



# ***What to do when a reporter attends (or wants to attend) your hearing in a Reporting Pilot Court***

*A guidance note for  
judges and professionals*

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

**THIS GUIDE APPLIES TO FAMILY COURTS WHERE REPORTING PILOTS ARE OPERATING. FOR OTHER COURTS, PLEASE REFER TO OUR SEPARATE GUIDE**

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

First, don't panic.

Check - does the reporting pilot apply? A list of the courts included in the reporting pilots as at 29 January 2024 is set out in the appendix to this document.

Where a case is proceeding in a non-pilot court or where the pilot does not apply to the category of case concerned, please refer to our separate guidance note for non-pilot courts.

Next, some key resources you may want to have to hand:

The President's Guidance on the operation of the Pilot and other relevant materials including template orders is available at : <https://www.judiciary.uk/courts-and-tribunals/family-law-courts/reporting-pilot/>

Guidance specific to the FR pilot (which appends an old January 2023 version of this guidance) can be found here: [https://www.judiciary.uk/wp-content/uploads/2023/12/Reporting.PilotScheme.Final\\_.President.pdf](https://www.judiciary.uk/wp-content/uploads/2023/12/Reporting.PilotScheme.Final_.President.pdf) NB this guidance note supercedes the earlier January 2023 version which was appended to the President's guidance.

A guidance leaflet for families and parties who are involved in cases where the children Reporting Pilot applies is available at: [www.judiciary.uk/courts-and-tribunals/family-law-courts/reporting-pilot/](http://www.judiciary.uk/courts-and-tribunals/family-law-courts/reporting-pilot/). There is no specific leaflet for families and parties involved in pilot cases in the FRC.

Consider the key principles set out below, and then work through the practical points below.

### Key principles

#### 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) hearings held in private. This has been the case since 2009 and is not specific to the pilot. Notable exceptions are FPR 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. It continues to apply under the pilot.
- 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. The pilot guidance encourages notice where that is possible.

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

**Children cases**

- a. In children proceedings held in private, 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.



- b. However, the President’s Reporting Pilot operating from 30 January 2023 in three courts and in many more courts from 29 January 2024 is an exception to this, in that the court will usually make a Transparency Order which reverses the presumption against publication and permits anonymised reporting of most of the detail of such cases. The Reporting Pilot currently operates in the courts listed in the Appendix to this document.
- c. S97 Children Act 1989 precludes the identification of a child as the subject of proceedings during the life of the case. Under a Transparency Order, the effect of s97 will usually be extended until the youngest child is 18 to give extra protection that enables safe reporting.

### Financial remedies

- d. In Financial Remedies 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). 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, this document does not attempt to offer a view. The FRC Reporting Pilot aims to cut through much of this potential controversy by provision of a template Transparency Order, which provides for anonymised reporting.
- f. Where there is controversy or contention, judges may wish to canvas the parties and reporters’ positions on such 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 S* 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.’*

## Appeals

- g. 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, court staff 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, and subject to the terms of the Transparency Order made in the individual case, a reporter or 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. Remember, welfare is ‘a primary consideration’ but is not paramount.
- 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 be lawfully achieved. If lawyers and judges engage reporters in discussions and 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 may differ again, for example they may be more interested in explaining law or legal process.

## **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.

### **Practical steps:**

#### **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). Note that there is somewhat more muted emphasis on the potential for remote observation in the Reporting Pilot guidance applying to the FRC.
- Check reporter’s credentials – for journalists this is a UK press card; for legal bloggers a 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) and one which can be reported on under the President’s Guidance.



- The pilots provide for certain key documents to be provided as of right, once a transparency order is made. But consider whether a reporter should be provided with any additional key documents to aid understanding (on terms), 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).
- If the reporter has been able to give sufficient notice of their intention to attend under the Reporting Pilot, the court should draft a Transparency Order for agreement by the parties. This order will protect the identity of children involved in the proceedings. However, where reporters may not have been in a position to give advance notice, the Transparency Order will have to be drafted at the outset of proceedings.
- Where a Transparency Order has been drawn the reporters will be entitled to see certain core documents without application and these should be provided promptly by legal representatives.

**At the outset of the hearing –**

- Judges and lawyers may need to explain the pilot and what it does and does not permit to the parties, and in particular reassure them as to the emphasis on anonymity. Many judges will introduce the reporters and invite the lawyers to identify those present in court and their roles before embarking on the business of the hearing.
- Deal with any objections to attendance in the presence of the reporter (brief submissions from parties with reference to FPR 27.11(3), with an opportunity to the reporter to respond).
- Draft and serve the Transparency Order or make arrangements for this (having dealt with any representations about the particular terms of the order – in most cases this will be a relatively straightforward exercise).





- 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.
- Consider setting time aside at the end of the hearing in the event that the reporter or any party needs to raise a new issue regarding the scope of the Transparency Order, when a reporter may understand more about the case and can make more informed representations as to the terms of the transparency order.
- Remember to deal with any issues / set ground rules about live reporting if requested and permitted / reporting of an ongoing hearing.

**At the end of the hearing -**

- Ensure that any order regarding reporting, including the Transparency Order, has been 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 the next hearing or 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 in writing and a date for compliance by the party is provided. Make sure there is clarity about how the reporter is to access any documents to be provided.



## APPENDIX

Courts where Reporting Pilots are in operation (as at February 2024)

### **Children cases:**

### **Most public law and private law proceedings before judges and magistrates:**

Cardiff  
Carlisle  
Leeds

### **Most public law proceedings before judges:**

Liverpool  
Manchester  
West Yorkshire  
Hull  
Nottingham  
Stoke  
Derby  
Birmingham  
Dorset  
Truro  
Luton  
Guildford  
Milton Keynes  
Central London.  
East London  
West London

The pilot is expected to encompass private law children cases and matters before magistrates in these courts in the course of 2024, but dates are not yet confirmed.

### **Financial remedy cases:**

Central Family Court  
Leeds  
Birmingham

The pilot is expected to extend to High Court level at Royal Courts of Justice from November 2024