**Transparency – Making Things Clearer**

**His Honour Judge Talbott**

**Sussex Family Justice Board Annual Training Event**

**23 October 2024**

What is transparency?

* Ensuring that the public have a greater understanding of what we do in the Family Court.
* Essential to combat the “secret Family Court” narrative.
* Publication of Information by journalists and legal bloggers.
* Publication of judgments (see P’s 19 June 2024 [“Transparency in the Family Courts – Publication of Judgments – Practice Guidance](https://www.judiciary.uk/wp-content/uploads/2024/07/Publication-of-Judgments-Practice-Guidance-JUNE-2024-1.docx)).

What has not changed?

* [S12 Administration of Justice Act 1960](https://www.legislation.gov.uk/ukpga/Eliz2/8-9/65/section/12) (contempt of court to publish information relating to proceeding heard in private. Applies forever).
* [S97 Children Act 1989](https://www.legislation.gov.uk/ukpga/1989/41/section/97) (makes it an offence for which someone can be fined to publish information which is intended, or is likely, to identify a child. Only applies during the course of the proceedings).
* Journalists and legal bloggers are allowed be in court [(FPR r27.11(2)(f)-(ff))](https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_27#IDAGR0HC). Can only be excluded if necessary in interests of child, for safety or protection of a party or witness, for the orderly conduct of proceedings, or if justice will otherwise be impeded or prejudiced.

What has changed and what will change further?

* Culture.
* Transparency pilot (reverses presumption that cannot report anything, now extended to include magistrates). Will be extended nationwide. Applies to all public and private law cases.
* Pilot courts utilise a [“Listings Code”](https://www.judiciary.uk/wp-content/uploads/2023/07/Listings-code-1.pdf) to improve transparency of the public lists.
* Transparency Order
  + An injunction which varies the provisions which would otherwise apply under s12 Administration of Justice Act 1960.
  + [Standard Order](https://www.judiciary.uk/wp-content/uploads/2023/05/TIG.TOv2FINAL.docx) annexed to this note which can be amended to fit the circumstances of a particular set of proceedings. In complex case, may add schedule of anonymisation.

What Should I do as an advocate or professional involved in a hearing that a reporter attends?

* Read and have available The Transparency Project *“What to do when a reporter attends (or wants to attend) your hearing – A guidance note for judges & professionals”*. (There is one for [“Pilot Courts](https://transparencyproject.org.uk/wp-content/uploads/WHAT-TO-DO-WHEN-A-REPORTER-ATTENDS-RP-v-2-Jan-2024.pdf)” and one for “[Non-Pilot Courts](https://transparencyproject.org.uk/wp-content/uploads/WHAT-TO-DO-WHEN-A-REPORTER-ATTENDS-Non-RP-v-2-2024.pdf)”).
* Top Tips for before you come into court:
  + Don’t panic (they are just a person)
  + Speak to the journalist (they are there to do their job)
  + They do not need to apply to come into court.
  + They must not be asked to “reveal their source”.
  + Editorial control is not your problem.
  + Explain the position to your lay or professional clients (emphasising the move towards greater transparency but reiterating that anonymity is still the headline) and take instructions on the making of a Transparency Order.
  + In any pilot court there should be an “[Information Sheet for Parents”](https://www.judiciary.uk/wp-content/uploads/2023/06/TIG.Litigants.PlainEngGuide-v4-FIN.pdf) document produced by the Transparency Implementation Group available.
* Top Tips for in the hearing:
  + Judge will address reporter in court (should have been told of their presence by staff).
  + Will likely leave any decision as to the making of a Transparency Order until the end of the hearing.
  + Will expect your assistance in respect of your client’s position with explanation of basis for objection (if there is any).
  + Court will balance articles 8 (Respect for private and family life) and 10 (Freedom of expression) of all involved. Welfare important but not paramount. See links to caselaw at end of handout.
  + If made, will include direction that certain documents are sent to the journalist by the parties (case summaries, position statements, index to bundle).
  + Court responsible for the order. Some journalists will have a draft with them.

Some Helpful Caselaw on Transparency

* [Griffiths v Tickle [2021] EWCA Civ 1882](https://caselaw.nationalarchives.gov.uk/ewca/civ/2021/1882?query=Griffiths+Tickle+%5B2021%5D+EWCA+Civ+1882)  – at para 71 *“The critical question, therefore, is whether the best interests of the child, treated as a primary consideration, are weighty enough to justify maintaining that fetter, during the course of the proceedings under s 97(2) Children Act, and indefinitely as a consequence of s 12 AJA?”*
* [Tickle v Herefordshire CC [2022] EWHC 1017](https://caselaw.nationalarchives.gov.uk/ewhc/fam/2022/1017?query=%5B2022%5D+EWHC+1017)  – Lieven J distils the principles to be applied from para 35 onwards.
* [Hannah Summers & Anor v Kristopher Paul Arthur White & Ors [2024] EWFC 182](https://caselaw.nationalarchives.gov.uk/ewfc/2024/182?query=hannah+summers&court=ewca%2Fciv&court=ewhc%2Ffam&court=ewfc) – HHJ Moradifar 23 paragraph judgment on making a Transparency Order

Useful Links

* [The Reporting Pilot Guidance from the President of the Family Division](https://www.judiciary.uk/wp-content/uploads/2024/08/Reporting-Pilot-Guidance-2024.pdf) (authoritative guidance)
* [Transparency Implementation Group Homepage](https://linktr.ee/TransparencyImplementation) (lots of resources and training materials)
* [‘Justice must be seen to be done’](https://www.judiciary.uk/speech-by-mr-justice-cobb-justice-must-be-seen-to-be-done/) (Speech by Cobb J, 10 October 2024)

**Annexe 1 – Template Transparency Order**

**[In the High Court of Justice, Family Division**

**Sitting at      ]****[In the Family Court sitting at      ]**

**Case no.**

**(Delete as appropriate)**

**The Children Act 1989**

**The Senior Courts Act 1981**

**The Inherent Jurisdiction of the High Court**

**TRANSPARENCY ORDER MADE BY [     ] ON [     ]**

**TO ANYBODY WHO HAS SEEN THIS ORDER OR IS AWARE OF ITS CONTENTS:** You must obey the terms of this order. If you do not, you may be held in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law.

**Notice and Definitions:**

1. This case has been included in the Reporting Pilot, which allows pilot reporters to, subject to the terms of this order, discuss certain aspects of the case with the parties, and report on what they see and hear in court hearings that they attend.
2. This order is an injunction, which means that you must do what the order says.
3. The point of contact for any pilot reporter is the Court Office. The details are at the foot of this order.
4. Nothing in this Order affects the ability of parties or their representatives to publish or communicate information as permitted by Family Procedure Rules 12.73, 12.75, 14.14 or Practice Directions 12G (para 2.1) and 14E to the Family Procedure Rules 2010.
5. In this order, "pilot reporters" means duly accredited representatives of news gathering and reporting organisations and duly authorised lawyers attending for journalistic, research or public legal educational purposes (legal bloggers) (together referred to in this order as ‘pilot reporters’) who are entitled to attend a hearing under r.27.11 of the Family Procedure Rules 2010 (‘FPR’).
6. Section 12 Administration of Justice Act 1960 continues to operate save and insofar as this Order varies it. This means that any publication of information relating to the proceedings which is not permitted by this Order is a Contempt of Court.

**Who does this order apply to?**

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

**It is ordered that:**

1. This Order will remain in force until [; usually the 18th birthday of the youngest child].
2. Except where allowed by this Order, no person is permitted to publish, or to communicate information relating to the proceedings except as already permitted under Family Procedure Rules 12.73, 12.75, 14.14 or Practice Directions 12G (para 2.1) and 14E to the Family Procedure Rules 2010, or by discussion between a party to the proceedings (or their legal representative) and a pilot reporter as permitted under the terms of this order.
3. This order applies to any person who is aware of its contents, including those set out in above under the heading ‘Who does this order apply to?’.

**What may and may not be published?**

1. A pilot reporter may publish any information relating to the proceedings save to the degree restricted below.
2. No person may publish any information relating to the proceedings to the public or a section of it, which includes:
3. The name or date of birth of any subject child in the case.
4. 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;
5. The name of any person who is a party to, or intervening in, the proceedings;
6. The address of any child or family member;
7. The name or address of any foster carer;
8. The school/hospital/placement name or address, or any identifying features of a school of the child;
9. 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;
10. The names of any medical professional who is or has been treating any of the children or family member;
11. In cases involving alleged sexual abuse, the details of such alleged abuse;
12. 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.
13. This Order does not disapply s.97(2) Children Act 1989 unless expressly stated.
14. For the avoidance of doubt, no body, agency or professionals may be identified in any information relating to the proceedings published to the general public or a section of it by a pilot reporter, save for:
    1. The local authority/authorities involved in the proceedings;
    2. The director and assistant director of Children’s Services within the LA (but no other person from the local authority, including the social worker, without express permission of the court);
    3. Cafcass (but not the children’s guardian or reporting officer without express permission of the court);
    4. Any NHS Trust;
    5. Court appointed experts (but not treating clinicians or medical professionals);
    6. Legal representatives and judges;
    7. Anyone else named in a published judgment.

**Documents**

1. A pilot reporter who attends a hearing in family proceedings in accordance with FPR r.27.11, or who indicates in advance that they wish to attend a hearing, is entitled to see, quote from, or publish:
   1. Documents drafted by advocates (or litigants if a party is self-representing): i.e. Case outlines, skeleton arguments, summaries, position statements threshold documents and chronologies.
   2. Any indices from the Court bundle.
   3. Any suitably anonymised Orders within the case.
2. Parties to the proceedings and their representatives may not disclose documents from the proceedings to pilot reporters, except as specified above, or with the specific permission of the court. This includes where a document is referred to or quoted from in court that the pilot reporter would not otherwise have access to.
3. Any such requests for copy documents must be made at or before a hearing which the pilot reporter has attended pursuant to FPR r.27.11.
   1. Upon a request being made, the author of the document shall as soon as practicable provide a copy of the document to the pilot reporter.
   2. The pilot reporter may quote from or publish the contents of the document, save that the details under heading ‘What may or may not be published?’ of this Order may not be published. Where any document referred to above quotes from a document to which the pilot reporter would not be entitled to see (such as source evidence), the passage quoted may not be reproduced or reported without permission of the court.
4. No other document may be provided to a pilot reporter without permission of the court.
5. A pilot reporter may share documents or information with their editorial team or legal advisor responsible for the publication of their proposed report of the case, providing that they also provide any such person with a copy of this order which will be binding upon that editorial team or legal advisor.

**Discussions between pilot reporters and parties and their representatives**

1. 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.
2. Where the parties or their representatives have invited reporters to attend a hearing, permission is given retrospectively for any discussions that took place with reporters.

**Operation**

1. Permission to report is not effective until [the end of the hearing at which this Order is made, **amend as appropriate**].

**Other Orders**

1. Permission for this Order to be served by email. Email shall be effective service for the purposes of FPR Part 6 and FPR Part 37.
2. Liberty to the parties and any pilot reporter to apply on notice to vary or discharge this Order. Any application to vary or discharge this Order should be made by way of C2 application, with the fact and nature of any objection being clearly set out in an accompanying position statement.
3. When a transparency order is made, or received, a pilot reporter must confirm to the court that they have read and understand the terms of this Order.

**Dated, etc.**

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