**THE TRANSPARENCY AND OPEN JUSTICE BOARD’S PROPOSED KEY OBJECTIVES**

**RESPONSE OF THE TRANSPARENCY PROJECT**

1. The Transparency Project is an educational charity (no. 1161271) operating in England and Wales concerned with family justice matters.
2. Our charitable objectives are:

*“To advance the education of the public in the subject of family law and its administration, including the family justice system in England and Wales and the work of the family courts, in particular but not exclusively through the provision of balanced, accurate and accessible information about the work of family courts and the facilitating of public discussions and debates which encompass a range of viewpoints.*

*To promote the sound administration and development of the law in England and Wales, in particular, family law, by encouraging and contributing to the transparency of processes in the family justice system, contributing to public legal education concerning family law and matters of family justice, enhancing access to justice in matters of family law and by such other means as the trustees may determine.”*

1. Some of our members are participants on the Board and we are grateful for the opportunity to contribute by way of comment on the proposed objectives. It is clear from the recently published [‘Call for Evidence: Open Justice, the way forward - Summary of Responses’](https://assets.publishing.service.gov.uk/media/679a5a5161c295e9331f789a/open-justice-call-evidence-summary-responses.pdf) that family courts in particular are still subject to widespread perceptions of operating in secret, notwithstanding considerable reform in recent years. Notably absent from that document is any commitment to specific reform or funding for the same.
2. Our observations on the proposed key objectives are set out below.

**Paragraph 1(2)**

*“…timely and effective access to the core documents relating to the proceedings held by the Court or Tribunal, including:*

*[…] c) any written submissions (including skeleton arguments) that are, or have been, considered by the Court or Tribunal at a hearing in public”*

1. In the Family Court ‘duly authorised lawyers’ (AKA ‘legal bloggers’) are on a par with accredited media representatives and are often permitted access to core documents such as skeleton arguments even in respect of hearings in private (with appropriate reporting restrictions applicable) (see FPR r27.11 and FPR PD27B). Under new FPR PD12R this should become normal practice whenever a journalist / legal blogger attends a hearing in the Family Court. However, ‘duly authorised lawyers’ are not formally recognised alongside journalists in CPR PD52C (para 33), meaning that when an appeal from the Family Court is heard in the Court of Appeal, where the CPR apply, ‘duly authorised lawyers’ must make an application to that court for access to skeletons and, where access to a hearing link is restricted to media we must also make an application.
2. Thus, we consider there are issues which are cross jurisdictional in the sense that they span multiple sets of procedure rules and the practices of various courts, and including hearings held in private, where access to documents requires consideration.
3. We request that the words ‘in public’ are removed, and replaced with ‘subject to any applicable reporting restrictions’. In this way, the objectives will more clearly encompass the issues we set out above, which are presently excluded.

**Paragraph 1 (3)**

*“(3) effective access to hearings of Courts and Tribunals held in public, including:*

* 1. *enabling members of the public and media representatives to attend the hearing in person (including maintaining designated spaces for media representatives) or remotely by video link where appropriate;*
  2. *permitting, where appropriate, broadcasting of the whole or part of the hearing; and*
  3. *enabling transcripts to be obtained of proceedings in public (subject to any applicable fees).”*

1. We note that unlike paragraph 1(1) and 1(2) this section refers only to hearings held in public, which will exclude most family matters, except for some appellate work.
2. We would like to see it extended as follows:
   1. In general – we suggest a further paragraph: **effective access to hearings held in private** for those entitled to attend i.e. accredited media and ‘duly authorised lawyers’ (AKA ‘legal bloggers’) in the family court. This is as important as it is in respect of public hearings. We cannot think of any reason why it should be excluded from consideration.
   2. **Paragraph 1 (3)(a)** should include other forms of authorised observers / reporters permitted to attend hearings in private, such as ‘duly authorised lawyers’ (as defined in FPR r27.11 and PD27B).
   3. In **paragraph 1(3)(c)** access to transcripts of proceedings heard in private is an issue as worthy of consideration as it is in respect of hearings held in public.

**Paragraph 2**

*“Open justice is the default position but there are recognised limitations to the principle. Some of the limitations are imposed by statute or statutory rules, which are set by Parliament not the Judiciary; any changes are a matter for Parliament, not the Judiciary. Sometimes, a Court or Tribunal will only be able to do justice in a particular case by departing from the principle of open justice. Any such departure from open justice must be necessary, proportionate, and justified.”*

1. This paragraph is expressed as a statement rather than a measurable objective. We suggest it is re-worded, for example:

*‘The Board will protect and promote the default position of open justice. There are recognised limitations …’*

1. Regarding the phrase *‘Sometimes, a Court or Tribunal will only be able to do justice in a particular case by* ***departing from the principle*** *of open justice’*  [**our emphasis**]:
   1. In the recent case of ***Tickle & Summers v the BBC & ors*** [2025] EWCA Civ 42, the Court of Appeal reaffirmed that the open justice principle absolutely *does apply to family proceedings* as much as any other type of proceedings:

“This principle is applicable as much in family proceedings as in any other proceedings. The statutory limitations contained in section 12 of the AJA 1960 and section 97 do not displace the open justice principle or create any separate “shielded justice” environment. They provide a degree of privacy for certain proceedings relating to children according to their terms.” [para 45]

* 1. We would therefore prefer to say that the open justice principle finds a *different route of expression* in family court proceedings, rather than that it is *disapplied*. We are concerned about the suggestion that the OJP does not apply in some jurisdictions, as this has historically been used to shut down requests for transparency in the Family Court (or at least has had that effect).

1. Whilst we recognise that the way in which open justice operates is of necessity *different* according to jurisdiction and subject matter, we are worried that paragraph 2 may lead to the family justice system being overlooked or put to one side (as it historically often has been) in committees or broader cross-jurisdictional discussions about open justice and open justice reform.
2. We suggest that the key objectives should be explicit in encompassing all jurisdictions including those where open justice has to be expressed other than by sitting in open court e.g. Family Court. It is vitally important that, in a jurisdiction where open justice is as important (perhaps more as a result of the potential diminishment of public trust and confidence that arises from the necessary privacy restrictions operating) and where it is harder to achieve, discussions about reform and developing open justice encompass family justice. Improvements need to work for family justice as much as they do for other jurisdictions (even if some adaptations are necessary). If, for instance, there were discussion of the matters about access to core documents referred to in paragraph 1, and development of systems to enable that, we would want those systems designed from the outset so as to be capable of use in the family jurisdiction, rather than finding that it was not appropriate for cross jurisdictional deployment, because it did not cater for the particular privacy needs of that jurisdiction.
3. Having attended the January 2025 stakeholder meeting of the Board, we understand and acknowledge that Mr Justice Nicklin wishes to avoid trespassing on an area currently being dealt with by the President of the Family Division’s Transparency Implementation Group (on which we are also represented), but consider that it is vitally important that family justice matters are considered *alongside other jurisdictions and not in a separate bubble* (of ‘shielded justice’ a concept rejected by the MR in the ***Tickle & Summers v the BBC & ors***).
4. Moreover, the TIG was intended to be a time limited group and, having achieved a number of its core objectives, is now concluding its various strands of work. Our experience is that whenever open justice is under discussion there is a tendency for family justice to be put to one side. We do not want family open justice to be ‘stranded’ outside the broader open justice remit of the Board, and we believe that the emergent development of transparency in the Family Court will need continual encouragement and nurturing from a cross jurisdictional perspective. Allowing family justice to revert into a silo (an endemic problem in more closed environments) will not achieve the objective of furthering transparency and nor will it maximise learning and development opportunities that arise from sharing of knowledge and experience.
5. We would like at the very least to see some explicit confirmation of the fact that the Board will consider the Family Court as part of its work, following appropriate consultation and liaison with the President of the Family Division and the TIG for so long as it continues in operation. We note that Mrs Justice Lieven is a member of the Board and that therefore that this should be eminently achievable.

**Paragraph 3**

*“In some areas, the ability of the Courts and Tribunals to deliver open justice is dependent upon the availability of resources and support from the Ministry of Justice and HMCTS.”*

1. Whilst we acknowledge the pragmatic truth of this proposition, we do not agree it is an *objective*. We are alive to the limitations on any judicial committee, and to the division of responsibility between judiciary, HMCTS and MoJ, and the likelihood that perhaps this has been included as a reminder to those other agencies of their responsibility to support the judiciary - but we are concerned that there is a risk of an alternative reading: that the Board is tacitly acknowledging that it is powerless to implement its ideas, and as such that the inclusion of this potentially undermines the Board’s objectives from the outset. The nature of the response to the Call for Evidence on Open Justice (See para 3 above) does not present a reassuring picture.
2. Additionally, the description ‘some areas’ is unclear – whether it is intended to refer to geographical areas, types of work or discrete jurisdictions / tribunals, we would suggest that ‘all areas’ is more accurate.

**The Transparency Project**

**www.transparencyproject.org.uk**

**February 2025**