion. Reporters must not interfere with pre-hearing discussions.
- e. If the party has a lawyer, any interview request must be made through that lawyer.

59. Lawyers acting in proceedings within the RP may approach the reporters, whether directly or through their press body, on behalf of their clients if so instructed.

60. Lawyers and lay parties are expected to work constructively with pilot reporters.

THE RELATIONSHIP BETWEEN LAY PARTIES AND PILOT REPORTERS

61. The standard Transparency Order will include provision to ensure that it would not be a Contempt of Court for parties to disclose information relating to proceedings to pilot reporters, for the purpose of discussing the case and informing the pilot reporter of the circumstances of the case. It remains a potential Contempt of Court for parties to share documents other than those specified above. It is not a contempt for a person to share details of the date, location, and time of a hearing, or to indicate the category of hearing or proceedings concerned.

62. Any onward disclosure of information received from a party by the pilot reporter will be governed by the Transparency Order, as outlined earlier in this document.

63. The TO retrospectively permits parties and their representative to have discussions inviting reporters to attend a hearing. However, no permission is granted to report such discussions or to see any documents until the TO is made.

64. Any onward disclosure of information received from a party by the pilot reporter will be governed by the Transparency Order, as outlined earlier in this document.

EVALUATION

65. The Ministry of Justice has agreed to fund an independent evaluation of the pilot. The procurement process is ongoing.

66. Evaluators will be specialist social scientists who will involve each stakeholder group to evaluate the process adopted, and the impact of the pilot on the stakeholders involved. Further details will be published in due course on the judiciary.uk website.

FURTHER INFORMATION

67. For any further information, please contact the TIG secretary, Jack Harrison, by email: pilots@thetig.org.uk.

68. Each pilot area has a liaison appointed from the junior bar who will act as a first point of contact for any issues that may arise, or any support that may be needed. These liaisons will participate in regular review meetings and can also be contacted through the address above. The liaisons are:

- Cardiff: Laura Beattie, Cathedral Chambers, Cardiff.
- Carlisle: Jack McCabe, 15 Winckley Square Chambers, Preston.
- Leeds: Connie Purdy, Spire Chambers, Leeds.

69. Training materials and further information will be published on the TIG homepage on the Judiciary website, accessed via our web link: www.thetig.org.uk.

Rt Hon. Sir Andrew McFarlane

President of the Family Division

18 January 2023

Amended 26 January 2023

APPENDIX I: DRAFT TRANSPARENCY ORDER



**In the Family Court at
Cardiff/Leeds/Carlisle**

Case no.

(Delete as appropriate)

The Children Act 1989

The Senior Courts Act 1981

The Inherent Jurisdiction of the High Court

TRANSPARENCY ORDER MADE BY [JUDGE] ON [DATE]

TO ANYBODY WHO HAS SEEN THIS ORDER OR IS AWARE OF ITS

CONTENTS: You must obey the terms of this order. If you do not, you may be held in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law.

Notice and Definitions:

1. This case has been included in the Reporting Pilot, which allows pilot reporters to, subject to the terms of this order, discuss certain aspects of the case with the parties, and report on what they see and hear in court hearings that they attend.
2. This order is an injunction, which means that you must do what the order says.
3. The point of contact for any pilot reporter is the Court Office. The details are at the foot of this order.
4. Nothing in this Order affects the ability of parties or their representatives to publish or communicate information as permitted by Family Procedure Rules 12.73, 12.75 or Practice Directions 12G (para 2.1) and 12E to the Family Procedure Rules 2010.

5. In this order, "pilot reporters" means duly accredited representatives of news gathering and reporting organisations and duly authorised lawyers attending for journalistic, research or public legal educational purposes (legal bloggers) (together referred to in this order as 'pilot reporters') who are entitled to attend a hearing under r.27.11 of the Family Procedure Rules 2010 ('FPR').
6. Section 12 Administration of Justice Act 1960 continues to operate save and insofar as this Order varies it. This means that any publication of information relating to the proceedings which is not permitted by this Order is a Contempt of Court.

Who does this order apply to?

7. The Order applies to:
 - a. The parties and their lawyers;
 - b. Any witnesses in the case;
 - c. Anybody who attends some or all of a hearing in the case;
 - d. Any authority, body or organisation (and their officers, employees, servants and agents) for whom any such person works, is employed, engaged or is giving evidence.
 - e. Anybody who is served with a copy of this order or is aware of its contents.
8. This Order will be served on the parties and their lawyers, and any pilot reporter who attends a hearing and wishes to report on what they see, read, and hear.

It is ordered that:

9. This Order will remain in force until [date; usually the 18th birthday of the youngest child].
10. Except where allowed by this Order, no person is permitted to publish, or to communicate information relating to the proceedings except as already permitted under Family Procedure Rules 12.73, 12.75 or Practice Directions 12G (para 2.1) and 12E to the Family Procedure Rules 2010, or by discussion between a party to the proceedings (or their legal representative) and a pilot reporter as permitted under the terms of this order.
11. This order applies to any person who is aware of its contents, including those set out in paragraph 6.

What may and may not be published?

12. A pilot reporter may publish any information relating to the proceedings save to the degree restricted below.
13. No person may publish any information relating to the proceedings to the public or a section of it, which includes:
 - a. The name or date of birth of any subject child in the case.
 - b. The name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the child(ren) being identified;
 - c. The name of any person who is a party to, or intervening in, the proceedings;
 - d. The address of any child or family member;
 - e. The name or address of any foster carer;
 - f. The school/hospital/placement name or address, or any identifying features of a school of the child;
 - g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;
 - h. The names of any medical professional who is or has been treating any of the children or family member;
 - i. In cases involving alleged sexual abuse, the details of such alleged abuse;
 - j. For the purposes of s.97(2) Children Act 1989, any other information likely to identify the child as a subject child or former subject child.
14. This Order does not disapply s.97(2) Children Act 1989 unless expressly stated.
15. For the avoidance of doubt, no body, agency or professionals may be identified in any information relating to the proceedings published to the general public or a section of it by a pilot reporter, save for:
 - a. The local authority/authorities involved in the proceedings;
 - b. The director and assistant director of Children's Services within the LA (but usually not the social workers working directly with the family, including the Team Manager);
 - c. Cafcass (but usually not the reporting officer, or a Guardian appointed for the Child);
 - d. Any NHS Trust;
 - e. Court appointed experts (but not treating clinicians or medical professionals);
 - f. Legal representatives and judges;
 - g. Anyone else named in a published judgment.

Documents

16. A pilot reporter who attends a hearing in family proceedings in accordance with FPR r.27.11, or who indicates in advance that they wish to attend a hearing, is entitled to see, quote from, or publish:
 - a. Documents drafted by advocates (or litigants if a party is self-representing):
 - i.e. Case outlines, skeleton arguments, summaries, position statements threshold documents and chronologies.
 - b. Any indices from the Court bundle.
 - c. Any suitably anonymised Orders within the case.

17. Parties to the proceedings and their representatives may not disclose documents from the proceedings to pilot reporters, except as specified above, or with the specific permission of the court. This includes where a document is referred to or quoted from in court that the pilot reporter would not otherwise have access to.

18. Any such requests for copy documents must be made at or before a hearing which the pilot reporter has attended pursuant to FPR r.27.11.
 - a. Upon a request being made, the author of the document shall as soon as practicable provide a copy of the document to the pilot reporter.
 - b. The pilot reporter may quote from or publish the contents of the document, save that the details at paragraphs 13 of this Order may not be published. Where any document referred to above quotes from a document to which the pilot reporter would not be entitled to see (such as source evidence), the passage quoted may not be reproduced or reported without permission of the court.

19. No other document may be provided to a pilot reporter without permission of the court.

20. A pilot reporter may share documents or information with their editorial team or legal advisor responsible for the publication of their proposed report of the case, providing that they also provide any such person with a copy of this order which will be binding upon that editorial team or legal advisor.

Discussions between pilot reporters and parties and their representatives

21. The parties to the proceedings and their representatives may disclose information from proceedings, and share any hearing dates, with a pilot reporter for the purpose of discussing the case and informing the pilot reporter of the circumstances of the case.
22. Where the parties or their representatives have invited reporters to attend a hearing, permission is given retrospectively for any discussions that took place with reporters.

Operation

23. Permission to report is not effective until [service of the order on the pilot reporter/the end of the hearing at which this Order is made. The end of the hearing takes place when the court gives a decision about Transparency].

Other Orders

24. Permission for this Order to be served by email. Email shall be effective service for the purposes of FPR Part 6 and FPR Part 37.
25. Liberty to the parties and any pilot reporter to apply on notice to vary or discharge this Order.
26. Any application to vary or discharge this Order should be made by way of C2 application, with the fact and nature of any objection being clearly set out in an accompanying position statement.
27. [For hearings where a TO has already been made...] At the start of the hearing, they must confirm that they have read and understand the terms of the Order.

Dated, etc.



**In the Family Court at
Cardiff/Leeds/Carlisle**

Case no.

(Delete as appropriate)

The Children Act 1989

The Senior Courts Act 1981

The Inherent Jurisdiction of the High Court

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5. In this order, "pilot reporters" means duly accredited representatives of news gathering and reporting organisations and duly authorised lawyers attending for journalistic, research or public legal educational purposes (legal bloggers) (together

referred to in this order as ‘pilot reporters’) who are entitled to attend a hearing under r.27.11 of the Family Procedure Rules 2010 (‘FPR’).

6. Section 12 Administration of Justice Act 1960 continues to operate save and insofar as this Order varies it. This means that any publication of information relating to the proceedings which is not permitted by this Order is a Contempt of Court.

Who does this order apply to?

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 - a. The parties and their lawyers;
 - b. Any witnesses in the case;
 - c. Anybody who attends some or all of a hearing in the case;
 - d. Any authority, body or organisation (and their officers, employees, servants and agents) for whom any such person works, is employed, engaged or is giving evidence.
 - e. Anybody who is served with a copy of this order or is aware of its contents.
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 - c. The name of any person who is a party to, or intervening in, the proceedings;
 - d. The address of any child or family member;
 - e. The name or address of any foster carer;
 - f. The school/hospital/placement name or address, or any identifying features of a school of the child;
 - g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;
 - h. The names of any medical professional who is or has been treating any of the children or family member;
 - i. In cases involving alleged sexual abuse, the details of such alleged abuse;
 - j. For the purposes of s.97(2) Children Act 1989, any other information likely to identify the child as a subject child or former subject child.

14. This Order does not disapply s.97(2) Children Act 1989 unless expressly stated.

15. For the avoidance of doubt, no body, agency or professionals may be identified in any information relating to the proceedings published to the general public or a section of it by a pilot reporter, save for:
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 - b. The director and assistant director of Children's Services within the LA (but usually not the social workers working directly with the family, including the Team Manager);
 - c. Cafcass (but usually not the reporting officer, or a Guardian appointed for the Child);
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 - e. Court appointed experts (but not treating clinicians or medical professionals);
 - f. Legal representatives and judges;
 - g. Anyone else named in a published judgment.

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i.e. Case outlines, skeleton arguments, summaries, position statements
threshold documents and chronologies.
 - b. Any indices from the Court bundle.
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 - a. Upon a request being made, the author of the document shall as soon as practicable provide a copy of the document to the pilot reporter.

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26. Any application to vary or discharge this Order should be made by way of C2 application, with the fact and nature of any objection being clearly set out in an accompanying position statement.
27. [For hearings where a TO has already been made...] At the start of the hearing, they must confirm that they have read and understand the terms of the Order.

Dated, etc.

Transparency Implementation Group

The Reporting Pilot: Information Sheet for Parents and Family Members

What is the TIG?

The Transparency Implementation Group (the TIG) is a group set up by the head family judge in England and Wales to help make the family justice system more open. We are running a Reporting Pilot and your case might be included. We have produced this sheet to explain a little about what this means for you.

What is the Reporting Pilot?

The TIG are running a pilot that allows certain reporters to come to hearings and report what they see and hear. Anything that is reported will be anonymised so that you and your family can't be identified.

The pilot is being run in three courts – Cardiff, Leeds and Carlisle. Your case will only be in this pilot if it is being heard in one of these courts.

What is involved?

What happens now?	What will happen under the pilot?
<ul style="list-style-type: none"> • Nearly all information in a family court case is private and cannot be shared. If you do share it, you could go to prison or be fined by a judge. • Journalists and qualified legal bloggers can come into family court hearings but they cannot write about or report on a case without asking the judge. • You cannot talk to journalists or qualified legal bloggers about your case. 	<ul style="list-style-type: none"> • Lots of sensitive information will still be private. Your family's privacy will be protected. • Journalists and qualified legal bloggers can come into family court hearings, watch the hearing and then report what they see with the permission of the judge. • Journalists and qualified legal bloggers can look at certain documents from the case. • You can talk to a journalists or a qualified legal blogger about your case. • To allow this to happen, a judge will make a 'transparency order', which will contain the rules for reporting that must be followed.

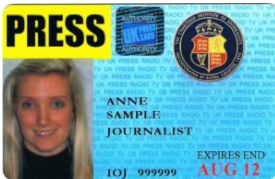
What is a transparency order?

As part of this pilot, you will be sent a 'transparency order'. This contains the rules of what can and cannot be reported. The transparency order allows reporters to report the case, but says that other people must not publish information about it.

What is a reporter?

A reporter is a journalist with a UK Press Card, or a lawyer who is not involved in the case but is authorised to attend hearings just like a journalist (also called a legal blogger).

A UK Press Card is an identification card produced by the UK Press Authority. It looks like this:



A legal blogger will belong to a barristers' chambers or a law firm, or an organisation like a University or charity, and will be able to verify who they are.

What can reporters see from my case?

Reporters will be allowed to see certain basic documents, such as the documents the lawyers produce to help them understand the case (called case outlines, skeleton arguments, or position statements). If a reporter wants to see what is in any other document, they must ask the judge for permission.

What can and can't be reported?

Generally, the transparency order will say that reporters can report the details of your case and case documents, and what has happened at your hearing. The transparency order will give more detail about which people, places, and organisations can be named and which ones must not be named. The judge dealing with your case may adjust the transparency order to make sure it's right for your family.

Reporters **cannot** include:

- the names of any children or family members involved;
- the places that the children live or go to;
- the dates of birth of any children;
- photographs of you or the children.

Sometimes an order will include other things that must not be included in reports, to make sure that your family can't be identified by accident.

The transparency order does not allow you to report or publish anything about the case. This is to make sure that you and the children cannot be identified. Even if there is press coverage of your case, you must not publish about it – including posting on social media - and you must not copy or “like” any media coverage.

If you publish about the case, you could be breaking the law.

Who decides if my case is included in the Reporting Pilot?

The judge will make the final decision about whether your case is included in this pilot or not. If you don't want your case to be reported, you will be able to tell the judge that before they decide, but you cannot opt out without the judge agreeing.

When a judge is deciding, they will think about all the circumstances of the case and balance the things you are worried about with the aim of making the family court's work more open. The judge will then tell you whether they will:

- allow your request, and stop all reporting;
- change the transparency order, so that less information can be reported;
- leave the transparency order in place.

Can I speak to the reporter?

Yes. You can only speak to a reporter who has a Press Card or is an 'authorised lawyer'. If the reporter has already attended a hearing in your case, the judge will have checked this and you can go ahead. If they haven't, you should check, so that you can be sure you aren't breaking the rules. If in doubt, ask to see the journalist's UK Press Card or their qualifications.

You don't have to speak to a reporter unless you want to. It is up to the reporter to make sure that whatever they include in their report is allowed to be published. You are not allowed to share any court documents with a reporter apart from the documents listed above, or where the judge has said it's ok.

How is the pilot being evaluated?

Independent evaluators will be looking at the pilot to see how well it works. As part of this, someone may contact you and ask to speak to you about your experiences.

What if I have any questions?

If you have a lawyer, speak to your lawyer. If you do not have a lawyer, please contact the Court. The transparency order will tell you who the point of contact is for your case.

If you would like to speak to somebody from the TIG, please contact the TIG secretary Jack Harrison by email, pilots@thetig.org.uk. **Please note we cannot talk about your case with you or give you any legal advice.**



Grŵp Gweithredu Tryloywder

Y Peilot Adrodd: Taflen Wybodaeth i Rieni ac Aelodau o'r Teulu

Beth yw'r Grŵp Gweithredu Tryloywder (TIG)?

Mae'r Grŵp Gweithredu Tryloywder (TIG) yn grŵp a sefydlwyd gan y prif farnwr teulu yng Nghymru a Lloegr i helpu i wneud y system gyfiawnder i deuluoedd yn fwy agored. Rydym yn cynnal Peilot Adrodd ac efallai y bydd eich achos yn cael ei gynnwys. Rydym wedi cynhyrchu'r ddalen hon i esbonio ychydig am beth mae hyn yn ei olygu i chi.

Beth yw'r Peilot Adrodd?

Mae'r TIG yn cynnal peilot sy'n caniatáu i rai gohebwyrr ddod i wrandawiadau ac adrodd beth maen nhw'n ei weld a'i glywed. Bydd unrhyw beth sy'n cael ei adrodd yn cael ei wneud yn ddiennw fel nad oes modd eich adnabod chi a'ch teulu.

Mae'r cynllun peilot yn cael ei redeg mewn tri llys – Caerdydd, Leeds a Chaerliwelydd. Dim ond os yw'n cael ei wrando yn un o'r llysoedd hyn y bydd eich achos yn y cynllun peilot hwn.

Beth sy' dan sylw?

Beth sy'n digwydd nawr?	Beth fydd yn digwydd o dan y peilot?
<ul style="list-style-type: none">Mae bron yr holl wybodaeth mewn achos llys teulu yn breifat ac nid oes modd ei rannu. Os ydych chi'n ei rannu, gallech fynd i'r carchar neu gael dirwy gan farnwr.Gall newyddiadurwyr a blogwyr cyfreithiol cymwys ddod i wrandawiadau llys teulu ond ni allant ysgrifennu am achos neu adrodd ar achos heb ofyn i'r barnwr. Ni allwch siarad â newyddiadurwyr neu flogwyr cyfreithiol cymwys am eich achos.	<ul style="list-style-type: none">Bydd llawer o wybodaeth sensitif yn dal i fod yn breifat. Bydd preifatrwydd eich teulu yn cael ei ddiogelu.Gall newyddiadurwyr a blogwyr cyfreithiol cymwys ddod i wrandawiadau llys teulu, gwyllo'r gwrandawriad ac yna adrodd beth maen nhw'n ei weld gyda chaniatâd y barnwr.Gall newyddiadurwyr a blogwyr cyfreithiol cymwys edrych ar ddogfennau penodol o'r achos.Gallwch siarad â newyddiadurwyr neu flogiwr cyfreithiol cymwys am eich achos.

- Er mwyn caniatáu i hyn ddigwydd, bydd barnwr yn gwneud 'gorchymyn tryloywder', a fydd yn cynnwys y rheolau ar gyfer adrodd y mae'n rhaid eu dilyn.

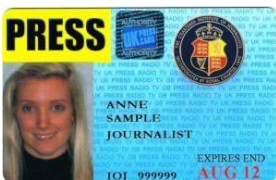
Beth yw gorchymyn tryloywder?

Fel rhan o'r cynllun peilot hwn, anfonir 'gorchymyn tryloywder' atoch. Mae hyn yn cynnwys rheolau'r hyn y gellir ei adrodd ac na ellir ei adrodd. Mae'r gorchymyn tryloywder yn caniatáu i ohebwyr adrodd am yr achos, ond yn dweud bod yn rhaid i bobl eraill beidio cyhoeddi gwybodaeth amdano.

Beth yw gohebydd?

Mae gohebydd yn newyddiadurwr gyda Cherdyn Gwasg y DU, neu gyfreithiwr nad yw'n ymwneud â'r achos ond sydd wedi'i awdurdodi i fynychu gwrandawriadau yn union fel newyddiadurwr (a elwir hefyd yn flogiwr cyfreithiol).

Cerdyn adnabod a gynhyrchir gan Awdurdod Gwasg y DU yw Cerdyn Gwasg y DU. Mae'n edrych fel hyn:



Bydd blogiwr cyfreithiol yn perthyn i siambrau bargyfreithwyr neu gwmni cyfreithiol, neu sefydliad fel Prifysgol neu elusen, a bydd yn gallu cadarnhau pwy ydyw.

Beth all gohebwyr ei weld o fy achos i?

Bydd gohebwyr yn cael gweld rhai dogfennau sylfaenol, fel y dogfennau y mae'r cyfreithwyr yn eu cynhyrchu i'w helpu i ddeall yr achos (a elwir yn amlinelliad o achos, dadleuon cryno, neu ddatganiad safbwynt). Os yw gohebydd eisiau gweld beth sydd mewn unrhyw ddogfen arall, mae'n rhaid iddo ofyn i'r barnwr am ganiatâd.

Beth ellir ei adrodd ac na ellir ei adrodd?

Yn gyffredinol, bydd y gorchymyn tryloywder yn dweud y gall gohebwyr adrodd am fanylion eich achos a'ch dogfennau achos, a'r hyn sydd wedi digwydd yn eich gwrandawriad. Bydd y gorchymyn tryloywder yn rhoi mwy o fanylion am ba bobl, llefydd, a sefydliadau y gellir eu henwi a pha rai na ddylid eu henwi. Gall y barnwr sy'n delio â'ch achos addasu'r gorchymyn tryloywder i wneud yn siŵr ei fod yn iawn i'ch teulu.

Ni all gohebwyr gynnwys:

- enwau unrhyw blant neu aelodau o'r teulu dan sylw;
- y llefydd mae'r plant yn byw neu'n mynd iddyn nhw;
- dyddiad geni unrhyw blant;
- ffotograffau ohonoch chi neu'r plant.

Weithiau bydd gorchymyn yn crybwyll pethau eraill na ddylid eu cynnwys mewn adroddiadau, i sicrhau nad oes modd adnabod eich teulu drwy ddamwain.

[Nid yw'r gorchymyn tryloywder yn caniatáu ichi adrodd na chyhoeddi unrhyw beth ynghylch yr achos.](#)

[Pwrpas hyn yw sicrhau nad oes modd eich adnabod chi a'r plant. Hyd yn oed os oes sylw yn y wasg i'ch achos, rhaid i chi beidio â chyhoeddi dim amdano - gan gynnwys postio ar y cyfryngau cymdeithasol - a rhaid i chi beidio â chopio na "hoffi" unrhyw sylw yn y cyfryngau.](#)

[Os byddwch chi'n cyhoeddi rywbeth am yr achos, gallech fod yn torri'r gyfraith.](#)

[Pwy sy'n penderfynu os yw fy achos yn cael ei gynnwys yn y Peilot Adrodd?](#)

Bydd y barnwr yn gwneud y penderfyniad terfynol ynghylch a yw eich achos wedi'i gynnwys yn y peilot hwn ai peidio. Os nad ydych yn awyddus i ohebydd adrodd am eich achos, byddwch yn gallu dweud hynny wrth y barnwr cyn iddo benderfynu, ond ni allwch optio allan heb i'r barnwr gytuno.

Pan fydd barnwr yn penderfynu, bydd yn meddwl am holl amgylchiadau'r achos ac yn cloriannu'r pethau yr ydych chi'n poeni amdanynt a'r nod o wneud gwaith y llys teulu yn fwy agored. Yna bydd y barnwr yn dweud wrthyfch a fydd yn:

- caniatáu eich cais, ac atal pob adrodd;
- newid y gorchymyn tryloywder, fel y gellir adrodd llai o wybodaeth;
- gadael y gorchymyn tryloywder yn weithredol.

[Ydw i'n gallu siarad â'r gohebydd?](#)

Ydych. Dim ond â gohebydd sydd â Cherdyn i'r Wasg neu sy'n 'gyfreithiwr awdurdodedig' y gallwch chi siarad. Os yw'r gohebydd eisoes wedi bod mewn gwrandawriad yn eich achos chi, bydd y barnwr wedi gwirio hyn a gallwch fynd yn eich blaen. Os nad yw wedi gwneud hynny, dylech wirio, fel y gallwch fod yn sicr nad ydych chi'n torri'r rheolau. Os oes amheuaeth, gofynnwch am weld Cerdyn y Wasg gan y newyddiadurwr neu ei gymwysterau.

Does dim rhaid siarad â gohebydd oni bai eich bod chi eisiau gwneud hynny. Mater i'r gohebydd yw sicrhau bod hawl i gyhoeddi beth bynnag mae'n ei gynnwys yn ei adroddiad. Ni chaniateir i chi rannu unrhyw ddogfennau llys gyda gohebydd ar wahân i'r dogfennau a restrir uchod, neu lle mae'r barnwr wedi dweud ei bod yn iawn gwneud hynny.

[Sut mae'r peilot yn cael ei werthuso?](#)

Bydd gwerthuswyr annibynnol yn edrych ar y peilot i weld pa mor dda y mae'n gweithio. Fel rhan o hyn, gall rhywun gysylltu â chi a gofyn i siarad â chi am eich profiadau.

[Beth os oes gen i unrhyw gwestiynau?](#)

Os oes gennych gyfreithiwr, siaradwch â'ch cyfreithiwr. Os nad oes gennych gyfreithiwr, cysylltwch â'r Llys. Bydd y gorchymyn tryloywder yn dweud wrthych pwy yw'r pwynt cyswllt ar gyfer eich achos.

Os hoffech siarad â rhywun o'r TIG, cysylltwch â'r ysgrifennydd TIG Jack Harrison drwy e-bost, pilots@thetig.org.uk. Sylwch na allwn siarad am eich achos gyda chi na rhoi unrhyw gyngor cyfreithiol i chi.



Neutral Citation No: [2023] EWFC 9

Case Nos: LS21C00133, KH22C5008, LS22C50104

IN THE FAMILY COURT
AT LEEDS

Date: 25th January 2023

Before:

MR JUSTICE POOLE

Re: BR and others (Transparency Order: Finding of Fact Hearing)

Family R

Julia Cheetham KC and Sara Anning (instructed by the Local Authority) for the **Leeds City Council**

Darren Howe KC and Iain Hutchinson (instructed by Ramsdens Solicitors) for the Mother,
MR

Karl Rowley KC and Louise McCallum (instructed by Switalskis Solicitors) for the Father,
FR

Michael George and David Orbaum (instructed by JWP Solicitors) for the child **AR**

Ruth Henke KC and Jane Curnin (instructed by Wilkinson Woodward Solicitors) for the children **BR** and **CR**

Family S

Taryn Lee KC and Sarah Blackmore (instructed by the Local Authority) for **East Riding of Yorkshire Council**

Rachel Langdale KC and James Hargan (instructed by Williamsons Solicitors) for the Mother
MS

Paul Storey KC and Naomi Madderson (instructed by Symes Bains Broomer Solicitors) for the Father, **FS**

Frances Heaton KC and Gaynor Hall (instructed by Lockings Solicitors) for the children, **DS, ES, GS and HS**

Family T

Jacqueline Thomas KC and **Brett Davies** (instructed by the Local Authority) for **Wakefield Metropolitan District Council**

Joseph O'Brien KC and **Justine Cole** (instructed by GWB Harthills Solicitors) for the Mother, **MT**

FT, father of HT, not appearing

FV, father of JV and KV, not appearing

Elizabeth Maltas (instructed by Peace Legal Solicitors) for the Father of LW, **FW**

Martin Todd and **Huw Lippiatt** (instructed by King Street Solicitors) for the children **HT**, **JV**, **KV**, and **LW**

Interveners

Bryan Cox KC and **Luke Berry** for **Sheffield Children's NHS Foundation Trust**

Natalia Levine (instructed by Howard & Co Solicitors) for **AC** and **BC** (carers for JV and KV)

James Ketteringham for **South Yorkshire Police**

Hearing date: 17 January 2023

JUDGMENT

This judgment was delivered in proceedings held in private but subject to a Transparency Order. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children who are the subject of these proceedings and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Poole:

1. On 29 November 2022, the President of the Family Division, Sir Andrew McFarlane, issued 'The Transparency Reporting Pilot Guidance' heralding a pilot project to test a new approach allowing for reporting of family proceedings. This followed publication in October 2021 of his 'Confidence and Confidentiality: Transparency in the Family Court', a review of the issue of transparency in family justice in which he wrote,

“My overall conclusion is that the time has come for accredited media representatives and legal bloggers to be able, not only to attend and observe family court hearings, but also to report publicly on what they see and hear. Reporting must be subject to very clear rules to maintain both the anonymity of the children and family members who are before the court, and confidentiality with respect to intimate details of their private lives. Openness and confidentiality are not irreconcilable, and each is achievable. The aim is to enhance public confidence significantly, whilst at the same time firmly protecting continued confidentiality.”

2. The reporting pilot will begin in the Family Court at Leeds, Cardiff and Carlisle on 30 January 2023. The present proceedings with which I am concerned is being heard as a finding of fact hearing in the Family Court at Leeds, beginning on 17 January 2023, and is expected to last for eleven weeks. The pilot will begin approximately two weeks after the hearing begins and so I thought it appropriate to adopt the pilot from the outset of the hearing rather than to do so two weeks after the case has begun. Accordingly, I made a Transparency Order (TO) adopting the template order attached to the President's Guidance. The TO was circulated to the parties. Potential pilot reporters were alerted through the auspices of the Press Office at the Royal Courts of Justice. I gave notice that I would consider any written or oral submissions to vary or to discharge the order on 17 January 2023.

The Present Proceedings

3. In 2022 I directed that three public family law applications brought separately by three different Local Authorities concerning three previously unconnected families living in different parts of Yorkshire, should be heard together at a finding of fact hearing. I shall refer to the families as Family R, Family S, and Family T. The hearing concerns allegations that the mother in each family has fabricated or induced illness in one child of each family. There are features common to all three cases, including that for some months the children directly affected were being treated at Sheffield Children's Hospital at the same time. The allegations have ramifications for all the children of the three families. The hearing will involve complex medical and other evidence from the healthcare professionals who treated and cared for the children, from expert witnesses, and evidence from the parents.

The Reporting Pilot

4. I need not set out the President’s Guidance on the Reporting Pilot (RP) in full – it is available online. However, it is useful to note the President’s guidance that,

“The aim of the RP is that in the designated courts, accredited journalists and ‘legal bloggers’ (i.e. ‘duly authorised lawyers’ for the purposes of Family Procedure Rules 2010, r.27.11) will be allowed to report on what they see and hear in court (“the transparency principle”).

All reporting will be subject to the principles of protection of the anonymity of any children involved unless the Judge orders otherwise (“the anonymity principle”).

The Court may depart from the transparency principle in any case. In deciding whether to restrict reporting, the Court must ensure the rights of the family and parties to a fair trial under Article 6 ECHR and must balance the rights to a private and family life under Article 8 ECHR, and the rights of the press, public and parties under Article 10 ECHR (or any other relevant rights which may be engaged).”

5. Article 8 of the European Convention on Human Rights and Fundamental Freedoms states,

“Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 10 states,

“Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States

from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.”

6. Section 12 (4) of the Human Rights Act 1998 provides that:

“The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appear to the court, to be journalistic, literary or artistic material (or to conduct connected with such material) to (a) the extent to which (i) the material has, or is about to, become available to the public, or (ii) it is, or would be, in the public interest for the material to be published, [and] (b) any relevant privacy code.”

7. The RP permits only “pilot reporters” to report on proceedings. A pilot reporter is any duly accredited representative of a news gathering or reporting organisation or duly authorised lawyer (legal blogger) who may attend a hearing under the Family Procedure Rules r.27.11. It is important to emphasise that such persons are already permitted to attend hearings, whether or not a case falls within the RP. What the RP allows, if an order is made in a particular case, is for the pilot reporters to report on the case they have attended and observed.

8. The overwhelming majority of cases in the Family Court, and those involving children heard in the Family Division of the High Court, are held in private. Section 12 Administration of Justice Act 1960 prohibits the publication of information relating to proceedings in private that relate to children as follows,

“s 12 Publication of information relating to proceedings in private.

(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 Act 1989 or the Adoption and Children Act 2002; or
 - (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;
- (b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;
- (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
- (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
- (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

The court may disapply the provisions of s 12.

9. A Transparency Order (TO) restricts what a pilot reporter can report but is the means by which transparency can be achieved. Without a TO protecting the anonymity of children involved in family proceedings within the pilot areas, there could be no reporting at all. The template TO attached to the President's Guidance may be adapted to suit the particular circumstances of any particular case. The template TO provides that reporting may only be permitted once a particular hearing has been concluded and that the following information may not be reported:

- “a. The name or date of birth of any subject child in the case;
- b. The name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the child(ren) being identified;
- c. The name of any person who is a party to, or intervening in, the proceedings;
- d. The address of any child or family member;
- e. The name or address of any foster carer;
- f. The school/hospital/placement name or address, or any identifying features of a school of the child;

g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;

h. The names of any medical professional who is or has been treating any of the children or family member;

i. In cases involving alleged sexual abuse, the details of such alleged abuse;

j. Any other information likely to identify the child as a subject child or former subject child.

10. The template TO provides that unless the Court orders otherwise the following agencies or professionals may be named:

“a. The local authority/authorities involved in the proceedings;

b. The director and assistant director of Children’s Services within the LA (but usually not the social workers working directly with the family, including the Team Manager, unless the Court so orders);

c. Senior personnel at Cafcass but not normally the Guardian named in the case.

d. Any NHS Trust;

e. Court appointed experts;

f. Legal representatives and judges;

g. Anyone else named in a published judgment.”

11. The template TO does not overturn s 97 of the Children Act 1989 which provides, in relation to proceedings under that Act (which includes the present case),

(2) No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify—

(a) any child as being involved in any proceedings before the High Court, a county court or a magistrates’ court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or

(b) an address or school as being that of a child involved in any such proceedings.”

Contravention of these requirements is a criminal offence but by s 97(4):

“(4)The court or the Lord Chancellor may, if satisfied that the welfare of the child requires it and, in the case of the Lord Chancellor, if the Lord Chief Justice agrees, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.”

In Re Webster; Norfolk County Council v Webster [2006] EWHC 2733, [2007] 1 FLR 1146, Munby J held that s 97(4) Children Act 1989 should be read as permitting the court to dispense with the prohibition in s 97(2) if the Convention rights required it.

12. The TO will apply until the youngest child in the case is aged 18. It therefore has the effect of extending the protections against identification of children under s 97 Children Act 1989 which have been interpreted as applying only during the currency of the relevant Children Act proceedings.
13. The template TO also entitles pilot reporters to be provided, on request, with certain documents from the particular case, and to share documents and information to certain specified individuals who must also be provided with a copy of the TO.
14. Hence, under s 97 Children Act 1989, and the terms of the template TO, pilot reporters must not report material which is intended to or likely to identify children in the proceedings. Reporting that contravenes that requirement might include the publication of different pieces of information which, when put together, are likely to identify a child – so-called jigsaw identification. The responsibility on pilot reporters is the same as that on reporters in the Youth Court or the criminal courts. Under s 49 of the Children and Young Persons Act 1933,

“Youth Courts

Restrictions on reports of proceedings in which children or young persons are concerned.

(1) No matter relating to any child or young person concerned in proceedings to which this section applies shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as someone concerned in the proceedings.”

Section 49 (3A) expressly prohibits publication of the child or young person’s name, address, school or other educational establishment, and any still or moving pictures of him.

By s 45 of the Youth Justice and Criminal Evidence Act 1999,

“Power to restrict reporting of criminal proceedings involving persons under 18.

(1) This section applies (subject to subsection (2)) in relation to—

(a) any criminal proceedings in any court (other than a service court) in England and Wales or Northern Ireland; and

(b) any proceedings (whether in the United Kingdom or elsewhere) in any service court.

(2) This section does not apply in relation to any proceedings to which section 49 of the Children and Young Persons Act 1933 applies.

(3) The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.”

15. These provisions are in similar terms to s 97(2) of the Children Act 1989, albeit the s 49 provision is discretionary. For many years, reporters in the Youth Court and Criminal Courts have had to ensure they do not report material “likely” to identify subject children. The same responsibility will now rest on pilot reporters in family proceedings.

Application to the Present Case

16. There have been no new statutes, rules or practice directions to facilitate the Reporting Pilot but the President of the Family Division has made it clear that he regards it as important to begin to allow reporting of family proceedings with a view to enhancing public confidence in the family justice system. The RP is designed to begin a sea change in transparency in the family courts. It would soon become wholly ineffective if judges in the pilot courts routinely refused to make TO’s but the decision whether to permit reporting is one for the judge to make in each case where a pilot reporter attends.
17. When deciding whether to make a TO and, if so, on what terms, a pilot court judge must strike a balance between rights that favour publication and the rights of the child to respect for its private and family life, adopting the principles set out in by the House of Lords in *Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593 (“*Re S*”) and by the Court of Appeal in *Griffiths v Tickle* [2021] EWCA Civ 1882. The consequence of Munby J’s decision in *Webster* (above) is that s 97(2) Children Act 1989 does not prevent this balancing exercise in cases concerning children’s welfare – it requires it if the court is considering dispensing with s 97(2) to

any extent. The President's Guidance on the Transparency Reporting Pilot should also be taken into account by the pilot courts.

18. In *Griffiths v Tickle* (above) the Court of Appeal noted that Lieven J had “conducted a fact-sensitive scrutiny of the competing considerations” as required when applying the *Re S* principles. During the RP, judges in pilot courts will not have time to conduct the kind of detailed scrutiny that was undertaken in that case, let alone to give a written judgment explaining the reasons why they have, or have not, made a TO.
19. The template TO is therefore of considerable assistance to judges in the RP. It includes prohibitions on reporting a list of information which will be likely to identify the subject children in every case, for example, their date of birth and their address. It will be unusual to relax any of those restrictions, although, for the reasons explained below, I have done so in one respect in the present case. The more common question for judges in the RP is likely to be whether to add further specific information to the list of restrictions in the template TO.
20. Having decided to treat the present case as if it is in the RP, and pilot reporters having attended the hearing, the approach I have taken to the questions of whether to make a TO in order to permit reporting and, if so, what the terms of the TO should be, is as follows:
 - i) The court must seek to achieve a balance between the rights of publication and the rights of the child to anonymity, applying the principles in *Re S*.
 - ii) The children involved in these family proceedings would be likely to suffer harm if their anonymity were lost.
 - iii) There is a significant public interest in allowing reporting of family proceedings as explained in the President's Transparency Reporting Pilot Guidance and his publication, *Confidence and Confidentiality: Transparency in the Family Court*.
 - iv) Save in exceptional cases where it would be particularly difficult to achieve anonymity for the child, the terms of the template TO will strike the right balance as required by *Re S*.
 - v) A TO does not exclude s 97(2) Children Act 1989 which makes it a criminal offence to publish information likely to identify a child. That places a heavy burden on pilot reporters who are required not only to abide by the prohibitions on reporting the list of specific information set out in the TO, but also to avoid the likelihood of jigsaw identification. The template TO and s 97(2) in combination provide significant protections against subject children being identified.
 - vi) The court cannot dictate the detail of what reporters write or broadcast. However, the circumstances of the particular case may require that the reporting of specific information, not already included in paragraph 13 of the template TO, should be prohibited. Any such further prohibitions should be limited so as to avoid undue interference with Article 10 rights to freedom of expression.

- vii) In a particular case there may be other information which might not itself identify the child, but which the court might recognise in the TO as being likely to identify the child if reported in combination with reportable information (jigsaw identification).
 - viii) In a particular case it may be appropriate to allow reporting of information that would otherwise be prohibited within the template TO, if there is a particularly strong public interest in it being reported.
 - ix) A TO can properly be made even if there are or may be pending criminal investigations or proceedings, but the template TO will usually have to be revised to prevent reporting until the conclusion of those investigations or proceedings, so as to avoid causing prejudice to them.
21. Parties and pilot reports should, if at all possible, consider in advance of a hearing what limited variations to the template TO they seek, and to be able to justify those variations.
22. The TO that I made prior to the hearing, adopted the template TO but with two significant variations.
- i) Firstly, because each of the three mothers in the present proceedings has been arrested and criminal investigations have been instigated, I ordered that no reporting will be permitted until criminal proceedings against all three mothers have been concluded and/or the police or Crown Prosecution Service have determined that criminal proceedings will not be brought and no further action will be taken. It may therefore be many months before reporting of this case is permitted.
 - ii) Secondly, due to the very large number of parties involved in the present case, I added a confidential schedule to my order in which the real names of the family members, including the children, are provided. The purpose of doing so was to avoid inadvertent reporting of any members of the three families. If a pilot reporter has any doubts about whether an individual is subject to the prohibition on identification, they can check the confidential schedule.

These additions to the template TO will not be necessary in most cases in the RP.

23. I have now received very helpful submissions from the parties and from a number of pilot reporters who attended the hearing today. Only one party – the father in Family R – wholly opposes the making of a TO. He invites the court not to permit any reporting. He believes that reporting of any kind will be likely to lead identification of the subject children which would be harmful to them. The other parties, whilst not opposing the making of a TO, submit that it should restrict the reporting of a number of further matters that would not be covered by adoption of the template TO. Before I turn to those submissions, I shall address certain other matters raised by the parties and by pilot reporters.
24. One submission made was that pilot reporters should only be permitted to attend remotely because their presence in the courtroom would be distressing to some members of the families attending court and because there is insufficient space in the courtroom to accommodate them. I do not accept that submission. It may be

uncomfortable for family members to have reporters in the courtroom but the distress caused does not justify excluding reporters from observing the proceedings in person. A particularly large courtroom has been secured for this hearing and I am satisfied that there is space to accommodate pilot reporters. It is important that pilot reporters are able to observe a hearing in person. However, this is also a hybrid hearing, in that some legal representatives will sometimes attend remotely and many healthcare professionals will give evidence remotely. Therefore pilot reporters may, in this case, attend remotely if they wish to do so.

25. Responsibility for ensuring that a pilot reporter is duly accredited or is a legal blogger rests with the court. The court must also be satisfied that the pilot reporters attending have read and understood the TO. In the present case a TO was drafted prior to the hearing. For many hearings, that will not be possible. The need to consider making a TO will only arise if a pilot reporter attends a hearing and the court may be unaware of a pilot reporter's intended attendance until shortly before or even until the beginning of the hearing. However, it is the TO that *permits* reporting. Without a TO, s 12 Administration of Justice Act 1960 prevents any publication of a private hearing. So, unless or until the court has made a TO, even if that is after the conclusion of the hearing, no reporting of the hearing is permitted.
26. The court has to satisfy itself that the pilot reporter has received and understood the TO whenever that TO is made. If a new pilot reporter attends part way through this long hearing, they will be provided by the court with the TO that is then in force and asked to confirm that they have read and understood it. Those pilot reporters will be identified by the court to the parties.
27. The template TO entitles pilot reporters to access a range of documents upon request. In the present case, adoption of the template TO would lead to a very large volume of documentation being made available. In my view the quantity of such documentation in this case would be an unhelpful burden on reporters and the parties alike. I have therefore decided to restrict the documentation which pilot reporters are entitled to receive without seeking specific permission, to the opening and closing position statements or skeleton arguments, and the indices to the hearing bundles. The parties are not permitted to provide other documentation to pilot reporters without the express permission of the court. To reduce the administrative burden on all concerned, I have asked the Court Associate to compile an electronic folder - the pilot reporter folder - containing the documents to which I have referred, together with the TO, which can be provided on request to pilot reporters. If a pilot reporter requests any other documentation that is not included in the pilot reporter folder, the request must be referred to me to consider whether to give permission.
28. Paragraph 20 of the template TO allows a pilot reporter to share documents or information with their editorial team or legal advisor providing that those other people have been provided with a copy of the TO. A legal blogger from the Transparency Project attended on 17 January 2023 and asked for permission to share documentation and information on the same terms but with four named members of the Trust at the Transparency Project. I agreed to vary the TO accordingly. Furthermore, for the sake of clarity, I have ordered that any pilot reporter who attends the hearing may share documentation and information with another pilot reporter who attends the hearing, even if they do not attend at the same time. This would allow legal bloggers from the

Transparency Project who attend the hearing at different times, to share information and documents with each other.

29. The Transparency Project has also asked for permission to report on the fact that the RP has been adopted for this hearing and how arguments about the TO have been dealt with by the court. I have drafted a short summary of the adoption of the RP, akin to a Press Release, which can be used by pilot reporters and I give permission for them to publish and report on that now. Of course, the President's Guidance is published and can be incorporated in any reporting of the adoption of the PR in these proceedings. To that extent, commentary and reporting on the mechanics of how matters of transparency have been dealt with at the outset of this hearing may be published before the conclusion of the hearing. However, the TO applies to all reporting, and under the TO in the present case, no other reporting will be allowed until the conclusion of all criminal investigations or proceedings (if any).
30. All the parties have expressed anxiety about jigsaw identification. As the parties' submissions have highlighted, there are many features of any family's life that might lead to the identification of the children of those families, even if their names, schools, addresses, dates of birth and other information prohibited from being reported under the template TO, are kept confidential.
31. Judges in family proceedings are used to publishing anonymised judgments. When doing so, they will consider whether certain information should be omitted from the published judgment in order to protect the anonymity of the children. That might include some distinguishing feature of a child that is not directly relevant to the issues which the court has to determine. It is a simple decision to leave that irrelevant information out. Other identifying information might be relevant to the judgment and so the judge will anonymise it, for example by referring to the country of origin of a child as "a European country".
32. It strikes me that the judicial exercise of deciding what information may not be reported is potentially much more difficult than that of deciding what information to omit from a published judgment. Firstly, the exercise will usually be carried out at the outset of, or during, a hearing, not at its conclusion: the judge will not be as familiar with the information in the case as they would be when giving a judgment. Secondly, the judge will have to undertake the assessment swiftly in order to leave sufficient time to conduct the hearing itself. Thirdly, whilst only some of the information in a case may be relevant to a judgment, a pilot reporter might be interested in reporting a much wider range of information – the judge has to proceed on the basis that all the information in the case might potentially be reported unless its publication is prohibited by the TO. Fourthly, and most obviously, whilst judges write their judgments, they do not write reports. Judges cannot prescribe how the proceedings are reported.
33. It is therefore of great assistance to have the President's Guidance and the template TO. They will lighten the burden on judges making decisions about TO's during the pilot.
34. Nevertheless I have to consider the submissions made by various parties that the court should not permit the reporting of a wide variety of potentially identifying information about the families that is not already addressed in the template TO. I cannot list that information in this judgment because I have been persuaded to vary the TO to prevent some of it being reported. Those matters that may not be reported cannot appear in this

judgment. Nor do I wish to draw attention to any particular information that might be regarded as distinctive even if I do not expressly prohibit its publication. However, to concoct an example to illustrate the point, it might have been the case that a subject child lives with their family in Manchester and that their father is a professional footballer. The father's occupation might be a detail that is wholly irrelevant to the matters the court has to decide, but its publication would be likely to identify the child, in particular when reported in combination with other material in the case, and it is likely to be information that would be reported unless there were an order prohibiting its publication.

35. In the present case I am cautious about making anything but very limited additions to the information that may not be reported already listed in the template TO. Firstly, it is not feasible to create a list of all the information that might, by itself or in combination with other evidence, potentially identify a subject child. Secondly, it would be wrong in principle for the court to be unduly prescriptive about how pilot reporters report the cases they observe. Thirdly, pilot reporters are bound by s 97(2) Children Act 1989. The template TO expressly prohibits, "for the purposes of Section 97(2) of the Children Act 1989", publication of "any other information likely to identify the child as a subject child or former subject child." As has been the case in the Youth Court and the criminal courts for some years, the responsibility lies on reporters not to publish information likely to identify a child. Contravention of s 97 would be a criminal offence. Pilot reporters are bound to take that responsibility seriously and will naturally be cautious to avoid committing an offence.
36. I have decided that only minor variations to the protections set out in the template TO are required in this case. I have ordered that no person may publish any information likely to identify where any child or family lives or has lived save that the children and family members of families R and T may be referred to as living in West Yorkshire, and the children and family members of family S may be referred to as living in the East Riding of Yorkshire.
37. On the other hand, I have decided to permit the identification of a hospital at which some subject children were treated. Whilst I have ordered that other hospitals at which the subject children have been treated and cared for may not be identified, I have excluded from that prohibition Sheffield Children's Hospital. That hospital is a significant common feature to the three cases which are being heard together. There seems to me to be a strong public interest in allowing the identity of that hospital to be reported, such that it outweighs the degree of risk of harm to the subject children of being identified as a result of the hospital being named.
38. In addition, I have inserted a paragraph in the order that without prejudice to the express prohibition, "for the purposes of s 97(2) Children Act 1989", of "any information likely to identify the child as a subject child or former subject child" (which I have adopted from the template TO),
 - ... the publication of any of the information set out in the Schedule of Identifying Information attached is likely to identify the child as a subject child or former subject child."

The Schedule of Identifying Information is short and contains only seven pieces of information. This part of the order does not prohibit the publication of the information in that schedule, but will, I hope, help pilot reporters to avoid reporting information which will very obviously give rise to the likelihood of identification of the children through a jigsaw identification process. This is a short list of pieces of information which in themselves would not risk identifying the subject children, but which, in combination with each other or with information that may be reported, would be likely to identify them.

39. I would not expect the use of a Schedule of Identifying Information to be needed in many cases in the reporting pilot, but it may be a useful addition in a few cases such as the present one.
40. The template TO prohibits the reporting of the dates of birth of the subject children. I have been asked to consider restricting reporting of their ages and their parents' ages. That seems to me to be over-restrictive. Any meaningful report of this case would have to include the subject children's approximate ages (but not their dates of birth). I do not regard the parents' ages as information likely to identify them or the children even in combination with other information about them.
41. By adding those restrictions and indications, and by allowing the naming of a hospital at which subject children were treated, I have sought to achieve an appropriate balance of Article 8 and Article 10 Convention rights in accordance with the principles set out in *Re S* and *Griffiths v Tickle* (above). In considering the Article 8 rights of the children and families I have been very mindful of the serious distress and harm that could be caused to the subject children if their identities were to become known.
42. Inevitably, some people who already know these families, or know of them, may be able to find out more information about them from reports of the hearing. The same may occur when an anonymised judgment is published. That prospect will be uncomfortable for the children and families and may even cause a great deal of distress. However, the risk of harm and respect for their Art 8 rights has to be balanced against the principle of open justice and rights under Art 10. Having conducted that exercise I am satisfied that in this case I should make a TO that permits pilot reporters to report on the present hearing subject to specified prohibitions on reporting certain information. Pilot reporters remain bound by s 97 Children Act 1989 and would be committing a criminal offence were they to publish any material likely to identify the children who are the subject of these proceedings. The protections provided by s 97 and the TO in this case provide the court with sufficient confidence that reporting may be permitted without creating an unacceptable risk that the children will be harmed by being identified.
43. The reporting pilot places a heavy responsibility on pilot reporters. It would be over-burdensome on judges, and objectionable in principle, for the court to give detailed directions to pilot reporters about the content of their reports. Pilot reporters must use their own professional judgment to ensure that their reporting complies with the law.
44. The pilot reporters who attended today had not had the advantage of seeing any documentation in the case prior to making submissions to me about variation of the TO. No reporting may take place until, at the earliest, the conclusion of the hearing and perhaps, due to possible criminal proceedings, long after that. As pilot reporters become

more familiar with the case there may be applications to vary the restrictions in the TO. I shall consider such applications as and when they arise, but will manage the hearing so that they are heard and determined at suitable intervals.

45. I am very grateful to Counsel and the pilot reporters who attended today for assisting the court to reach decisions about the TO in this case. I have decided to publish this judgment because it may be helpful to other judges and parties in the pilot courts, although the approach taken in each case will depend on the specific circumstances of that case. For obvious reasons I cannot attach the TO I have made to this published judgment.



***What to do when a
reporter attends
(or wants to attend)
your hearing***
*A guidance note for
judges & professionals*

This guide is designed to assist professionals involved in family court cases to think through issues around the attendance of reporters in those cases. Nothing written here should be treated as legal advice on individual cases or circumstances. The Transparency Project does not give legal advice.

The Transparency Project
January 2023

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(Charity Registration no: 1161471)

WHAT TO DO WHEN A REPORTER ATTENDS (OR WANTS TO ATTEND) YOUR HEARING

Firstly, don't panic. Identify the relevant parts of the Family Procedure Rules ('FPR') and applicable statute.

Next, consider the following key principles and then work through the practical points below.

1. Reporters are generally allowed to attend hearings – they do not need to 'apply' or give notice

- a. FPR 27.11 gives a general right of attendance to journalists and legal bloggers to most (but not all) private hearings. Notable exceptions are part 14 (adoption etc) and hearings involving judicially assisted conciliation (or at any rate those parts of hearings involving judicially assisted conciliation) typically FDR or FHDRA hearings.
- b. This right of attendance applies to accredited media representatives (journalists with a press card) and duly authorised lawyers (qualified lawyers attending for journalistic, research or public legal educational purposes – colloquially known as legal bloggers). For convenience the collective term 'reporters' is useful to cover both. You should check the credentials of a reporter, unless they are known to the court. A legal blogger should provide form FP301 (this is not required for a journalist).
- c. FPR 27.11(3) defines the limited circumstances in which the court may (of its own motion or on application) exclude a reporter from all or part of a hearing.
- d. If there is an issue with the attendance of a reporter the court should hear briefly what the nature of the objection is, and allow the reporter to respond. The court should consider FPR 27.11(3) in deciding whether to exclude the reporter. FPR 27.11(3) requires something more than the fact that the nature of the proceedings is 'private' or that one or more parties would prefer them not to attend. Concerns about potential reporting are not a basis for excluding a reporter from attending. In some cases automatic restraints on publication will apply, in others it may be appropriate for the court to impose them. But a need to restrict publication of information does not necessarily mean a reporter should be excluded from observing.

- e. Although it is obviously helpful if a reporter does give notice that they intend to attend, it is not a requirement. In reality, for various reasons, this will not always be possible. A reporter should not be criticised for not giving notice or ‘sufficient’ notice.

2. What a reporter is permitted to report will depend upon the nature of the hearing / proceedings.

- a. In private Children Act 1989 proceedings, s12 Administration of Justice Act 1960 (‘AJA 1960’) will generally significantly curtail what can be published. A reporter may attend but report very little without the permission of the court. In those cases a reporter may wish to make an application to report, and this is usually best dealt with at the end of the hearing.
- b. NB The President’s Reporting Pilot operating from 30 January 2023 in Carlisle, Leeds and Cardiff is an exception to this, in that the court will usually make a transparency order in such cases in those courts which reverses the presumption against publication and permits anonymised reporting of most of the detail of such cases.
- c. S97 Children Act 1989 precludes the identification of a child as the subject of proceedings during the life of the case.
- d. In Financial Remedy cases s1 of the Judicial Proceedings (Regulation of Reports) Act 1926 (arguably) applies. There is an apparent divergence of view at High Court level as to whether the implied undertaking of confidentiality arising from the compelled disclosure requirements / duty of full and frank disclosure or the general ‘private’ nature of hearings precludes the publication of information by reporters (or parties) in circumstances where privacy is attenuated (or destroyed) by the right of attendance by reporters (see *Gallagher (No 1) (Reporting Restrictions)* [2022] EWFC 52). On one view (per Mostyn J in *Gallagher*) there is no *de facto* restriction on the reporting of information gathered / heard by a reporter at a FR hearing, and if there is to be any such restriction it must be the subject of an on notice reporting restriction order application (on notice to the press via the Media Injunctions Alert Service (aka Copydirect). NB, it has recently been suggested that contrary to PD27B and in accordance with *A v BBC* [2015] AC 588 the media need not be given notice in advance of a *contra mundum anonymity* order (as opposed to a particular respondent) is not required. However, *A v BBC* suggests that steps

must be taken to ensure the media are aware after the fact that the order has been made (in civil cases the anonymity order is published on judiciary.uk).

- e. Whilst this topic remains controversial, judges may wish to canvas the parties and media/ reporters' positions on these issues at the outset of a hearing attended by the media, in order that a pragmatic and lawful way forward can be found. For example, reporters may not wish to report anything until the conclusion of the hearing, or may be content to agree not to include specific information in their reports, at least for the time being. If necessary and proportionate, the court may make an interim order pending a full *Re* analysis (*Re S (A Child)* [2004] UKHL 47) at the conclusion of the proceedings / substantive hearing – but whether this is appropriate will depend on the circumstances. *Re S* applies and judges should have regard to paragraph 17, per Lord Steyn:

'The interplay between articles 8 and 10 has been illuminated by the opinions in the House of Lords in Campbell v MGN Ltd [2004] 2 WLR 1232. For present purposes the decision of the House on the facts of Campbell and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case.'

- f. By PD30B appeals are presumptively to be heard in public, but may be taken in private. In cases involving children anonymity orders may be made. Subject to any anonymity or reporting restriction order matters referred to in a public appeal (or other) hearing may be reported (s12 AJA will not apply).

3. A reporter should not be asked to reveal their source

- a. A reporter may become aware of or interested in attending a hearing for a number of reasons. It is not appropriate for a judge or legal representative to ask a reporter who told them about the hearing or who invited them to attend. Where a reporter is entitled to attend a hearing they are not required to justify

or explain their attendance, and they may decline to respond to such an enquiry. A journalist's duty of confidentiality and professional code of conduct will usually require them to do so and legal bloggers attending for a journalistic purpose are likely to hold to similar standards. Reporters should not be placed under pressure to reveal sources or criticised for not doing so.

- b. Judges and legal professionals should remember that journalists attending a family court hearing are outsiders and such requests may have a 'chilling' or intimidating effect upon reporters.

4. Editorial control of reporting is no part of the court's function

- a. The court should not engage in enquiries that amount to editorial control or approval or disapproval of proposed journalistic material. Providing material is lawfully obtained and lawfully reported a reporter / publisher is at liberty to publish on their own terms. Such reporting may contain material that a party would prefer not to be included, it may exclude material a party considers highly relevant, it may offer comment or opinion that is contrary to the view of the court or the parties. Concern that any of these things may happen is neither a proper basis upon which to exclude a reporter from a hearing nor to restrict reporting which would otherwise be permitted. The court should have regard to *Re S* in considering whether to relax or restrict any existing constraint on reporting in the individual case. This will usually involve close scrutiny of any competing Article 8 or 10 ECHR rights, analysis of the specific facts of the case and any arguments about public interest, privacy, welfare etc and a careful balancing of those factors to reach a conclusion which interferes with each of those rights only insofar as is necessary and proportionate.
- b. It is not appropriate for the court or parties to require or request sight of a proposed report prior to publication for approval. Most journalists will refuse this as contrary to their journalistic independence.

5. Communication is key

Reporters may in some respects be the outsiders in the room (though a small number have made attendance at Family Court hearings their speciality), but they are generally skilled at thinking creatively about how the balance between privacy and public interest in the reporting of court proceedings can lawfully be achieved. If lawyers and judges engage reporters in discussions / submissions about these issues reporters may come up with a pragmatic proposal that will enable matters

to move forwards on an agreed basis, or at least to narrow the issues. What a journalist wants and needs to report will depend upon whether they are a news journalist or are carrying out broader investigative or long form journalism work. What a legal blogger wants and needs to report will differ again.

6. A reporter will need to be able to share information with their editorial team

Any reporter (unless self-publishing) will need to be able to share sufficient information with their editorial and any in house legal team in order to facilitate publication, and to ensure that publication is in compliance with the law and any court orders. Most reporters will assume this is permitted. It is probably helpful to make it explicit to avoid any confusion.

7. Practical steps:

(NB some of these steps may not be applicable or may need some adjustment in Reporting Pilot cases)

Before the hearing (if it is known a reporter is attending) –

- Court to let the parties and their legal representatives know that a reporter is intending to attend
- Court to make arrangements for the reporter to be provided with a link (see Practice Guidance Issued by the LCJ in June 2022 ‘Open Justice – Remote Observation of Hearings – New Powers, which sets out that ‘Remote observation should be allowed if and to the extent it is in the interests of justice; it should not be allowed to jeopardise the administration of justice in the case before the court’, and makes clear that this may include remote attendance by a reporter of an otherwise fully attended hearing).
- Check reporter’s credentials – for journalists this is a UK press card; for legal bloggers practising certificate or letter from their academic institution or Registered Educational Charity such as The Transparency Project, and form FP301.
- Check the hearing is one which reporters are permitted to attend (FPR 27.11)
- Consider whether a reporter should be provided with key documents to aid understanding (on terms) – e.g. case outline, ES1, skeleton argument, etc, and if so on what terms (see for e.g. *President's Guidance: Attendance of the Media* [2009] 2

FLR 167 “Where a representative of the media in attendance at the proceedings applies to be shown court documents, the court should seek the consent of the parties to such representative being permitted (subject to appropriate conditions as to anonymity and restrictions upon onward disclosure) to see such summaries, position statements and other documents as appear reasonably necessary to a broad understanding of the issues in the case”, and *Newman v Southampton City Council & Ors* [2021] EWCA Civ 437 in which it was confirmed that the *Re S* exercise should be utilised in connection with issues relating to reporters’ access to documents).

At the outset of the hearing –

- Deal with any objections to attendance in the presence of the reporter (brief submissions from parties with reference to 27.11(3), with an opportunity to the reporter to respond)
- If not already done, consider whether a reporter should be provided with key documents to aid understanding– e.g. case outline, ES1, skeleton argument, etc. Documents can be provided on terms such as no further distribution / publication pending further order, no reporting of identifying details etc as appropriate.
- Canvas any potential issues regarding reporting – ensure all parties and reporters are on the same page in terms of what can be reported (in a Reporting Pilot case ensure all have the pilot guidance and deal with the terms of the Transparency Order)
- Consider setting time aside at the end of the hearing to deal with such issues. Many reporters will invite the court to deal with this at the end of the hearing when they understand more about the case and can make more informed proposals as to what should and should not be reportable and what (if anything) could be justifiably withheld in order to facilitate the reporting of more editorially important facts (e.g. in a children case a reporter may make sensible concessions / suggestions about specific facts that might be identifying but which are not journalistically essential).
- Remember to deal with any issues / set ground rules about live reporting if requested and permitted / reporting of an ongoing hearing.
- In an FR case where it is clear a reporter will wish to report and a party objects to that the court will need to decide whether an on notice RRO application is

necessary / appropriate (depending on its interpretation of the law) and if so how to deal with matters in the interim. It may be appropriate to refer the case to the Lead FR Judge (see Peel J guidance ‘Financial Remedies Court Practice Guidance, 13 May 2022’).

At the end of the hearing -

- Check back in to see if the reporter wishes to make an oral application for permission to report (if required) or if a party wishes to make representations. In most cases this can be dealt with by brief oral submissions. If not consider adjourning to another hearing, in complex cases this may need to be adjourned to a High Court Judge (See PD27B and President of the Family Division’s Reporting Guidance 2018. NB This guidance implicitly relates primarily to children cases, but may nonetheless contain useful pointers for financial remedies cases. It is likely to be revised as part of the work of the President’s Transparency Implementation Group).
- Ensure that any order regarding reporting (permissive or restrictive, or in a pilot case a Transparency Order) is drawn clearly and provided to the reporter. The reporter should be copied into the draft order before approval to ensure that all are in agreement that the drafting corresponds with what was ordered by the court / conceded by the reporter.
- Make arrangements for the reporter to be able to communicate with a point of contact about next hearing / hand down of any judgment (whether the court or a legal representative).
- If you are directing that documents should be shared with a reporter ensure this is reduced to writing and a date for compliance by the party is provided.

LEGAL BLOGGERS AND YOUR FAMILY COURT HEARING

- **A legal blogger is a lawyer who is allowed to attend most private family court hearings** (journalists are also allowed to attend the same hearings). They are allowed to attend for ‘journalistic, research or public legal education purposes’.
- **Court rules protect your privacy** : even though they can attend hearings reporters can’t usually report the detail of what is said in your hearing unless the judge agrees. They can’t identify you or your child with your name or picture.
- **You can object to a blogger or journalist attending if you have a good reason.**

This leaflet tells you more about how legal blogging works. In this document we use the word ‘reporters’ to cover both journalists and legal bloggers.

Why are legal bloggers allowed to come into my court hearing?

Most court hearings are held in public, meaning that anyone can attend, including reporters. Because courts have a lot of power over people’s lives it’s important that the public can see what happens and be confident that things are done properly or ask for change if they aren’t. In cases about families and children the court usually sits in private, which means the public can’t attend and there are often rules about what can and can’t be reported in newspapers and online. The only people usually allowed to attend a private family hearing apart from the lawyers and the family involved are reporters. Usually there are still restrictions on what can be reported but they can be adjusted where appropriate. These arrangements are set up to try and ensure there is some scrutiny of the court’s process without compromising the privacy of the families and children involved. Journalists have been allowed to attend hearings since 2009, and legal bloggers have been allowed to attend since October 2018.

Who are the legal bloggers?

For a legal blogger to be allowed to attend your hearing they must be a practising lawyer, a lawyer working for a university, or a non-practising lawyer who is attending on behalf of an approved educational charity such as The Transparency Project, an educational charity whose aims are to make family justice clearer. Before they are allowed into the hearing a legal blogger will have to produce identification and confirmation that they are eligible to attend. They must sign a form confirming that they are aware of the rules about privacy and will stick to them (FP301).

We’ve left a space at the bottom of this leaflet for the blogger who is attending your hearing to write their name and basic details so you know who they are and where they are likely to publish any report they might write about your case (overleaf).

Protecting your privacy and telling your story – what can they report?

In cases involving children the law says that a reporter can’t report the detail of what is said in court or in the court documents. They also can’t report the name of the child, details of their home or school address or any



information likely to identify them as a child who the case is about. This doesn't mean nothing at all can be reported about a case, but it does protect your and your child's identity and privacy.

This can be changed if appropriate – for example the judge could agree to allow reporters to write about what happened at court as long as they don't include names or certain details which might identify you - but this doesn't happen very often and only after everybody has had a chance to tell the judge what they think and if the judge thinks it's appropriate. In some courts (Cardiff, Carlisle and Leeds) there is a pilot scheme running throughout 2023 where anonymised reporting is allowed.

A reporter might ask to see some of the basic documents in your case to help them understand what's going on a bit better. Even if they are shown these documents the rules still say they can't report the detail of what is in those documents – unless the judge agrees. Before the judge makes any decision allowing more reporting than usual you will have an opportunity to think about things and say what you think should happen.

Talking to reporters

You don't have to talk to a reporter about your case if you don't want to do so. There are rules about what you can tell or show a reporter – you should not show them court documents without the permission of the court. If you are worried about a legal blogger coming into your hearing they should be happy to speak to you to explain more about their role to help reassure you about their motivation and any particular issues about privacy that apply to your case. If you have a lawyer your lawyer could talk to them for you.

How do I object?

You should be told that a reporter wants to come into your hearing before it starts. You can tell court staff before the hearing that you want to object, or you can ask the judge at the start of the hearing. Usually the judge would check with you before the hearing continues. You can object if excluding the reporter is necessary:

- in the interests of any child concerned in, or connected with, the case;
- for the safety or protection of a party, a witness, or a connected person; or
- for the orderly conduct of the proceedings;

or because justice will otherwise be impeded or prejudiced by their attendance.

The judge could exclude a reporter from some or all of the hearing, or could adjust the restrictions on what can and can't be reported to strike the right balance between privacy and openness.

Where do I go for more information?

- Justice.gov.uk – see Family Procedure Rules (Rule 27.11 and Practice Direction 27B)
- HMCTS form FP301 and leaflets EX710 and EX711
- The Transparency Project website www.transparencyproject.org.uk/legalbloggers

Details of the legal blogger who is at court today

Name :

Practising lawyer at chambers / firm / Charity name / University name (as appropriate) :

Likely location of any blog :



Administration of Justice Act 1960

2.5

12 Publication of information relating to proceedings in private

(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 Act 1989 or the Adoption and Children Act 2002; or
 - (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;
 - (b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;
 - (c), (d) . . .
 - (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.
- (2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.
- (3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.
- (4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).

2.315

97 Privacy for children involved in certain proceedings

(1) *(repealed)*

(2) No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify –

- (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or

- (b) an address or school as being that of a child involved in any such proceedings.
- (3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.
- (4) The court or the Lord Chancellor may, if satisfied that the welfare of the child requires it and, in the case of the Lord Chancellor, if the Lord Chief Justice agrees, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.
- (5) For the purposes of this section –
- ‘publish’ includes –
 - (a) include in a programme service (within the meaning of the Broadcasting Act 1990); or
 - (b) cause to be published; and
 - ‘material’ includes any picture or representation.
- (6) Any person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (6A) It is not a contravention of this section to –
- (a) enter material in the Adoption and Children Act Register (established under section 125 of the Adoption and Children Act 2002), or
 - (b) permit persons to search and inspect that register pursuant to regulations made under section 128A of that Act.
- (7), (8) *(repealed)*
- (9) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (4).

Chapter 7 Communication of Information: Children Proceedings

3.552

Amendments—SI 2012/3061.

3.553

12.72 Interpretation

In this Chapter ‘independent reviewing officer’ means a person appointed in respect of a child in accordance with regulation 2A of the Review of Children’s Cases Regulations 1991, or regulation 3 of the Review of Children’s Cases (Wales) Regulations 2007.

3.554

12.73 Communication of information: general

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

- (a) 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 Director of Legal Aid Casework (within the meaning of section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012);

- (vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;
 - (viii) a professional acting in furtherance of the protection of children;
 - (ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies;
- (b) where the court gives permission; or
- (c) subject to any direction of the court, in accordance with rule 12.75 and Practice Direction 12G.
- (2) Nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings.
- (3) Nothing in rule 12.75 and Practice Direction 12G permits the disclosure of an unapproved draft judgment handed down by any court.

12.74*(revoked)***3.555****12.75 Communication of information for purposes connected with the proceedings**

- (1) A party or the legal representative of a party, on behalf of and upon the instructions of that party, may communicate information relating to the proceedings to any person where necessary to enable that party –
- (a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;
 - (b) to attend a mediation information and assessment meeting, or to engage in mediation or other forms of non-court dispute resolution;
 - (c) to make and pursue a complaint against a person or body concerned in the proceedings; or

- (d) to make and pursue a complaint regarding the law, policy or procedure relating to a category of proceedings to which this Part applies.
- (2) Where information is communicated to any person in accordance with paragraph (1)(a) of this rule, no further communication by that person is permitted.
- (3) When information relating to the proceedings is communicated to any person in accordance with paragraphs (1)(b), (c) or (d) of this rule –
 - (a) the recipient may communicate that information to a further recipient, provided that –
 - (i) the party who initially communicated the information consents to that further communication; and
 - (ii) the further communication is made only for the purpose or purposes for which the party made the initial communication; and
 - (b) the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the conditions in sub-paragraph (a) are met.

3.1104

27.10 Hearings in private

- (1) Proceedings to which these rules apply will be held in private, except –
 - (a) where these rules or any other enactment provide otherwise;
 - (b) subject to any enactment, where the court directs otherwise.
- (2) For the purposes of these rules, a reference to proceedings held ‘in private’ means proceedings at which the general public have no right to be present.

3.1105

27.11 Attendance at private hearings

- (1) This rule applies when proceedings are held in private, except in relation to –
 - (a) hearings conducted for the purpose of judicially assisted conciliation or negotiation;
 - (b) proceedings to which the following provisions apply –
 - (i) Part 13 (proceedings under section 54 or section 54A of the Human Fertilisation and Embryology Act 2008);
 - (ii) Part 14 (procedure for applications in adoption, placement and related proceedings); and
 - (iii) any proceedings identified in a practice direction as being excepted from this rule.
- (2) When this rule applies, no person shall be present during any hearing other than –
 - (a) an officer of the court;
 - (b) a party to the proceedings;
 - (c) a litigation friend for any party, or legal representative instructed to act on that party’s behalf;

- (d) an officer of the service or Welsh family proceedings officer;
 - (e) a witness;
 - (f) duly accredited representatives of news gathering and reporting organisations;
 - (ff) a duly authorised lawyer attending for journalistic, research or public legal educational purposes; and
 - (g) any other person whom the court permits to be present.
- (3) At any stage of the proceedings the court may direct that persons within paragraph (2)(f) and (ff) shall not attend the proceedings or any part of them, where satisfied that –
- (a) this is necessary –
 - (i) in the interests of any child concerned in, or connected with, the proceedings;
 - (ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or
 - (iii) for the orderly conduct of the proceedings; or
 - (b) justice will otherwise be impeded or prejudiced.
- (4) The court may exercise the power in paragraph (3) of its own initiative or pursuant to representations made by any of the persons listed in paragraph (5), and in either case having given to any person within paragraph (2)(f) and (ff) who is in attendance an opportunity to make representations.
- (5) At any stage of the proceedings, the following persons may make representations to the court regarding restricting the attendance of persons within paragraph (2)(f) and (ff) in accordance with paragraph (3) –
- (a) a party to the proceedings;
 - (b) any witness in the proceedings;
 - (c) where appointed, any children’s guardian;
 - (d) where appointed, an officer of the service or Welsh family proceedings officer, on behalf of the child the subject of the proceedings;
 - (e) the child, if of sufficient age and understanding.
- (6) This rule does not affect any power of the court to direct that witnesses shall be excluded until they are called for examination.
- (7) In this rule—
- ‘duly accredited’ refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this rule by the Lord Chancellor; and
 - ‘duly authorised lawyer’ means a person who meets the criteria specified in Practice Direction 27B.