https://www.irwinmitchell.com/news-and-insights/expert-comment/post/102isze/recording-tribunal-hearings-a-new-chapter-in-legal-transparency

22.11.2023

Recording tribunal hearings: a new chapter in legal transparency?

The Presidents of the Employment Tribunals in England and Wales and in Scotland have recently issued a joint Practice Direction on the recording of Employment Tribunal hearings. This sets out that, with effect from 20 November 2023, audio recordings will be made of all Employment Tribunal hearings (where the technical facility exists and where the recording can be securely retained). The Presidential Guidance can be found here. Will all hearings be recorded? All hearings will be recorded (whether it is a preliminary or final hearing, in public or in private) with only two exceptions:

hearings for judicial mediation or other ADR; and

hearings in national security proceedings.

These will not be recorded. When will this start?From Monday 20 November. However, most hearings rooms used by the Employment Tribunal don't have any formal recording equipment installed and it will take time to install these. Currently, only a few centres have the ability to record hearings. These are: Bristol, Southampton, Mold, Sheffield, Newcastle, Hull, Liverpool and one room at Birmingham.HMCTS are currently investigating the use of CVP as a recording device for in person hearings (along with other options), where there is no recording equipment installed. What about remote hearings?These will be recorded if they take place via BT MeetMe conferencing or CVP and/or the Video Hearings (VH) service. For any hearings which take place on Microsoft Teams (which is used as a backup platform to CVP or VH) recordings will not be made (as they cannot currently be securely retained). Therefore, if you are participating in a remote hearing (which is by CVP as most are) it will be recorded. Are the parties automatically given a copy of the transcript? No. You need to ask for the transcript within six months of the final date of the hearing, using Form EX107 (produced by HMCTS) and paying the fee. There are some limited circumstances where the transcript may be provided “at public expense”. Further details can be found in the guidance which accompanies Form EX107 here. Of note, is that a party or their representative can request the transcript without notifying/copying in the other side. This departs from the general rule in Employment Tribunal matters that correspondence to the Tribunal, must be copied to the other side. Are there any issues we need to think about

before attending a hearing?Yes. This may be a relevant consideration for parties at case management, when identifying the most appropriate forum for the hearing (particularly where the Claimant is a litigant in person and the risk of confusion as to what has been said during a hearing, is perhaps greater). It will be interesting to see if there is a rise in the number of hearings taking place by CVP because recordings will be available. Our viewThis is a positive step and should help to avoid disputes as to what has taken place during a hearing. It will likely save time and expense in resolving any such issues as the transcript will be a full and final record of exactly what was said at the hearing. Our newslettersWe publish monthly education and employment newsletters. If you'd like to be added to the mailing list, please let me know. Our fixed price employment law serviceWe also have a fixed price employment law service. Please contact Gordon Rodham if you'd like to find out how we can help you avoid these sorts of problems with our fixed-fee annual retainer, or flexible discounted bank of hours service. About HannahHannah is an associate in our employment team specialising in tribunal advocacy. Please let Hannah know if you have any queries about tribunal recordings, or any other employment law matters.

https://www.lawgazette.co.uk/practice-points/no-such-thing-as-a-free-transcript/5119927.article

No such thing as a free transcript

By Julia Jensen7 June 2024

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In the UK, individuals charged with a crime have a right to a fair and public trial. But victims of crime are not granted the same dispensation unless they can spend thousands of pounds. Why? Because victims do not have a right to a free transcript of the criminal trial.

Julia Jensen

You may think, ‘surely victims can watch the trial they are a part of?’, but in England and Wales, victims are often told they cannot watch the trial and they are only actually present in court to give evidence and undergo cross-examination. Victims then wait to be told the verdict.

A member of the public could watch the whole trial for free while victims, for example of sexual crimes, have been quoted up to £22,000 for a transcript to know what happened. That is about 24,444 pints of milk (10,476 litres of oat milk), or the price of a Renault Clio.

Putting aside the fact that many people do not have thousands of pounds floating around, the fact that the burden for payment rests on the victim’s shoulders is incongruous. Victims are not expected to pay for the police investigation, witness costs, or anything else to facilitate justice. Why would they suddenly have to pay for a transcript of the trial that they have not been permitted to watch?

A transcript tells victims what happened at the trial they were not allowed to attend. This:

(1) offers a victim validation and closure in the event of a guilty verdict; or

(2) if there is a not-guilty verdict, enables the victim to read what happened to try and process the outcome properly; and

(3) allows the victim to decide on possible appeals or complaints.

I have used the word ‘victim’ intentionally. In my work as a solicitor for victims of abuse in civil claims for compensation, many of my clients have gone or are going through the criminal process. They find it agonising. At every stage, the victim has been at the mercy of someone else: the perpetrator, police, CPS, trial barristers, judges, and jury. Victims of violent and sexual crimes in particular have had their lives upturned, their privacy and sense of self violated by the crime(s) and, often, the criminal and judicial processes. Victims face serious impacts that can last their entire lives, affecting social and intimate relationships,

employment and education access, physical and mental health, substance use, and financial solvency. Not all victims of crime receive compensation through a civil claim, or even through the Criminal Injuries Compensation Authority, so the criminal process is the only legal route to justice. Any funds survivors have should be available for them to rebuild their lives. Spending money on costly transcripts diminishes their recovery resources.

When a transcript is requested, victims can apply for help with costs using Form EX105. A judge then decides if the victim is entitled to a transcript, and if this is to be at reduced cost, or at no cost. As legal practitioners, we can understand how difficult things can be for lay persons navigating procedure in order to make applications to the court, let alone how variable decisions can be from one judge to the next. Thus there are significant barriers to a victim's understanding of the criminal trial.

As a legal practitioner, I know you will be thinking about the costs, particularly ever-diminishing resources allocated to the judiciary. The government, too, has been focusing on the resource issue.

With a general election looming, it is important to review not only the new ideas being proposed by political parties and candidates, but also missed opportunities from recent years. Where have lawmakers failed that the next government could make progress? Two words: free transcripts.

In 2023, victims proposed an amendment to the Victims and Prisoners Bill that would entitle survivors to a free transcript of the criminal trial. While the bill received royal assent on 24 May and is now law, lawmakers rejected the proposal for victims to have a right to a free transcript. During the House of Lords debate on the proposal in April, discussion largely surrounded the practicalities (costs) of producing the transcripts rather than the principle of victims' access to open justice. However, it should be noted that the current costs issue for transcripts may be linked to the prices set by private, profit-making companies which are contracted for transcription services. To date, the solution has been to outsource the resource problem to victims of crime, who do not get to choose which contracts are made for transcription providers.

It was stated that the technology is not ready to meet the potential demand for transcripts should parliament legislate. But parliament has passed the Online Safety Act, which concerns arguably much more complex technologies. Transcriptions are regularly completed

by Grade D fee-earners, Zoom and Microsoft Teams programs, and Microsoft Word dictate function. Subtitles exist for most television and video platforms. The technology may not be in place, but there are actionable pathways.

It may be tempting to minimise the significance of the proposed amendment to make this about government resources, but I would argue that misses a bigger picture. The reality is that when victims of crime have to spend thousands of pounds on a transcript, that is thousands of pounds that they can no longer use for things like mental health treatment or substance misuse treatment. This means victims may not access timely treatment which in turn can lead to an increase in mental and physical health crises, A&E attendances, and even victims living with entirely untreated mental health conditions. People can be left unable to work or struggling with addiction, with a resource-draining knock-on effect for the NHS and social services.

It is time lawmakers did right by the victims of crime.

https://www.dekachambers.com/2024/01/26/balancing-openness-and-confidentiality-the-transparency-reporting-pilot-in-the-family-courts/

On Monday 29 January 2024 the Transparency Reporting Pilot, which was launched last year in Cardiff, Leeds and Carlisle, will be extended and come into effect in a number of other court centres, including the Family Courts at the Central Family Court, East London and West London. In this article we set out what all family practitioners working in these court centres will need to know about the new rules as of Monday 29 January 2024.

What is the Reporting Pilot?

In November 2021, the Transparency Implementation Group (TIG) was set up to implement the President of the Family Division's recommendations regarding transparency in family justice. The Reporting Pilot, designed by the TIG, allow accredited journalists and 'legal bloggers' to report on court proceedings, subject to maintaining the anonymity of the children concerned at certain courts.

In any case where an accredited journalist or legal blogger attends a hearing, the Court will consider whether to make a Transparency Order. A Transparency Order permits reporting on certain matters and keeps other matters confidential. It remains in place until any child to whom the proceedings relate reaches 18 years of age. Importantly, unlike attendance of

reporters generally, reporters attending courts within the Reporting Pilot need not apply for permission to report in those cases.

It is noted that pilot reporters may attend without notice, however they are encouraged to do so. Notice is given by email or phone to the relevant Court.

Courts within the Scheme

The pilot was initially January 2023 – January 2024 in Cardiff, Leeds and Carlisle. It has now expanded to a further 16 courts, with official effect from 29th January 2024.

Courts included from 29th January 2024 are:

North West: Liverpool, Manchester

North East: West Yorkshire, Kingston-upon-Hull

Midlands: Nottingham, Stoke, Derby, Birmingham

London: Central Family Court, East London, West London

South West: Dorset, Truro

South East: Luton, Guildford, Milton Keynes

Transparency Orders: When and How

Upon an accredited journalist being present, the court is essentially concerned with two questions: (1) whether to make the Transparency Order at all and (2) what terms on which to make the Transparency Order. Of course, it may be that conditions imposed mitigate concerns as to whether a Transparency Order should be made.

Whether to make the order at all

When the court is considering the former question, the Court retains a discretion to order that no reporting may take place. In so doing, the Court will balance the parties' Article 6 and 8 ECHR rights (to a fair trial and a private and family life) against the Article 10 ECHR right to freedom of expression. The Court's discretion is maintained and therefore the Order may be varied, or indeed, it may be ordered that no further reporting may take place. Importantly, whilst the child's best interests will be an important consideration, they are not the

paramount or only factor. Instead, the child's best interests must be balanced against other rights and the wider considerations surrounding the public interest of reporting cases in the Family Courts.

The considerations the Court will take into account when deciding whether reporting should take place can be found in the guidance and in Mrs Justice Lieven's judgment in Tickle v Father and Ors [2023] EWHC 2446 (Fam). Crucially, although adjournment is possible Mrs Justice Lieven emphasised that adjournment in and of itself is an intrusion upon reporting rights and should not be treated as a normal case management decision (see paragraph [51]).

2. What should be the terms of the Order

A standard form Order has been produced and a Word version is attached to the Reporting Pilot Guidance (see link above). Those practitioners familiar with the Court of Protection will recognise that this Order is similar to transparency orders that are routinely made in that jurisdiction. This is however a 'standard form' Transparency Order, and the Court may modify the terms of the order appropriate to each case.

What may pilot reporters be provided with?

A draft order must be given to the pilot reporter attending the hearing, and pilot reporters, in accordance with FPR r.27.11, may request to be provided copies of documents drafted by parties (for example; case summaries, threshold, position statements) and any indices from the Court Bundle. As any quotes from these documents must not breach the requirements for anonymity, it will likely not be necessary to redact these documents. If the reporter wishes to see any other documents, the reporter must apply to the Court for permission.

What should practitioners do and expect as a result of the Scheme?

Firstly, practitioners should ensure that they are fully aware of the new rules under the pilot scheme. The Transparency Project has produced useful Guidance for Judges and Practitioners available here.

Secondly, practitioners should ensure that their clients are aware of the Reporting Pilot scheme. There is separate guidance produced to assist lay clients.

Thirdly, in accordance with the guidance, all advocates should consider the issue of transparency in advance of the first hearing in a case (or any subsequent hearing if it is not

addressed at the first hearing). This should be addressed whether or not notice from a reporter has been given. Advocates should ensure they have instructions on whether a Transparency Order should be made and any proposed amendments to the draft order.

To this end, the Local Authority legal representatives would be well advised to prepare the draft order in advance so that other parties can consider the proposed terms on what will be permitted to be reported. This should avoid any party (particularly the parents) feeling ambushed by the presence of a reporter at a hearing where the court is considering issues of the utmost privacy and confidentiality. Equally, local authority clients need to be aware that the actions of Children's Services, their policies, practices and funding decisions are likely to be of interest to reporters. However, it is important to note that whilst parties' views will be considered in considering whether to grant a Transparency Order, a party cannot merely veto a reporter's presence.

Finally, practitioners should be alert that although a draft order has been provided, there may be additional conditions which should be sought to protect any party's interests. Parties must be alert to the risk of jigsaw identification based on the particular facts and circumstances of the case. For example, the standard form draft order does not provide that the details of a medical condition is omitted from reporting. If a disease or illness has a particular rarity, this, along with identification of the Local Authority, may lead to confidentiality being compromised.

https://barristermagazine.com/reporting-in-family-courts/

A-Z Barristers Chambers

Reporting in Family Courts

Comment & OpinionReporting in Family Courts

February 28, 2023

By Stuart Barlow, Solicitor, Family Law Specialist

To make sure that children, vulnerable adults and families are protected from unwanted publicity, restrictions have been put in place to limit what the media can report. A new era for

transparency in family court reporting has begun with a pilot scheme that was launched on the 30th January 2023 under the title of Reporting Pilot.

Reporters are generally allowed to attend family court hearings. They do not need to apply or give notice. The rules give a general right of attendance to journalists and legal bloggers, to most, but not all, private hearings.

The Family Procedure Rules 2010 govern the procedure in the Family Court and the High Court.

Under rule 27.10, hearings relating to family matters are generally held in private, meaning members of the public cannot be present.

While accredited media representatives may attend hearings under rule 27.11(2), subject to exceptions, there are strict limits on what they can report.

Under section 12 of the Administration of Justice Act 1960 it may, for example, be a contempt of court to publish information about proceedings relating to children if a court sits in private. Additionally, under section 97(2) of the Children Act 1989, it is an offence to publish information which could identify a child involved in certain proceedings.

Review of transparency in the Family Courts

In 2019, the President of the Family Division, Sir Andrew McFarlane, appointed a review panel to investigate transparency in the Family Courts. Amongst other things the panel asked the following questions:

Is the line currently drawn correctly between, on the one hand, the need for confidentiality for the parties and children whose personal information may be the subject of proceedings in the Family Court, and, on the other hand, the need for the public to have confidence in the work that these courts undertake on behalf of the State and society?

If not, what steps should be taken to achieve either greater openness or increased confidentiality?

Any observations on the Practice Guidance: Family Court Anonymisation Guidance issued by the President on 7 December 2018 and the President’s Guidance as to reporting in the Family Courts, issued on 29 October 2019.

Sir Andrew published the panel's findings and his recommendations in the October 2021 report, Confidence and Confidentiality: Transparency in the Family Courts.

Sir Andrew said the time had 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."

He said: "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."

Sir Andrew noted that witnesses to the review panel had referred to the "chilling effect" of section 12 of the 1960 Act (contempt of court). Sir Andrew said: "… the fear of breaching it and the costs involved in litigation have acted as a major disincentive to journalists and others reporting on Family cases." He said it was not for judiciary to consider whether section 12 should be repealed or replaced but that he supported "calls for urgent consideration to be given by government and Parliament to a review of this provision."

The Reporting Pilot

In the October 2021 report, Sir Andrew proposed bringing forward rules to mitigate the impact of section 12, so allowing journalists and legal bloggers to attend and report on Family Court proceedings.

In November 2021, a Transparency Implementation Group was established to carry out these recommendations. The result of this work is the 'Reporting Pilot' .

On 30th January 2023, the Reporting Pilot was launched in the designated courts of Cardiff, Leeds and Carlisle.

The Reporting Pilot will apply to any level of judge of the family court, or in the Family Division of the High Court. Initially the Reporting Pilot 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.

The pilot will run over a period of 12 months and be subject to independent evaluation. The aim of the pilot is to introduce a presumption that legal bloggers and accredited media may report on what they see and hear during family court cases, subject to strict rules of anonymity (the transparency principle). Only so-called ‘pilot reporters’ will be able to attend and report on proceedings heard in pilot courts.

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 ability to report is being piloted to make sure it can be done safely and with minimum disruption to those involved in the cases, and the courts. Judges in these courts will make a Transparency Order, which sets out the rules of what can and cannot be reported.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).

Transparency orders

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.

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.

The rules on what may or may not be reported in a particular case will be set out in a transparency order issued by the court. Each order will take the form of an injunction and reporters will be bound by its terms.

All reporting will be subject to the principle of anonymity in relation to children, family members and other specified parties, unless the court orders otherwise.

The standard Transparency Order will state that it remains in place until any child to whom the proceedings relate reaches the age of 18.

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;

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;

The name of any person who is a party to, or intervening in, the proceedings;

The address of any child or family member;

The name or address of any foster carer;

The school/hospital/placement name or address, or any identifying features of a school of the child;

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;

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

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

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

Under the standard Transparency Order journalists will be able to identify:

The local authority/authorities involved in the proceedings

The director and assistant director of children’s services within the local authority (but usually not the social workers working directly with the family, including the team manager, unless the court so orders)

Senior personnel at Children and Family Court Advisory and Support Service (Cafcass) (but usually not the guardian appointed for the child)

Any NHS Trust

Court-appointed experts (but not treating clinicians or medical professionals)

Legal representatives and judges

Anyone else named in a published judgment.

Family members

Family members will for the first time be free to speak to journalists reporting under the pilot without being at risk of contempt of court. It will also be permissible for journalists to quote family members in their reporting, as long as the family is effectively anonymised. 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.

Documents

A reporter who attends a hearing, or who intends to attend a forthcoming hearing, is entitled to see certain documents from a case (but not all documents). They are also entitled to quote from or publish the contents of those documents, subject to effective anonymisation, once a transparency order has been made.

The permitted documents are:

Documents drafted by advocates (or litigants if a party is self-representing): ie case outlines, skeleton arguments, summaries, position statements, threshold documents and chronologies.

Any indices from the court bundle.

Any suitably anonymised orders within the case.

Qualifying cases

The following cases will be part of the Reporting Pilot:

All applications for public and private law Orders under Parts II and IV Children Act 1989, including applications to discharge, vary or enforce existing Orders. The pilot will commence with public law cases and shortly thereafter extend to private law cases.

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.

All applications under the inherent jurisdiction of the High Court, including applications to authorise the deprivation of a child's liberty

The pilot will start with public law cases (such as care order proceedings) and then proceed to include private law cases (for example, child arrangements orders).

Financial remedy proceedings are excluded

The pilot excludes financial remedy cases, such as money claims made on divorce, along with applications under the Family Law Act 1996 eg non molestation orders

The current practice is for courts to restrict the publication of confidential financial information where parties have been compelled to disclose their affairs as part of the proceedings. The transparency of such proceedings continues to be a matter of debate. The Transparency Implementation Group is examining the issue as part of ongoing work to open up the Family Court.

What happens next ?

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

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.

For most family courts the legal position will remain the same at least for the time being

https://www.stewartslaw.com/news/greater-transparency-family-proceedings-court-of-appeal/

Court of Appeal decision affirms trend towards greater transparency in family proceedings

17 May 2022 | Divorce and Family

The Court of Appeal has confirmed that the parents involved in Children Act 1989 proceedings in a case involving a current and a former MP can be identified in journalistic reporting, even if this will tend to identify the child. The court considered important issues around balancing the right to privacy under Article 8 of the European Convention on Human Rights and the right to freedom of expression under Article 10.

The Griffiths v Tickle case aligns with the general direction of travel for greater transparency in family proceedings, although its particular facts were key to the court's decision. Our Media Disputes and Divorce and Family teams jointly consider the judgment.

Background

The case at the heart of this application was that of former MP Andrew Griffiths and his ex-wife and current MP Kate Griffiths. Following a hearing in the Family Court, the judge

made serious findings of fact against Andrew Griffiths, namely that he perpetrated domestic and sexual abuse against Kate Griffiths. The judge chose not to make the findings public to protect the former couple's young child.

Two journalists, Louise Tickle and Brian Farmer, then made an application for publication of the fact-finding judgment, including the names of both parents but not that of the child, the wider family or certain intimate details. This would mark a departure from the usual position whereby findings of fact in Family Court cases often remain behind closed doors. The journalists' application was supported by Kate Griffiths, the guardian appointed to represent the child's interests and the non-profit organisation Rights of Women, which specialises in providing legal advice to women experiencing or are at risk of experiencing violence.

Before the hearing, Andrew Griffiths based his objection to the application solely on the child's rights under Article 8 rather than his own. This would prevent the court from doing anything that might identify the child and protect the child's relationship with him. At the hearing, Andrew Griffiths changed his position. He argued that every detail in the judgment should be published (even the few intimate details that Kate Griffiths had requested be redacted) so long as all names, including his own, were redacted.

High Court

The High Court judge disagreed and granted the journalists' application. Mrs Justice Lieven identified four factors favouring Article 10 and publication, which had been argued by the applicants and supported by Kate Griffiths and Rights of Women. Namely:

The open justice principle.

Andrew Griffiths' role as an MP and minister at the time of many of the allegations.

Inconsistencies between public statements Andrew Griffiths made in 2018 and the fact-finding judgment gave the media a strong reason to 'set the record straight', especially given his role as an MP. Plus, the fact that his untrue statements were made to protect his political career and the gravity of the facts found.

The public interest in showing the workings of the Family Court, particularly in a case where a man with power and influence was held to account in respect of the abuse of his female partner.

There are some interesting takeaways from the High Court judgment:

The child's best interests were plainly a primary consideration but not the primary consideration. Regarding the child's Article 8 rights, the judge considered the direct impact on the child of publication and any media interest that might follow. She concluded that if the child were older and likely to be on social media or engage with press coverage, she would be very concerned. However, the child's very young age meant the child had no access to social media and would not have for some time. She considered that explanations would have to be given to the child at an age-appropriate time. In any event, the father's previous sexting scandal meant some of his behaviour was already in the public domain.

The mother had "the right to tell her story", and the mother's rights were bolstered by the "very unusual" fact that the child's guardian also supported publication.

The judge held that there is a "significant public interest" in fully informed, open discussion and debate about domestic abuse and how it is dealt with by the Family Courts. It is usually only those cases in which something has gone wrong that are published. That leads to an erosion of public confidence in the family justice system, which is hugely detrimental to the public interest. The unusual features of this case meant that it offered an opportunity "to slightly redress" that problem.

The court also considered the point made by Rights of Women that women who do not seek the support of the Family Court are relatively free to speak out about their experiences, subject to the laws of defamation. However, those engaged in Family Court disputes concerning their children are likely to be more restricted about the degree to which they can share information, including within their own support networks. As an MP, Kate Griffiths could speak about these matters in parliament with the protection of parliamentary privilege in any event. She should not otherwise be "silenced" by the court because of Andrew Griffiths' opposition. Being prevented from speaking publicly due to his opposing publication would be another example of his coercive control.

The Court of Appeal

Andrew Griffiths was granted permission to appeal, although he had limited prospects of success as this was an opportunity for the Court of Appeal to review the current guidelines and law on the relationship between Articles 8 and 10 rights and Children Act proceedings.

The court concluded that his five grounds of appeal could be reduced to two main points.

That the High Court judge misinterpreted and misapplied section 97 of the Children Act. This was on the basis that its true construction prohibits a court from authorising the publication of anything likely to identify a child as being the subject of proceedings under the Children Act unless it is satisfied that the welfare of the child requires such a publication; and

In the alternative, the judge's analysis was legally flawed in relation to Re S (A Child) because it was wrongly biased or weighted in favour of publication and against the child's interests.

The court disagreed with both these points and concluded that the first instance judge "was clearly right". In its judgment, the court emphasised the unusual factual circumstances of this case involving two MPs and matters of genuine public interest.

As to point two specifically, in Re S (A Child), the House of Lords considered the balancing exercise to be carried out in relation to Articles 8 and 10. Lord Steyn articulated the following four principles:

"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."

Critical factors

The Court of Appeal confirmed that the law applicable to this case was clear and had been correctly applied by the High Court judge. The court did not consider it necessary to provide any further guidance. It said:

"Decisions of this kind are inevitably case-specific. The critical factors in this case included:

The father's decision not to invoke his own Article 8 rights but to rely exclusively on the rights of the child

The very young age of the child

The guardian of the child being in favour of publication

The mother's support for publication, and

The extent and nature of the information about the father that was already in the public domain."

Conclusion

The general position in the Family Court, in which a reporter can attend a hearing but not automatically report on the proceedings, has a sound policy basis behind it. However, this case demonstrates why this approach can also have an impact on public policy matters such as domestic abuse and the public's confidence in the justice system.

There is a greater move towards transparency in the Family Courts, particularly following Sir Andrew McFarlane's 'Transparency in the Family Courts' report, and this case aligns with that sentiment. However, it cannot be understated how unusual and important were the facts at the heart of this case. Lord Steyn's balancing exercise will be carefully conducted on a case-by-case basis. This case is a helpful reminder of this; there should be no one-size-fits-all.

https://resolution.org.uk/the-review/archive/the-review-issue-215/the-presidents-transparency-review-what-it-means-for-family-lawyers/

https://www.stewartslaw.com/news/leeds-judge-makes-first-transparency-order-allowing-reporting-of-family-court-case/

Leeds judge makes first transparency order allowing reporting of family court case

3 February 2023 | Divorce and Family

A pilot in relation to media access in family law proceedings went live on 30 January as part of the ongoing drive to make justice visible and accessible. A Leeds judge is thought to be the first to have made a transparency order to allow reporting of a complex case in the family courts. Senior Associate Jenny Bowden considers the issues involved.

Mr Justice Poole's order has been made before the hearing, which is expected to run for 11 weeks. Perhaps unusually, the transparency order includes a prohibition on any reporting until after the conclusion of the hearing (and perhaps beyond). So while the order may be the first of its kind, it is unlikely to result in the first press coverage under the pilot. Leeds is one of only three regions in which the pilot is being conducted during 2023; the others are Cardiff and Carlisle family courts.

An end to secrecy

Family proceedings are generally heard in private to protect the privacy of those involved, with judgments (if published) routinely anonymised. Although journalists may attend hearings in family matters (unless expressly excluded by the court), they cannot necessarily freely report on cases (outside this pilot) due to certain restrictions which may be imposed. This is certainly the case in proceedings concerning children where publication of certain information is strictly prohibited. This contrasts with the position in financial remedy proceedings, where it is not a contempt of court for media or legal bloggers to publish information (save for the requirement to protect the anonymity of any child) unless there are specific reporting restrictions imposed by the judge.

For cases which fall within the scope of the new reporting pilot, restrictions are being relaxed on a trial basis to allow more public scrutiny of the process through improved media access to proceedings and consequently, more transparency in family law proceedings. The purpose of the pilot is to introduce a presumption that legal bloggers and accredited media may report on what they see and hear during family court cases, subject to strict rules of

anonymity. This will be achieved by judges in the pilot courts making a ‘Transparency Order’, which sets out the rules of what can and cannot be reported.

There is an increasing perception that the family court is shrouded in secrecy. Many parties come out of family proceedings feeling somewhat bruised and ‘let down’ by the system, and without any real understanding of how it works. Some say there has been a measured decline in the public’s confidence in family justice. This pilot aims to tackle that issue. If judges within the pilot embrace this transparency project, it is hoped the public will have a greater understanding of how proceedings are conducted and decisions made.

Importantly, the pilot only permits accredited journalists and legal bloggers to attend, and will not include all types of family proceedings.

The difference between the publicity under this pilot and the publicity generated by a published judgment is simple. Under the pilot, the journalists will have access to the proceedings and certain documents. They may be able to report justice ‘as it happens’. In contrast, a published judgment is produced by the court often well after the hearing and focuses on the legal arguments rather than matters of public interest.

Another important point is that reporting arising from this pilot must still preserve the anonymity of the parties (as is usually the case with wider reporting restrictions) and confidentiality with respect to intimate details of the family’s lives. That is not always the case when judgments come to be published. There are parallel threads, therefore, all aimed at increasing the visibility of the justice system.

What does the family court hope to achieve?

It is hoped that greater transparency will help the court remove misconceptions, so everyone can be comfortable with the system and understand how justice is done.

The production of anonymised judgments can help provide greater visibility of the family justice system while still recognising the parties’ privacy. However, when a judgment is published, there is the possibility of so-called ‘jigsaw identification’. This has long been an issue in cases where the parties’ lifestyles, business interests and circumstances of their separation make it possible to piece together the anonymised details and identify the family involved. This may be made easier by the level of detail intended to be made publishable by

the courts. If the press has attended and reported on the case, that coverage may be read in tandem with any reported judgment.

Unintended consequences

Media reporting and intrusion are so common in this age of social media and instant access to information that even when the courts try to keep the details of parties confidential, it is inevitable some may try and link the threads together. There is also a move towards judgments being published without anonymity, in which case it's not simply a risk that the parties may be identified, but rather it's a given.

Another unintended consequence is the potential damage to the mental health and welfare of the children of parents going through such proceedings. That damage can extend to the parties themselves, but any children involved are likely to be passive passengers on this journey. If the parties are engaged in a judicial process, chances are they are already under a significant amount of stress in what may be an emotionally challenging time. Add to that the presence of a journalist writing down every detail, even if it can't be reported in full, and you can imagine it makes that experience of attending a court hearing all the more fraught.

Comment

Partner Lisette Dupré says: "Greater transparency is needed to increase public confidence and, frankly, accountability in family proceedings. There is a clear public interest in the proceedings being reported, and it's positive to see the judiciary engaging with this pilot so promptly. That said, press coverage must be balanced with the impact on the health and wellbeing of those involved. It is hard enough for a child to have parents going through divorce proceedings without also having to contemplate their friends and peers discussing their parent's affairs in the school playground.

"While this pilot scheme is welcomed, it has some difficult issues to iron out in practice. I anticipate that for families with the means to engage in alternative dispute resolution, this pilot will serve as a further incentive to avoid the risk of their family life being under the spotlight within the court process."

https://resolution.org.uk/the-review/archive/the-review-issue-223/the-reporting-pilot-in-the-family-courts/

The Reporting Pilot in the Family Courts

by Stuart Barlow

transparency

A new era for transparency in family court reporting has begun with a pilot scheme that was launched on 30 January 2023

To make sure that children, vulnerable adults and families are protected from unwanted publicity, restrictions have been put in place to limit what the media can report. Reporters are generally allowed to attend family court hearings. They do not need to apply or give notice. The rules give a general right of attendance to journalists and legal bloggers to most, but not all, private hearings.

The Family Procedure Rules 2010 govern the procedure in the Family Court and the High Court. Under rule 27.10, hearings relating to family matters are generally held in private, meaning members of the public cannot be present.

While accredited media representatives may attend hearings under rule 27.11(2), subject to exceptions, there are strict limits on what they can report. Under section 12 of the Administration of Justice Act (AJA) 1960 it may, for example, be a contempt of court to publish information about proceedings relating to children if a court sits in private. Additionally, under section 97(2) of the Children Act 1989, it is an offence to publish information which could identify a child involved in certain proceedings.

Review of transparency in the Family Court

In 2019 the President of the Family Division, Sir Andrew McFarlane, appointed a review panel to investigate transparency in the Family Court. Amongst other things the panel asked the following questions:

Is the line currently drawn correctly between, on the one hand, the need for confidentiality for the parties and children whose personal information may be the subject of proceedings in the Family Court, and, on the other hand, the need for the public to have confidence in the work that these courts undertake on behalf of the state and society?

If not, what steps should be taken to achieve either greater openness or increased confidentiality?

The panel was also asked to provide any observations on the Practice Guidance: Family Court Anonymisation Guidance issued by the President on 7 December 2018 and the President's Guidance as to Reporting in the Family Courts, issued on 29 October 2019.

Sir Andrew published the panel's findings and his recommendations in the October 2021 report, "Confidence and Confidentiality: Transparency in the Family Courts", and said the time had 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… 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."

Sir Andrew noted that witnesses to the review panel had referred to the "chilling effect" of section 12 of the 1960 Act (contempt of court). He said: "… the fear of breaching it and the costs involved in litigation have acted as a major disincentive to journalists and others reporting on family cases." He said it was not for the judiciary to consider whether s12 should be repealed or replaced but that he supported "calls for urgent consideration to be given by government and Parliament to a review of this provision".

The Reporting Pilot

In the October 2021 report Sir Andrew proposed bringing forward rules to mitigate the impact of s12, so allowing journalists and legal bloggers to attend and report on Family Court proceedings.

In November 2021 a Transparency Implementation Group was established to carry out these recommendations. The result of this work is the Reporting Pilot, which was launched in the designated courts of Cardiff, Leeds and Carlisle.

The Reporting Pilot will apply to any level of judge of the Family Court, or in the Family Division of the High Court. Initially the Reporting Pilot 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.

The pilot will run over a period of 12 months and be subject to independent evaluation. The aim is to introduce a presumption that legal bloggers and accredited media may report on what they see and hear during family court cases, subject to strict rules of anonymity (the transparency principle). Only so-called “pilot reporters” will be able to attend and report on proceedings heard in pilot courts.

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 ability to report is being piloted to make sure it can be done safely and with minimum disruption to those involved in the cases, and the courts. Judges in these courts will make a transparency order, which sets out the rules of what can and cannot be reported. 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).

Transparency orders

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.

There will be a standard form of transparency order, but the court may modify its terms 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.

The rules on what may or may not be reported in a particular case will be set out in the transparency order issued by the court. Each order will take the form of an injunction and reporters will be bound by its terms.

All reporting will be subject to the principle of anonymity in relation to children, family members and other specified parties, unless the court orders otherwise.

The standard transparency order will state that it remains in place until any child to whom the proceedings relate reaches the age of 18.

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:

The name or date of birth of any subject child in the case.

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.

The name of any person who is a party to, or intervening in, the proceedings.

The address of any child or family member.

The name or address of any foster carer.

The school/hospital/placement name or address, or any identifying features of a school of the child.

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.

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

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

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

Under the standard Transparency Order journalists will be able to identify:

The local authority/authorities involved in the proceedings.

The director and assistant director of children's services within the local authority (but usually not the social workers working directly with the family, including the team manager, unless the court so orders).

Senior Cafcass personnel (but usually not the guardian appointed for the child).

Any NHS Trust.

Court-appointed experts (but not treating clinicians or medical professionals).

Legal representatives and judges.

Anyone else named in a published judgment.

Family members

Family members will for the first time be free to speak to journalists reporting under the pilot without being at risk of contempt of court. It will also be permissible for journalists to quote family members in their reporting, as long as the family is effectively anonymised. It will not permit the parties to themselves publish information from the proceedings where this would be restricted by AJA 1960 s12 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.

Documents

A reporter who attends a hearing, or who intends to attend a forthcoming hearing, is entitled to see certain documents from a case (but not all documents). They are also entitled to quote from or publish the contents of those documents, subject to effective anonymisation, once a transparency order has been made.

The permitted documents are:

Documents drafted by advocates (or litigants if a party is self-representing): ie case outlines, skeleton arguments, summaries, position statements, threshold documents and chronologies.

Any indices from the court bundle.

Any suitably anonymised orders within the case.

Qualifying cases

The following cases will be part of the Reporting Pilot:

All applications for public and private law orders under Parts II and IV of the Children Act 1989, including applications to discharge, vary or enforce existing orders (for example, child arrangements orders). The pilot will commence with public law cases (such as care order proceedings) and shortly thereafter extend to private law cases.

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.

All applications under the inherent jurisdiction of the High Court, including applications to authorise the deprivation of a child's liberty.

Financial remedy proceedings are excluded

The pilot excludes financial remedy cases, such as money claims made on divorce, along with applications under the Family Law Act 1996, eg non-molestation orders.

The current practice is for courts to restrict the publication of confidential financial information where parties have been compelled to disclose their affairs as part of the proceedings. The transparency of such proceedings continues to be a matter of debate. The Transparency Implementation Group is examining the issue as part of ongoing work to open up the Family Court.

What happens next ?

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

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.

For most family courts the legal position will remain the same, at least for the time being.

https://www.rainscourt.com/transcript/

How can I get a transcript of my Family Court hearing?

A court hearing in the Family Court will usually be recorded by the court. A court transcript is a written version of the recording. As a party to those court proceedings, you can pay to obtain a typed version of the audio recording. This may be useful if there is a dispute about what occurred in court. A transcript will usually be required if you are appealing a decision.

There are currently six transcription companies available to produce transcriptions of court proceedings. You will need to contact the transcription companies, and make a decision about which transcriber you would like to use. The costs of producing the transcripts depend on which company you choose, and how quickly you require the document to be produced. The standard timescales are to produce the transcription within 48 hours or within 12 working days.

You will need to prepare a form EX107 confirming which transcribing company you wish to use, which part of the court hearing you wish to have transcribed and additional information about the request and the hearing. The form is sent to the relevant Family Court. The court will then send your request plus the tapes of the hearing to the transcriber. The transcription service will produce the transcript and it is usually returned to the court for the judge to approve. It will then be sent to you.

The contact details for the six transcription companies are as follows:

Name

Address

Telephone/Email/Website

Ubiqus UK Ltd

291–299 Borough High Street London SE1 1JG DX 149165 Southwark 9

T 020 7759 2695 F 020 7405 9884

E legal@ubiqus.com

W www.ubiqus.co.uk/

Epiq Europe Ltd (formerly DTI)

Unit 1 Blenheim Court Beaufort Business Park Bristol BS32 4NE DX 414 LDE

T 020 7421 4036 E civil@epiqglobal.co.uk

E crown@epiqglobal.co.uk

W www.epiqglobal.com/en-gb

eScribers (formerly Auscript Ltd)

Central Court Suite 303 25 Southampton Buildings London WC2A 1AL

T 03301 005223 F 03301 005213

E uk.clientservices@escribers.net

W www.escribers.net

Marten Walsh Cherer Ltd

1st Floor, Quality House 6–9 Quality Court Chancery Lane London WC2A 1HP DX 410 LDE

T 020 7067 2900 F 020 7831 6864

E civil@martenwalshcherer.com (for Civil, Family and Tribunals)

W www.martenwalshcherer.com/

The Transcription Agency

24–28 High Street Hythe Kent CT21 5AT

T 01303 230038 (public)

E court@thetranscriptionagency.com

W www.thetranscriptionagency.com

Opus 2 International Ltd

5th Floor 5 New Street Square London EC4A 3BF

Helpdesk 020 7831 5627 T 020 7831 5627

E civil@opus2.digital

W www.opus2.com

Excerpt from EX107GN Guidance Notes

The costs of the six suppliers are set out in this table. The price shown is the cost per folio. A folio consists of 72 words. The total cost of the transcript will be the number of folios multiplied by the price shown.

Service Level Band

Service Description

Ubiqus

Epiq

eScribers

Marten Walsh Cherer

The Transcription Agency

Opus 2

Band 2

48 Hours

£1.33

£1.30

£1.31

£1.43

£1.91

£2.36

Band 5

12 Working days

£0.76

£1.05

£1.02

£1.19

£1.44

£1.71

Band 6

Copy rate

£0.00

£0.33

£0.10 per page

£0.33 per page

£0.43 per page

£0.43 per page

Excerpt from EX107GN Guidance Notes

Any of the 6 Transcription Companies in the table above can be used to provide a transcript in Civil, Family or Tribunal proceedings. The table above shows the maximum cost charged by each of the six suppliers for the two standard service levels which are available.

https://www.stewartslaw.com/news/move-towards-greater-transparency-in-family-law-proceedings-gathers-pace/

Move towards greater transparency in family law proceedings gathers pace

18 March 2022 | Divorce and Family

The issue of transparency in family law proceedings has been the subject of debate for some time. According to Sir Andrew McFarlane, the President of the Family Division, that debate was, for several decades, left to stagnate in “the ‘Too Difficult’ box” of the family judiciary’s agenda.

To address the issue, the President published a report in October 2021 calling for greater openness in family proceedings. Lucy Swinton examines the report and a subsequent judicial report relating to transparency in financial proceedings.

For those unfamiliar with the transparency debate, the competing policy drivers are simple. On the one hand, there is the need to safeguard the privacy of parties who turn to the courts for help with intimate financial disputes. On the other hand, there is the need to ensure that public confidence in the family court is not eroded by the veil of mystery that has, to date, been thrown over most family judgments.

The report by the President, titled ‘Confidence and Confidentiality: Transparency in the Family Courts’ endorses a “new norm” of reporting, which, it is hoped, will go some way to bolstering public confidence in the Family Court. However, whilst reform is typically synonymous with progress, there is concern amongst family practitioners that this move towards transparency could be a step back for parties and their families insofar as the prospect of one’s intimate personal affairs making newspaper headlines could deter people from seeking proper recourse through the courts.

A “closed system”

It is no secret that the rare reporting of family cases and routine anonymisation of judgments has, historically, favoured the everyday litigant. Most parties have been able to attend court confident in the expectation that the outcome of their case would remain private. While some high profile litigation has been subject to press intrusion, often the finer details of those cases have, nevertheless, been shielded from public scrutiny. This, the President says, has created a “largely closed court system”, where the public is given “no account of how the court operates”, leading to accusations of “secret justice”.

Concerned by the limited scope of openness, the President’s report seeks to demystify the inner workings of the Family Court. Not only does the report encourage family judges to publish more of their judgments, it also states that the “time has come” for accredited media

representatives and legal bloggers to be able to report publicly on what they see and hear when attending Family Court hearings.

Transparency in financial proceedings

Mr Justice Mostyn and His Honour Judge Hess have since launched a consultation aimed at bringing greater transparency to financial proceedings. In doing so, they suggest introducing a standard reporting permission order ("RPO"), which would allow journalists access to key documents in financial remedy cases. It would also permit the publication of any details heard at the hearing or read in the court papers. This would include the parties' names, their photographs and a broad description of the factual, evidential or legal issues in the proceedings, including the settlement proposals made by the parties.

Though the outcome of the consultation is pending, the unravelling of routine anonymisation in financial proceedings has already begun. In BT v CU [2021] EWFC 87, for example, Mr Justice Mostyn concluded that the practice of anonymising such judgments should be "abandoned". In that case, Mr Justice Mostyn initially allowed the publication of the full judgment, granting anonymity only to the parties' children. He subsequently granted anonymisation to the husband and wife, but only due to the following specific facts of the case:

Naming of the wife (who worked at the parties' children's school) would enable the identification of the children; and,

The parties came to the hearing with the reasonable expectation that the hearing would preserve their anonymity.

That Mr Justice Mostyn ultimately granted the parties full anonymity should by no means be characterised as a boycott of the President's calls for transparency. On the contrary, Mr Justice Mostyn unequivocally endorsed the impetus towards greater openness in family (and in particular, financial) proceedings, concluding his judgment by saying: "My default position from now on will be to publish financial remedy judgments in full without anonymisation, save that any children will continue to be granted anonymity. Derogation from this principle will need to be distinctly justified by reference to specific facts, rather than by reliance on generalisations."

The future of transparency rulings

In the subsequent case of A v M [2021] EWFC 89, Mr Justice Mostyn again stressed the "vital importance of transparency". Like BT v CU, the A v M proceedings began well before the President's report was published. Mr Justice Mostyn, therefore, allowed the full anonymisation of the judgment to recognise that the parties had approached the hearing with the "confident expectation that journalists would not attend and that the judgment would be anonymised". He nevertheless reiterated his default position (as set out in BT v CU (above)). Responding to claims that his decision in BT v CU "snatched away an established right of anonymity", he stated that he does "not believe that there is any such right".

As can be seen from the report and the recent case law that follows it, the direction of travel is clear; family judgments will be increasingly exposed to public scrutiny. It is yet to be seen how these developments will influence parties' willingness to pursue financial relief through the courts. It may be that these reforms will drive litigants away from the court system in search of the private courts where anonymity prevails.

Head of Divorce and Family Stephen Foster comments:

"The acceleration towards transparency and open court is significant. Clients should be alive to the impact that these reforms will have on their privacy (or lack thereof) in financial proceedings. Arguments that one started proceedings historically with a reasonable expectation of privacy will not survive for very long in this new environment.

Stewarts are well equipped to advise those with privacy concerns and have long been providing solutions to clients to shield and protect their privacy before this shift in landscape occurred."

https://www.london-law.co.uk/court-transcript-access-costs/

What is a Court Transcript, how do I obtain one and how much does it cost to obtain?

23

May

A Court Transcript is simply a written and verbatim record of a court's judgment. In today's blog we look at how do you obtain one and how much does it cost to obtain a court transcript? You can apply for a transcript of a court or tribunal hearing if the hearing was recorded.

The court can refuse to provide part or all of a transcript (for example, if details of the hearing are confidential).

Are Court Hearings recorded?

Hearings at the Crown Court and at civil and family courts are always recorded. Tribunal hearings are not always recorded. You can contact the tribunal to find out if the hearing was recorded. Hearings at magistrates' courts are never recorded.

How to apply for a Court Transcript?

Obtaining a Court Transcript is a very straightforward procedure. You simply need to download and fill in form EX107. The link for the form is:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884704/ex107-static-eng.pdf

The form then needs to be returned by email or post to the court or tribunal where the hearing took place with the appropriate fee (if applicable).

How much does it cost to obtain a Court Transcript?

You will usually have to pay for the transcript unless the court or tribunal believes there are special circumstances (for example, you need the transcript urgently but cannot afford to pay).

The final cost varies depending on the transcript's size, whether it's a new transcript or a copy, and other factors. Transcripts are charged by the folio (which consists of 72 words)

and range from £0.74 to £2.30 per folio. There may also be copying charges ranging from £0.10 to £0.42 per folio.

Most courts or tribunals require payment upfront before issuing the transcript and depending on the court or tribunal depends upon the method of payment that they will accept.

https://www.majorfamilylaw.co.uk/transparency-project-extended-to-16-new-courts/

Transparency project extended to 16 new courts

February 13, 2024 • 3 minute read

A pilot scheme which enables direct reporting on family cases has been extended to 16 more courts.

The Transparency Implementation Group Reporting Pilot or TIG was launched in January 2023 to explore the feasibility of increasing reporting rights in family courts without affecting safety or causing disruption. Accredited media representatives and legal bloggers, attending the family courts at Leeds, Cardiff and Carlisle could now request a ‘transparency order’ enabling much more extensive reporting than was previously possible, as long as they observed strict rules on anonymity for children and individual social workers.

The TIG pilot represented the very first time journalists had been allowed to quote from family court documents other than published judgements, describe events in the courtroom and even speak to families.

Initially the scheme only covered care proceedings, but it was later extended to include private disputes involving children.

Now the pilot has been extended to additional courts across England, namely:

Luton

Guildford

Milton Keynes

Truro

Dorset

Liverpool

Manchester

Hull

West Yorkshire

Central Family Court

East London

West London

Nottingham

Birmingham

Stoke

Derby

Reporting from the new courts will follow the same trajectory as the initial three: initially limited to care proceedings, it will later be extended to private family cases and magistrates' hearings.

Since the launch of the pilot, a number of high-profile organisations have delivered pioneering reports from family courts, including the Guardian, the Sunday Times, BBC Radio 4 and the Bureau of Investigative Journalism.

As President of the Family Division of the Hight Court, Sir Andrew McFarlane is the most senior family law judges in the country. He said:

“Extending the reporting pilot to family courts across the country is a huge step in the judiciary’s ongoing work to increase transparency and improve public confidence and understanding of the family justice system…We hope that in extending the pilot further we can continue to understand the impact that family court reporting has. I would like to urge the media to read the guidance and come to the family courts to see the vital and challenging work that is done there, and to report on the cases and issues that are so important.”

Joanne Major is Managing Director of northern specialist law Major Family Law. She said:

“Family courts intervene in some of the most emotional and personal aspects of people’s lives, and that makes public confidence in them vital. Responsible, managed access for the media can only further that goal and help to counter the sensationalism and distortions we have all too often seen in the media up till now, with no compromise to the anonymity protections provided to the most vulnerable individuals involved in each case.”

https://www.localgovernmentlawyer.co.uk/child-protection/309-children-protection-features/59458-a-guide-to-transparency-orders

A guide to Transparency Orders

18.Dec.2024

Claudia Saxton provides a simple breakdown guide in relation to transparency orders; who may be granted a transparency order and what may they report on.

The Transparency Pilot started in January 2023 in Leeds, Cardiff and Carlisle. The pilot permitted ‘accredited journalists and legal bloggers to report on what they see and hear in children cases in the family courts’. Across the last two years the pilot has been extended. In January 2024, the pilot extended to a total of 19 areas across the country and in July included private law cases.

Most recently, on 4 November the pilot extended to include public and private law cases in all 19 current pilot areas before Magistrates. On 11 November 2024, the pilot for reporting financial remedy proceedings extended to the Royal Courts of Justice.

Transparency orders

In order for an accredited journalist or legal blogger to report upon a case, the court must grant a transparency order. The court retains the discretion to not make a transparency order and that there should be no reporting of the case. The standard transparency order contains the following terms:

No person may publish any information relating to the proceedings to the public or a section of it, which includes:

The name or date of birth of any subject child in the case.

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;

The name of any person who is a party to, or intervening in, the proceedings;

The address of any child or family member;

The name or address of any foster carer;

The school/hospital/placement name or address, or any identifying features of a school of the child;

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;

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

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

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.

Unless the Court orders otherwise the following agencies or professionals may be named:

The local authority/authorities involved in the proceedings;

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);

Senior personnel at Cafcass but not normally the reporting officer, or children's guardian named in the case;

Any NHS Trust;

Court appointed experts;

Legal representatives and judges;

Anyone else named in a published judgment

Cases that require special consideration

The court has discretion whether to make a transparency order. The court may also vary the standard terms of the transparency order. When considering this, the court will have careful consideration of the following categories of cases:

Cases where matters relevant to the case are subject to criminal charges, active investigation, or proceedings, where reporting may cause prejudice to those proceedings;

Applications that are made without notice, where reporting and or/publication of the hearing or facts would cause prejudice to the applicant.

Cases where it is particularly difficult to achieve anonymity for the child.

Cases involving protected parties, and in particular cases where the Official Solicitor acts as a litigation friend.

FDAC cases, where some where some court appointments are not hearings within the meaning of FPR 27.11.

What documents may the reporters request?

Accredited journalists or legal bloggers who attend 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:

Documents drafted by advocates (or litigants if a party is self-representing), that is:

Case Summaries,

Skeleton Arguments,

Statements of Case,

Position Statements,

Threshold Documents and

Chronologies.

Any indices from the Court bundle.

Any suitably anonymised Orders within the case.

The reporter must make their request to see these document at the hearing or before. The author of the report shall then as soon as practicable provide a copy of the document to the pilot reporter.

If a reporter seeks any additional documents, they must request permission of the court.

‘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.’

Within their report, a pilot reporter may quote from or publish the details of the document save for the details specified above.

Discussions

A pilot reporter may seek to discuss the case with parties to the proceedings and their representatives to understand the circumstances of the case.

‘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.

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.’

Claudia Saxton is a Consultant Barrister at Unit Chambers.

References

Draft Transparency Order

https://www.judiciary.uk/wp-content/uploads/2024/08/Reporting-Pilot-Guidance-2024.pdf

Related Articles

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https://www.weightmans.com/insights/media-and-transparency-in-the-family-court/

The introduction of open reporting provisions across family courts in England and Wales marks a significant milestone towards greater transparency.

6 Feb 2025

3 minutes read

Following a pilot which began in a handful of courts across England & Wales in January 2023, we now have open reporting provisions in all family courts across the country. It has been called “a watershed moment” in the history of the Family Court and in family justice.

Are journalists allowed in the Family Court?

From January 2025 journalists and legal bloggers are entitled to attend all public law children’s cases (care proceedings) and from May 2025 they can also attend all private law children’s cases between parents in the Family Court.

There is also an ongoing pilot in all family courts across the country dealing with financial remedy proceedings (ancillary to divorce) which has been extended until January 2026.

The changes mean that journalists are now able to report on what they see and hear, if a transparency order has been granted.

In certain circumstances, the court may provide the reporter with copies of specific documents and allow the parties to be spoken to, so long as their anonymity is protected. A party cannot be forced to speak to a journalist if they choose not to do so.

What is a transparency order?

If a journalist or legal blogger wishes to attend your hearing, they will need to apply to the judge for a transparency order. This will set out their entitlement to attend the hearing, what

documents (if any) they are entitled to see, and any reporting restrictions imposed by the Judge.

Can I prevent a journalist from attending my family court hearing?

The presumption is that a transparency order will be made, and the journalist will be allowed to attend and report on the court hearing, unless there is a legitimate reason to stop them.

Can the names of me and my children be reported?

Restrictions have been put in place to limit what can be reported and to ensure that children and parents retain anonymity.

What can I do to stop my court hearing being reported to the media?

Consideration should be given to non-court options such as mediation or arbitration which are private and are closed to the media and public.

If that is not an option, you can express your objections to the judge, but it is likely to be very rare for a journalist or legal blogger to be excluded.

What court documents are journalists entitled to see?

It will depend upon the nature of your hearing and the objections (if any) made as to what documents may be released to a journalist or legal blogger. The usual documents are position statements and case summaries which ensures that the attendee understands the basis of each parties' case and what issues the court is being asked to resolve.

Are the media allowed to report on family cases?

Yes, but they must ensure that the names of the parties and children are anonymised and that they cannot be named through jigsaw identification. For example, a journalist cannot publish names, dates of birth or the details of schools attended by the children or use photographs.

Can I ask a journalist to attend my family court hearing?

Yes, you are entitled to invite a journalist, but they will still need to obtain a transparency order from the judge.

You are not entitled to give the journalist any documents unless you have permission to do so from the judge as they remain private and confidential.

What is the aim of transparency in the Family Court?

There are various stated aims which led to the pilot beginning in 2023 but they largely centre around allowing reporting on cases that are in the public interest, and improving understanding, trust and confidence in the Family Court.

https://www.drdpartnership.com/news/lifting-the-veil-on-proceedings-in-the-family-courts

Lifting the veil on proceedings in the Family Courts

29 Feb 2024

7BR's Kitty Geddes and DRD Partnership's Jon McLeod and Beatrix Lohn reflect on the extension of a Pilot Scheme that will allow journalists and legal bloggers to report on cases from almost half the Family courts in England and Wales.

The journey to transparency

Despite the fact that since 2009 accredited journalists have been able to attend private hearings in the family courts, the statutory restrictions on what they could publish, and the lack of advance warning as to when hearings might take place and where, meant that the prospect of attending hearings was both uneconomical, impractical and frustrating. Some judgments were published and therefore it was easier to report using those judgments as a basis. From October 2018 the doors of the family courts were opened a little wider and "duly accredited lawyers/ legal bloggers" were also permitted to attend the hearings, however, again, what they could report from those hearing was very limited indeed.

There was a clear call for greater transparency in the family courts and this was coming both from judiciary, the media and the wider public.

The movement supporting transparency reached an inflection point in 2019 when Sir Andrew McFarlane, President of the Family Division, appointed a review panel to investigate transparency in the Family Court. The panel's findings were published in 2021 in a report: "Confidence and Confidentiality: Transparency in the Family Courts". The review marked a turning point for accredited journalists (and legal bloggers) concluding that they should be

able to “attend and observe Family Court hearings, [and] also to report publicly on what they see and hear”.

In November 2021, a Transparency Implementation Group was formed to carry out the review of the panel’s recommendation.

In January 2023 three pilot courts were identified, Leeds, Carlisle and Cardiff and the Transparency Pilot was rolled out, initially for public law children cases and then for private law children cases in May of the same year. The pilot intended to reverse the default position on private hearings and allow journalists and legal bloggers to report on what they see and hear but with stringent conditions. The conditions are set out in a transparency order which is made at the beginning of the hearing. This sets out in detail what the journalist or legal blogger can and cannot report on. The anonymity of the child, and any information which could identify the child, through jigsaw identification remains a primary concern and the focus of the Court when considering what can and cannot be published.

Guidance on how to make a Transparency Order came in January last year in Re BR & Ors (Transparency Order: Finding of Fact Hearing). The judgment, by Poole J, sets out the legal framework behind the execution of a Transparency Order alongside the guidance provided in the Pilot Scheme.

The first pilot, initially set to run for 12 months, has now been extended, with coverage of cases at 16 more Family Court centres from 29 January 2024. The pilot includes some financial remedy cases as well as both public and private children cases.

"This newly established transparency must tread a fine line between openness and safeguarding; integral to the Family Courts is the anonymity vouchsafed to the families and children that turn to it for protection".

7BR’s Kitty Geddes and DRD Partnership’s Jon McLeod and Beatrix Lohn

The importance of transparency in the courts

There needs to be greater transparency in the family courts to ensure public confidence in the legal system. Allowing journalists and legal bloggers to report on what they see and hear, allows for greater accountability as well as a greater understanding of how and why decisions are made.

This newly established transparency must tread a fine line between openness and safeguarding; integral to the Family Courts is the anonymity vouchsafed to the families and children that turn to it for protection. And so, within this decision to expand pilot transparency lies an apparent tension. The President addressed the need to strike the balance between anonymity and openness arguing that the “twin principles of confidence and confidentiality are not, in my view, mutually exclusive and it is possible to achieve both goals.” In Re BR also indicated the flexibility of a Transparency Order

A positive step for journalism

This is, without a doubt, a shift that has the potential to create a positive impact on the media’s coverage of some of the less well-understood aspects of the law within the reporting of matters in the Family Courts. The hope is that with cooperation between the media and the Courts there can be successful, accurate reporting which remains within the bounds of the Transparency Order. Failure to abide by the terms of the Order runs the risk of journalists and bloggers being held in contempt of court.

Balancing the legal and communications impacts of these changes

The extension of the pilot schemes will present new challenges for barristers, solicitors and communicators alike. In some cases it may be in the interests of the client for their lawyer to oppose the transparency imposed by the pilot, and those applications will be reviewed by the Courts on their merits. In others cases clients may embrace the fact that proceedings are attended by the media.

Whatever the case background lawyers and communication teams will need to ensure that they understand the transparency provisions, when in communications with press or bloggers. Only then will we ensure that there is fair and accurate reporting in accordance with the law.

Back to news

https://barcankirby.co.uk/media-reporting-now-allowed-in-family-courts/

Media reporting now allowed in family courts

29 April 2025

The Transparency Project is a pilot scheme that allows journalists to report directly from family courts. It was rolled out in 2023 and has recently been extended across England and Wales.

In this blog, our child law solicitors look at the pros and cons of the Transparency Project and how it might affect family law cases.

What is the Transparency Project?

The Transparency Implementation Group Reporting Pilot (TIG) was launched in January 2023 to trial increased reporting rights for the media in family courts.

Accredited media representatives, i.e. newspapers and journalists, can request a transparency order to enable them to report more extensively.

From January 2025, the scheme covers public children law cases (care proceedings) in courts before Judges, but not Magistrates.

From May 2025, the trial will include private children law, financial remedy upon divorce, and Schedule 1 cases (before Judges, but not Magistrates).

Cases before Magistrates are set to be included from the end of September 2025.

Magistrates typically chair lower courts, handling more straightforward cases, whereas Judges deal with more complex matters in higher courts.

Which courts are using the Transparency scheme?

The first three courts to trial the project were Cardiff, Carlisle and Leeds.

From the end of January 2025, the Transparency Project has been extended to all family courts in England and Wales, including here in Bristol, where our child law solicitors are based. You can find your local family court here.

Can journalists report from court?

Journalists have been allowed to attend family courts since 2009, but had no legal right to report on hearings and/or cases. Now, journalists and legal bloggers can apply for a

Transparency Order to enable them to report on what they see and hear in court, if they keep families anonymous.

Some types of hearings are not covered by the Transparency Project: certain financial cases, some meetings in the Family Drug and Alcohol Court, adoption hearings that are not connected to care proceedings, and surrogacy cases.

The benefits of reporting from court

Extending media reporting in the family courts is a positive step towards increased transparency of what happens in family law cases and improves public understanding of the family justice system.

It is also beneficial for journalists to report on cases that are of public interest, to reduce speculation and sensationalism in the media, whilst protecting the anonymity of the families involved in these often sensitive and emotional cases.

Can you object to a journalist coming to court?

Those involved in family court hearings have the right to object to journalists or legal bloggers attending and reporting on their cases. This includes parties, witnesses, Cafcass officers, guardians or children. However, this doesn't necessarily mean they won't be allowed in.

Ultimately, the Judge has the final say in whether the media can attend court and report on cases. Judges can also decide whether certain reporters can attend, i.e. if a particular journalist is causing issues, they may be asked to leave while others remain. A judge can also specify that reporters leave part of the hearing if it is particularly sensitive or confidential.

Further information

Our child law solicitors have decades of experience helping families navigate the complex and emotionally challenging area of child law. We focus on achieving the best outcomes for children and their families.

To speak to a member of our team, call 0117 253 0371 or fill out our online enquiry form.

How can we help you?

We’re here to help. Please fill in the form and we’ll get back to you as soon as we can. Or call us on 0117 253 0371.

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Updates

https://www.goodlawsolicitors.co.uk/insights/transparency-in-family-court/Can Journalists Come Into My Family Law Court Hearing?

In short: yes.

Journalists and legal bloggers can attend Family Court hearings in England and Wales, but their ability to report is subject to strict anonymity rules and court approval.

The Family Court deals with highly personal and sensitive information about ordinary people’s family lives. Given the clear need for confidentiality, there have always been strict restrictions on the ability to report on family law cases.

However, this means there is little public understanding of the processes followed by the Family Court and the decisions being made. The Family Court intervenes in family life on a daily basis – deciding, for example, which parent a child should live with; the fair distribution of wealth after divorce; and whether a child is at risk of significant harm and should be removed from their family.

This has therefore been the subject of much debate and discussion, for many years – should reporters be allowed greater access to the Family Court? Should the public have a better understanding of the important decisions being made by the Family Court?

New Open Reporting Rules in Family Courts

The Transparency Review concluded in 2021 with a recommendation for journalists and legal bloggers to be able to report on what they see and hear in the Family Court, subject to strict rules around anonymity. It became the job of the Transparency Implementation Group to put this into practice.

In January 2023, a Reporting Pilot began in three Family Courts. The pilot has been reviewed and expanded since then.

Since 27 January 2025, new open reporting provisions apply to all Family Courts in England and Wales.

How Do the New Rules Work?

In summary:

Journalists and legal bloggers (i.e. lawyers acting in a reporting capacity) can attend the Family Court

The Court will decide whether to make a ‘Transparency Order’. This would set out that the case can be reported, but with strict rules around anonymity to ensure the confidentiality of the family is maintained. The Order would likely also allow the reporter to see certain documents from the case.

The presumption is that reporting should be allowed, but the Court can decide that a reporter not be allowed into the Courtroom if considered necessary in the interests of the child (or a connected child); for the safety or protection of a party (or connected person); for the ‘orderly conduct’ of proceedings; or because justice would otherwise be ‘impeded or prejudiced’

Accreditation Requirements

Members of the media, whether they are journalists or authorised legal bloggers, are expected to carry identification to verify their accreditation. Representatives of news organisations should present a card issued by the UK Press Card Authority, while legal bloggers must carry identification confirming their authorised status.

This ensures that only accredited individuals gain access to sensitive court proceedings.

Limitations on Media Attendance

Certain hearings remain closed to media representatives. These include judicially assisted conciliation or negotiation sessions, such as Financial Dispute Resolution Hearings, and applications for adoption or placement orders.

As above, the judge may exclude media where necessary to protect the welfare of those involved or to ensure the fair administration of justice.

Seating Arrangements for Media

Courts are encouraged to accommodate media representatives by providing designated seating areas. Where space is limited, alternative arrangements such as audio-visual links to a separate room may be considered to ensure transparency while maintaining the orderly conduct of proceedings.

Final Thoughts

It is important to be aware that, even though the rules around reporting have changed, this does not mean that parties to the case can report or publish anything about the case. Permission to report the case will only be for professional journalists or legal bloggers.

Further guidance can be found in Part 27 and Practice Directions 12R & 27B of the Family Procedure Rules. The Transparency Project is a charity which provides helpful information about transparency in the Family Courts on its website.

Lawyers need to realise they are not above the law when dealing with complaints | Scottish Legal Complaints Commission

Lawyers need to realise they are not above the law when dealing with complaints

3rd June 2024

This article was first published in The Scotsman on 3 June 2024

It’s a basic principle of customer service that consumers should feel any complaint they make will be taken seriously, and their feedback used to improve services.

Now imagine you've had to raise a concern but haven't received a satisfactory response, so you take your complaint to the ombudsman. They start to investigate, but the firm doesn't respond, so the whole system grinds to a halt.

Would that feel like your complaint was being taken seriously?

You might think such a situation would be rare. After all, it's a basic requirement for regulated professionals to respond to their regulators.

Unbelievably, in around a quarter of our complaint investigations law firms do not comply with requests for information by the statutory deadline we set. And in around 5-10% of cases we receive no satisfactory response to reminders and have to begin legal action against the firm. Those figures don't include firms who contact us to discuss genuine problems in providing information.

This failure causes further delays for already aggrieved consumers and adds significant cost to our processes. Those costs are paid by the entire legal profession who fund the complaints system, and ultimately are passed on to clients in legal fees. That means ordinary people in Scotland are paying more for their legal services because of the failure of regulated professionals to comply with basic statutory requirements.

Currently, few levers currently exist to deal with this beyond costly and time-consuming court procedures. But even if we're successful in court, recovering expenses awarded to us is a lengthy process, often lasting many years, and never covers the full costs.

These figures have remained broadly consistent over recent years despite all efforts to encourage compliance. That includes tribunal decisions finding practitioners guilty of professional misconduct for these failures, and the Law Society of Scotland introducing a dedicated rule requiring firms to co-operate with us. While we're grateful for this clarification, it simply should not be necessary to remind lawyers to comply with the law.

While new rules and new powers are welcome, fundamentally we need a mindset shift within the legal profession so that dealing with complaints is seen as a basic regulatory requirement and one which every lawyer should meet swiftly and to the best of their ability.

In court we've heard tales of disorganised practices, disordered or unreachable files, staff shortages and mounting workloads as excuses for not responding. Those statements raise

serious public protection concerns about the management of legal practices which regulators need to be taking account of.

And those cases are just the tip of an iceberg of unnecessary delays, costs and frustration which we deal with every week in trying to investigate complaints. That includes frequent requests for extra time due to holidays, the pressures of business or just to get a file together. Are these reasonable requests or would consumers expect firms to prioritise responding to a regulator and to have contingency plans in place to ensure this happens?

The public and the legal profession are being let down by a system which is failing to tackle a longstanding and widespread culture where solicitors fail to respond to their clients and in their statutory duty to respond to complaints. It's a pyramid of problems which together form a large and weighty drag on the sector, its efficiency, competence and reputation.

Ultimately, is this what any of us, as consumers, would expect if we had to make a complaint?

And is it what the legal profession is content to expect from its members?