Publication of Family Court Judgments

A guidance note for families & professionals

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

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INTRODUCTION

What is this guide about and who is it for?

This guide is for use by anyone involved with a family court case, to help them think through the pros and cons of publication and the practicalities of how that might be best achieved. The guide might be used by parents or older children, or by legal or social work professionals, separately or in discussion together. For example, it might be something that a lawyer or client would use to help them frame a discussion or think of questions to ask in order to give or obtain instructions.

It won't tell you whether or not publication is a "good idea" in the case you are involved in. Every case is different. This guidance note gives those making decisions some structure to help people make informed choices and to be a part of decision making around publication.

We've tried to use language which is not too technical because this is meant to be a practical document to help people make good decisions, not a legal textbook. We've tried to keep legal language to a minimum, but this document probably wouldn't be accessible for parents with literacy or cognitive difficulties or for older children who may want to have a say about publication, and who are entitled to instruct their lawyer about this. In these cases, we would expect the lawyer representing the child or adult to support them in understanding the contents of this document.

Aims of this guide

The guide aims to:

(1) Help people do anonymisation better. We've made a checklist tool for people who are involved in anonymising a judgment or checking a draft before publication;

(2) Help the parents and (older) children involved in family cases to think about and talk through publication issues with their lawyers or those supporting them;

(3) Help reassure those whose lives may be described in judgments, by promoting good anonymisation;

(4) Minimise the risk of unintended identification of children and families through publication of judgments

(5) Enable judgments to be published where possible and appropriate

The guide mainly applies to judgments in children cases, but may be of use in financial remedy and other family cases in which children are mentioned, or regarding vulnerable adults.

Context

From February 2014, guidance issued by the President of the Family Division has required judges to permit and send certain specified types of family court judgments for publication on BAILII[1], unless there are compelling reasons in the individual case why that shouldn't happen: see *Practice Guidance: Transparency in the Family Courts: Publication of Judgments* ("the Judges' Guidance") at

paragraphs 16-17 [2]. The types of judgment that the Judges' Guidance applies to are listed in a schedule at the end of that Guidance ("the Schedules"). The Judges' guidance also said that these judgments should normally be anonymised in respect of the children and families involved, while experts should normally be identified by name (see paragraph 20).

In July 2016, Dr Julia Brophy, on behalf of the Association of Lawyers for Children, published proposals for the judiciary called the *Anonymisation and Avoidance of the Identification of Children and the Treatment of explicit descriptions of the sexual abuse of children in judgments intended for the public arena - Judicial Guidance* ("the ALC research"), a version of which the President of the Family Division issued as guidance in December 2018. In March 2019 the President confirmed that he would consult further on transparency issues and issue further guidance. That guidance is awaited.[3]

In March 2017, the findings from research led by Dr Julie Doughty of Cardiff University were published in a research report entitled *Transparency through publication of family court judgments: An evaluation of the responses to, and effects of, judicial guidance on publishing family court judgments involving children and young people* ("the Cardiff research") [4]. The researchers analysed two years' worth of judgments from decisions about children published under the Judges' Guidance, to evaluate the effects and impact. Though not a primary aim, some data was gathered about anonymisation practice, including examples of effective judicial practice. Judges' own views about their anonymisation and publication strategies were also harnessed via a survey. Those research findings, together with the practice experience and research of members of The Transparency Project, form the basis of this guide.

Format

This guide is divided into two parts to make it easier to read:

Part One - SHOULD THE JUDGMENT IN MY CASE BE PUBLISHED?
Practical tips around whether, when and how to request or oppose publication of a family court judgment

Part Two – Anonymisation Checklist

In real life you can't always decide whether to publish a judgment until you've thought about how you could go about doing it. In particular it is often helpful to ask the question: "If this judgment was published, how would we go about anonymising it to make sure that the family weren't identified?" Sometimes that will lead to the conclusion that the judgment actually shouldn't be published at all, because anonymisation wouldn't protect the family, but in other cases it might actually turn out to be possible to both publish and protect.

Put legally, the balance between (1) a right to privacy or a need for protection, and (2) the right to freedom of speech, may tip in favour of publication *if* a suitable anonymisation strategy is in place (or there are other steps taken to manage publication, such as timing).

Sources

We've included references and links in endnotes. The Checklist is largely drawn from examples of existing judicial good practice in published judgments and suggestions from individual judges, as identified by the Cardiff research[5].

Updates and amendments

As always, we welcome constructive feedback and will consider amending or

updating this guide accordingly. We are aware that the President's guidance is under review and may be revised, and will amend this guidance note as and when that happens.

When should I start thinking about publication?

The short answer: whenever you know there is a judgment coming soon that somebody in the case is likely to think is important.

The longer answer is that it probably depends on the nature of the case and the judgment in question. However, thinking about publication and possible anonymisation at an early stage may help encourage greater transparency and save time and public funds.

It can be unhelpful to some family members for these issues to be raised without prior warning after the delivery of a judgment, with time then being required to take instructions and marshall arguments, when their focus is likely to be on the substance of the decision.

Older children are entitled to have these matters explained to them and to give instructions, and may need time to process what can be a complicated set of decisions, involving both "principled" and "practical" issues.

Parents and older children may need time to properly think through the issues raised in this guidance note and to think about how they apply in their case., so that they can give informed instructions or views if and when the time comes. Lawyers and guardians may wish to have early, general discussions about the possibility of publication with them in preparation.

If those involved have thought about publication in advance, they can ask the judge to deliver judgment in an already anonymised form. Judgments which are

delivered in a form which is already anonymised (and which omits obvious identifying geographical and other markers) are less likely to need editing after the event, which is more efficient and less stressful for families, and probably reduces the risk of inadvertent error.

The checklist is intentionally very general – it is a tool, not a set of answers.

PART 1

SHOULD THE JUDGMENT IN MY CASE BE PUBLISHED?

Here we help you think through the possible "pros" and "cons".

1.1 POSSIBLE DOWN SIDES OF PUBLICATION

- The child or other family members might be identified if anonymisation is not carried out properly (particularly if the case is reported in the local press where the readers of a news report will be able to piece things together more easily). For a child, this could potentially lead to placement breakdown or targeting of an abused child who has gone into care for abuse or exploitation. For adults sometimes this can make it very difficult to remain in the local community, for example if there are reprisals, or unkindness, bullying or harassment;
- The child or other family members might be identified if a family member links themself on social media as being the parent or other person mentioned in the judgment ("this is my case");
- The press may approach a family member for interview (usually via their solicitors);
- The press may report the case from a particular angle which is inaccurate or upsetting or critical of someone involved in the case;
- Press interest could be intrusive - but this is unlikely because the press will probably be banned from publishing pictures or names (so won't be tempted to trawl Facebook / social media accounts), and because the IPSO Editors' Code of Conduct[6] regulates the way in which journalists can interact with or write about children or vulnerable persons;
- Members of the public may be critical or unkind about someone involved in the case on social media;
- There could be a risk that any future criminal trial around the same issues could be prejudiced (but in reality if there is any possibility of a criminal trial

the court will almost certainly NOT publish a judgment until after the trial or a decision not to proceed);

- If the judgment identifies someone as a perpetrator of abuse or harm to a child or another adult in the case (this rarely happens but the Judges' Guidance does refer to it, so it is possible) then it will obviously make life difficult of them to be identified in their community;
- Risk of a particular child or adult being inhibited from sharing important information such as about abuse;
- There might be evidence that a particularly vulnerable child or adult may be placed at risk of harm by anxiety or worry about publication (whether identified or not).

1.2 POSSIBLE REASONS TO PUBLISH

- Because justice should, so far as possible, "not only be done but be seen to be done", with the public able to see what is done in their name;
- A parent (or more rarely a child) will be able to tell their story (although if a parent wants to talk about some part of the hearing that is not detailed in the judgment they may still need the permission of the court) However, a parent who tells their story may not have very much control over how others tell it on their behalf;
- Someone who has been accused of abuse or harmful behaviour but who has been found not to have done it may benefit from it being known that they are innocent, to counter gossip and misinformation (although in many cases the person exonerated will be anonymised to protect the identity of the child, so this will only work indirectly if people who know the family join the dots);
- Other families will feel reassured or will be alerted to issues that might be relevant in their case – it is important to many parents that what has gone wrong in their case doesn't happen again, and that other parents (including

those without a lawyer) are aware of their experience and how it got resolved;

- A parent will be able to campaign on a question of public importance (for example to raise awareness about a rare medical issue);
- To highlight serious failures of a judge, a professional or some agency;
- To enable the accurate reporting of family cases and research by the press;
- To help the public understand how family courts work and how they deal with cases of a particular sort;
- To rebalance or correct information in the public domain where there has been unauthorised or distorted publication of information on social media or in the press.

It is perhaps easy to see from these two lists that things may look very different before a judgment is delivered to afterwards, particularly if the view taken by the judge is unexpectedly negative / favourable. Someone who has had findings made against them or who the judge has said was abusive, incompetent or dishonest will be less likely to be enthusiastic about publication. So, whilst it is a good idea to think about publication in advance, further thought may be required once the substance of the decision is known.

1.3 REPORTING RESTRICTIONS AND RUBRICS

This guide doesn't set out the law about restrictions on what can be published – our Media Guide[7] gives an overview, and signposts to more detailed guidance.

It is important to understand that when the question of publication of a judgment is raised, it may also lead to the court considering what reporting restrictions should be put in place – sometimes a court is prepared to publish a judgment (or another party will be prepared to agree to publication) on the basis that there is a reporting restriction put in place to make sure that additional information which

might identify a family or place a child at risk does not slip out when a judgment is talked about.

In very rough outline, the stuff that goes on in court, and which is contained in court documents in a case about children, cannot be talked about in public unless it is contained in a published judgment or the court says it's ok. Rules about identification of a child are slightly different – and if a judgment is to be published after a court case has finished, the court may wish to re-impose a restriction on identification through the rubric or, perhaps where the details of what needs to remain private are more complex, through a reporting restriction order (RRO).

A rubric is a warning placed at the top of a judgment, which explains what can and cannot be published about a case. Where a judgment is published, it will typically permit publication of anything in the judgment but not of any information which might identify the child (usually this includes the parents).[8]

Sometimes when the question of publication is raised, or there is media interest in a case, somebody will apply for a reporting restriction order (or the judge may raise the issue herself). It is important to understand that, where this happens, the press have to be told what is happening, so that they can argue against a restriction on what they can report if they wish. This can generate media interest in a case, which the press had not previously noticed and might well have left alone.

That said, the media will often make sensible concessions about details that should not be reported in order that they can still report the story they want to report.

1.4 WHAT IF ANONYMISATION GOES WRONG?

There have been examples of failures in anonymisation, most often where a name has been left in by mistake. Clearly those failures are very worrying for the families

concerned and for families more generally, because they do create a risk of identification of a child or family, with potential knock-on effects. A study carried out by the ALC research team on a sample of judgments concluded that a number of them contained potentially identifying information, but the children were not in fact identified, and there was no evidence of anything actually happening as a result.

But it is important to recognise that:

- there is very limited evidence about what the impact of inadvertent anonymization errors actual are, and
- no evidence of direct harm in any individual case.

Many of the judgments that The Transparency Project and the Cardiff Research team identified as containing anonymisation errors had been published unnoticed on the bailii.org website for many months. The greatest risk of identification is probably from family members publishing material on social media, rather than from the judgment itself. However, it is far better to reduce any risk of identification by thorough anonymisation / redaction than to rely on nobody picking up on a judgment or name – and this guide aims to empower the parties to make sure that their judgments are dealt with thoroughly and safely and that they are properly involved in the process.

Worries about anonymization errors should not be a reason not to publish a judgment. They are a reason to take more care with the process before publication.

In general terms, the risk of anonymization error can be minimised by the following :

- build in a double check : ensure that more than one person has checked the draft. Different people will spot different things. Don't assume someone else has checked it so it's okay.

- Don’t rely exclusively on search and find functions in word – if there is a spelling error you may miss something. Print and perform a visual check.
- Ensure someone with local knowledge and the family are involved in the anonymization process so that locally identifying details are picked up and screened out.

1.5 WHAT DOES THE LAW SAY ABOUT PUBLISHING FAMILY JUDGMENTS?

This is a very condensed summary only, meant to give an overview for non-lawyers and a reminder to lawyers.

1.5.1 Open justice principle

There is a general rule that justice must be seen to be done. This means that family cases, which are often heard in private, are an exception to the rule. This doesn't mean that the open justice principle doesn't apply to family cases. On the contrary, family cases can only be dealt with differently to other sorts of cases when it is justified. Often it is easily justified – but not always. This means that judges and those involved in cases ought to be asking themselves: "Can this be done more openly than it is and, if so, how?"

1.5.2 Public interest

People's privacy is one side of the equation. Public interest is the other. It isn't always obvious what "public interest" actually means though.

Public interest is not the same as things the public are *interested* in (it's not just celebrity separations and paparazzi): public interest is about the reasons that a member of the public (or others such as the press, campaigners, researchers or charities) might legitimately want to know what is going on in a court case. Some of these reasons might be:

- So they can be confident that the justice system is working, and would work for them if they had to go to court,
- So that they can know if the justice system isn't working, so that they can do something about it or can campaign for change,
- So that they can contribute to public debate about how it might be made better,

- So that they can understand how the law and the courts treat a particular group or category of people,
- So that they can identify a particular problem or a rogue individual or agency or systemic patterns (for example a corrupt or inept professional or expert),
- To inform their decisions or actions in a case which they are (or might be) personally involved in,
- To help them understand if their own experience is typical or not,
- To inform their decisions or actions as a member of society in the knowledge of what the consequences might be.

So, on one level, every case holds some public interest, but it's also easy to see that some cases hold far more public interest than others.

In family cases, knowing when, why and how the State will step in and take away people's children – potentially your children – is a really important thing for the public to understand. Knowing how the courts will approach disputes between parents and when, why and how the courts will order or prevent people from seeing their children, or how courts will protect you from abuse, false allegations or poor practice are also really important matters. Similarly, knowing how the courts will approach financial disputes between separated couples, or disagreements between family members and medics about life saving or life ending treatment is also really important.

The public don't necessarily need to know the names or full details of individual cases to understand all of those things, but they do have a claim to know what happens in individual cases.

Because family cases involve people's private lives and often involve vulnerable children, there is usually a need for some sort of restriction on the open justice principle in those cases. So the law does put in place some automatic restrictions

on what can and can't be said publicly about these cases. Those automatic restrictions can be relaxed or tightened depending on the individual case. In most family cases, judgments must not be published without the permission of the judge.

1.5.3 Balancing relevant rights

It is up to the judge to decide whether to publish a particular judgment. This usually happens at the end of the hearing when the judgment is delivered. The law requires a judge to balance the public interest in open justice and the private rights of individuals to private and family life, and to consider and balance relevant human rights:

- Respect for private and family life (Article 8)
- Right to freedom of expression (Article 10)
- Right to a fair hearing (including in other connected court cases, for example a criminal trial) (Article 6)

The judge has to look hard at each of the competing rights, how they apply and how important each of them is *in the individual case* (caselaw describes this as an "intense focus").[9] Neither freedom of expression nor the right to privacy automatically take priority in that balancing exercise – it all depends on the facts in each case. In these cases, the rights to freedom of expression and to privacy are in direct conflict, so something has to give. Any decision the court makes will interfere with one or other right to some extent. The law says that any interference has to be proportionate, which means that the judge must make a decision, which interferes with the right to freedom of expression or right to private and family life *as little as possible*.

In practical terms, this intense focus may involve thinking hard about what could be done to allow publication in a way that does not interfere with a child's privacy – again it is easy to see that creative thinking about anonymisation, perhaps in combination with reporting restrictions on certain sensitive or identifying matters,

may have an impact on where the balance falls, and how both sets of rights can be respected with as little interference as possible.

1.5.4 The individual child's best interests

The law says the court must have regard to the best interests of any child who is the subject of the case, but the child's welfare is not "paramount" – it is one of a number of factors when considering publication.

1.5.5 Anonymisation and naming decisions

In most cases, the starting point will be that children and family members will be anonymised to protect their privacy (See paragraph 20 of the Judges' Guidance), but there may be cases where this is not necessary, or where anonymisation would frustrate the purpose behind publication (for example, to clear someone's name, to allow a parent to campaign about a medical issue, to correct the public record on a matter where the identity of the parties is already known).

1.5.6 Naming experts and professionals

The open justice principle includes not just the idea that the proceedings should be open to scrutiny but that the names of the people involved in the hearing should be public knowledge. The idea is that those who offer expert evidence to courts should do so with the expectation that their conclusions and analysis are likely be held up to public scrutiny, particularly in the family court where decisions affected by those opinions are of such life-changing importance to children and families.

1.5.7 Risk of identification (even of children) is no automatic bar to publication

Publication is not *necessarily* harmful even if it does lead to identification - although in many cases involving children it may be easy to show that it would be. The court will need to balance the level of risk associated with publication (of identification or of increased media interest) and how serious the consequences might be if identification actually happened.

1.6 WHAT THE JUDGES' GUIDANCE SAYS ABOUT PUBLISHING JUDGMENTS

As mentioned at the beginning of this guide, the President of the Family Division published guidance on this topic in January 2014, encouraging the publication of more judgments in certain cases, where appropriate.

The guidance is under revision. If and when it is revised we will consider whether we need to update this note.

The guidance was aimed at ensuring more frequent publication of certain family court judgments. It did not change the law, but is more of a prompt of the existing law about the need to respect freedom of expression as well as privacy. It makes explicit the great weight of public interest in open justice, against which rights to privacy must be balanced. It makes publication in the public interest the starting point for certain types of case.

The guidance only applies to family court judgments given at circuit judge level or above. It doesn't apply to decisions of magistrates or district judges (but this doesn't prevent such judges from publishing a judgment if appropriate). (Publication from appeal and committal applications is subject to separate guidance). The guidance applies only to certain categories of case / judgment.

The guidance does not tie the judge's hands in an individual case if they think that the public interest in publication is outweighed by some other compelling reason.

The guidance only applies where there is already a written judgment or where there is going to be a transcript anyway.

The categories of judgment to which the guidance particularly applies are judgments from:

(1) serious fact finding decisions in either public (care) or private law cases (for example findings about injuries to a child or domestic violence) – but not where things are agreed or unopposed;
(2) final orders on care and supervision order applications (or discharge) – but not where things are agreed or unopposed;
(3) final orders in placement and adoption applications (including revocation) – but not where things are agreed or unopposed;
(4) secure accommodation order applications
(5) serious medical treatment order applications
(6) all applications for reporting restrictions

but other cases may still be published on application or if the judge considers there is a public interest in doing so.

1.7 WHAT ACTUALLY HAPPENS IN PRACTICE?

What happens in practice will probably depend on:

- whether the judge regularly publishes in accordance with the Judges' Guidance;
- whether the judge thinks the public interest requires publication in the case;
- whether the case falls in the list of cases the guidance says should normally be published;
- whether anyone raises publication / formally applies for publication;
- whether there is a written version, either because the judge prepares a typed judgment or orders a transcript for some other reason (see below);

Whatever the guidance says, the Cardiff research has confirmed that there are big variations between judges and different courts about whether they routinely send judgments for publication.

Judges who intend publication will generally prepare their own written judgments or order transcripts of judgments. Other judges may routinely give oral judgments and may not address the issue unless asked.

Often no party has any interest in publication, no one wants to incur the costs of a transcript of an oral judgment and no one will raise the issue of publication at all.

But sometimes someone does want a written judgment prepared for some reason, and then the issue of publication is more likely to come up. For example:

- Local authority children's services or CAFCASS [10] may want a transcript of judgment for their records if relevant to a future assessment, for example, of a baby due to be born;
- Children's services or CAFCASS might want a judgment to provide information to intended new permanent carers of the child, to keep for the child to read when they are an adult; or to share with external agencies subject to certain rules; etc;
- A family member may want publication to tell their story; show they have been vindicated; or as a record or for use in an application to appeal; etc
- A judgment may be released to the police for a criminal investigation or to other bodies for the purposes of making a complaint of some sort about someone involved in the case;
- A judgment from a fact finding hearing may be needed for a family member to reflect on or to inform an expert assessing what should happen next;
- The Police may wish to have sight of a judgment to help them decide whether they should prosecute any possible criminal offence (they are entitled to a copy of any judgment automatically under court rules).

As someone else might raise this issue, it's a good idea to have thought about what your answer might be if you were suddenly asked what you think about publication and what anonymisation might be required.

1.8 WHAT IF I *DON'T* WANT THE JUDGMENT PUBLISHED?

- It may be best to say nothing, whilst also being ready to tell the judge and parties you are opposed to publication, with reasons if anyone suggests it;
- You can ask to approve any anonymised judgment for publication before it is sent for publishing and you can use **the Checklist in Part 2** of this guide to help you make any arguments for any further detail to be taken out if it poses an unacceptable risk of you or someone else in the case being identified and / or harmed;
- It is ok to say, "I would agree to publication if this or that detail were removed from the judgment";
- So, first think about how the anonymisation can be made safe and sufficient. If you still think it can't be, you will need to be ready to show ***in your particular situation*** exactly how the balance between public interest in open justice and privacy falls against publication, even if well anonymised. If your judgment is one of the types of judgment listed in the Schedules you will need "compelling" (really good) reasons to avoid publication (assuming that someone else has raised the topic – sometimes it passes unmentioned);
- You might be able to point to specific harm or difficulty that you are worried about such as :
    - The risk that you or a member of your family might become identifiable locally and that you or a family member would be harassed, bullied or disadvantaged,
    - The risk that your location or that of a family member might be discovered by someone who is a risk to you or a family member (for example a violent ex partner),
    - You are worried about press harassment or intrusion (for example door-stepping or using material on your Facebook or social media profile),

- You are worried that you might be the subject of criticism in the press or on social media,
- Publication might lead to worry about a child's placement (for example because their location may become known), meaning they have to change placement or move home,
- The details are so upsetting that they should not be published either because they are distressing for an involved adult to read, inappropriate for public consumption (for example because of their graphic nature*) or because they might be found by a child in an unplanned way;

- You can see that most of these arguments could be dealt with in most cases by really good anonymisation or removal of unnecessary detail*;
- It is your right to have your arguments heard and to be given reasons for any decision to refuse this. If you need to prepare arguments or research the law you could ask the judge to adjourn the decision to a hearing specifically on this. For example, if there are complex legal or factual arguments or the situation has arisen unexpectedly with parties unprepared;
- The judge is entitled to decide to publish a judgment even if you object. It is important that IF the judge agrees to publish the judgment you let them know what anonymisation you think is appropriate;
- If the decision doesn't go your way it may be possible to appeal the decision to publish. However this guidance note does not cover appeals. A decision about publication is likely to be classed as a "case management decision" which has a time limit for appeal of 7 days, so urgent legal advice and action is important.

*Different people hold different views about what amounts to "unnecessary detail" and whether something is too graphic for public consumption.

1.9 WHAT IF I *DO* WANT THE JUDGMENT PUBLISHED?

- The judge will need to be satisfied that publication is in the public interest or that your case falls within the schedules to the guidance that means it should ordinarily be published.
- In any event, the judge will need to be satisfied that there is a written judgment already or that the costs of ordering one should be incurred.
- Unless the judge or another party is already raising the question of publication, then it is a good idea to raise it yourself as early as possible (or at any rate once you reach a point where you aren't likely to change your mind). If your case falls within the schedules to the guidance you can politely point out that you are raising it so that others can raise any compelling reasons why publication is not justified in this particular case – as the starting point is in favour of publication.
- The same things apply as in the paragraph above about your right to be heard, to be given reasons and to seek permission to appeal.

1.10 WHO PAYS FOR THE COSTS OF A TRANSCRIPT OF JUDGMENT?

The Judges' Guidance says if the judge permits publication in the public interest then the costs should be met by the courts. By contrast, the costs of judgments that fall within Schedules to the Judges' Guidance should be shared between the parties.

Where the judgment is published on the application of the press or a party (i.e. those cases which aren't in the Schedules and which the judge didn't decide of their own volition it was in the public interest to publish, and where someone asks

them to publish anyway) then the costs are the responsibility of the person who asks.

However, we aren't sure that this is always how it works in practice. In care cases the parties will usually have legal aid. But there have reportedly been difficulties getting the Legal Aid Agency to agree to pay for the costs of a transcript in some cases where they think that cost is not justified for some reason, or that someone else could / should pay. And of course in some cases there IS no legal aid – so the court will have to decide whether one or more of the parties should pay for the costs of a transcript from their own pockets.

1.11 OTHER THINGS TO THINK ABOUT

- It can be very useful to have a judgment as a record. (Many people think that all parties – including the children for later life understanding- should receive one free, as of right, within a reasonable period after delivery of judgment). However it's important to be aware that under the Judges' Guidance,[11] asking for and obtaining a transcript of judgment may bring your case under the criteria for publication of that judgment in a way that it was not before the transcript was obtained.

- Bailii.org is a small charitable website which the public are largely unaware of, and has historically been mainly used by legal reporters, lawyers, researchers and academics. However, the Judges' Guidance has led to an increase in the number of 'ordinary' judgments published, (when we say 'ordinary' we mean cases that don't change the law but are good examples of how things typically work). Journalists are increasingly using bailii.org to find and write stories about family courts that the public will be interested in.

- Many newspapers try to publish only accurate reports with reasonable

balance, while holding the strong opinions, which they are entitled to hold. But the regulatory code most newspaper publishers sign up to and the way it is interpreted in practice by their external 'regulator' (IPSO – under the Editors' Code) doesn't currently prevent some newspapers from publishing stories that 'cherry pick' isolated aspects of judgments for scandalous or controversial headlines that will sell papers, while ignoring the rest. They are not required to link to the judgment nor offer a genuinely balanced presentation. And once information is out, it may remain forever 'out there' on the web even after the passage of time.

- You can ask your legal representative to ensure you have the chance to give your full instructions about how any judgment is anonymised before being sent for publication and to check the final version. If you are not legally represented, you can ask to do this directly yourself. See **Part 2 Checklist** for guidance on some things to consider. Put your requests about anonymisation in writing or have your legal representative do so. Significant disagreements can be referred to the judge.

PART 2

THE ANONYMISATION CHECKLIST

This checklist is intended to help you think about what should be anonymised or redacted, so you can think about whether or not a judgment can or should be published, and so that you can make sure that if it is published it is done safely for all.

It is also intended to help those to whom the task of anonymisation or checking may be delegated (usually lawyers acting for the parties) and to help those who are giving them instructions to think through what steps they want taken on their behalf BEFORE publication, in order to avoid a scramble after publication when something slips through the net or someone realises that they should have asked for removal of an identifying detail after all.

What needs to be done to a judgment will depend on a number of things. For example:

- Some judgments may come ready anonymised (some judges type their own judgments and habitually use initials anyway) and may need little work
- Some families have unusual characteristics such as uncommon ethnicity for the locality, or an unusual number / configuration of sibling group; or an unusual medical or other characteristic;
- Or the particular facts relating to their situation are already in the public domain or likely to be such as through reporting of criminal trial,
- The subject matter of some judgments may be particularly likely to attract media or community interest and attention or may contain graphic details which may be humiliating or distressing or render a victim vulnerable if published in full (for example sexual abuse cases).

For pragmatic reasons lawyers to whom this task are delegated may tend to err on the side of caution, removing more detail than is strictly necessary. There is a risk that such an approach could defeat the purpose of publication, that is to properly inform the public about what is done in their name. There is no point in publishing a judgment that says nothing once redacted – if a judgment seems pointless we suggest that either the anonymization strategy has probably been too enthusiastic or, if not, that the judgment should probably not be published at all.

ISSUE	PRACTICE TO CONSIDER
RUBRIC	It is important to make sure that any rubric (a notice at the head of the judgment, warning of reporting restrictions) is appropriate to the circumstances of the case and that it makes clear whether the court sat in private or public. Ensure the deemed standard rubric or an amended version[12] is clearly on the face of the order. Good idea to identify if any additional reporting restrictions are in place within the rubric. *Standard rubric (see paragraph 21 President's Guidance):* *This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All person, including representatives of the*

	media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.
NAMES	• Consider using fictitious initials for children and/ or generalised terms where possible e.g.: 'PJ' or 'XJ or 'the child', 'child 1' 'the Father', 'the family friend' where possible; • But note that instead of an initial (which is a bit dehumanising), some people prefer use of a pseudonym (substitute name) which matches the gender and cultural background of a child, possibly with the same initial e.g. Hassan for Hamza or Cody for Christopher. If a pseudonym is used the judgment should say so; • Terms like 'the mother or 'the father's cousin' or 'the father of X' are much easier for the reader to follow than initials such as 'AB' or 'XY', but in complex families such labels may themselves be inappropriate / difficult to apply or follow; • Where initials are used it can be helpful to include a schedule of anonymisation at the outset to which the reader can quickly cross-refer back to; • Pay particular attention to names of wider family and friends and names within quotes from expert reports / written evidence which are easy to miss. Take particular care if relying on transcription services to anonymise. Many

	anonymization errors seem to be connected with quotes from reports or documents or of oral evidence; • Where fictitious initials or names are used to replace actual names in a judgment that is being converted for publication it is important not to be over reliant on electronic "find+replace" commands , which can lead to errors and accidentally allow the real name to slip through; • Ensure that all variants of a name are checked for and removed, including misspellings (David, Dave, Davod); • Print revised document and check manually; • Do not rely on someone else having checked the document.
DATES OF BIRTH	Redact dates of birth to the month and year of birth where possible: 'Child A born in March 2017' or 'early 2017' Combining the ages and number of members of a sibling group can lead to identification locally, particularly where one or more child has identifying features such as a disability.

LOCATION OR PRESENT WHEREABOUTS	• Generalise current villages, towns and even cities to wider area e.g.: 'a small village in Lincolnshire'; 'a town/city in the South West of England' • As well as current schools, nurseries, colleges, workplaces, refuges, hospitals where in-patient, places of worship, etc. e.g. consider identifying tier of school and year group without identifying the school itself, in smaller communities where there is only one school of a particular type/ tier particular care may be needed; • Or Contact Centres; Family Centres, local Assessment Centres or treatment projects; details of A&E or paramedics.
INDIRECT IDENTIFIFCATION	Ensure details about type or characteristics of current schools, colleges etc don't effectively identify location by being the only one of its type in an area e.g. a mosque or a specialist school.
'JIGSAW IDENTIFICATION'	Think about the cumulative impact of the information that will be contained in a judgment set alongside with other information that is already in the public domain (jigsaw identification).

	Consider in particular whether there is already any information on social media about the case, media coverage of related criminal proceedings, or even other judgments from the same proceedings / concerning the same parties.
(i) Ethnicity, religion, citizenship etc.	Consider whether details of someone's ethnicity, religion or citizenship are relevant, necessary and proportionate to the increased risk of 'jigsaw' identification from specifying an identifiable minority group within a much wider community.
(ii) Details of some unusual disabilities, illnesses, conditions or other characteristics	Consider generalising rare characteristics or conditions, which may be identifying. E.g. ' a rare, genetic disorder' rather than the specific genetic disorder particularly if in a small rural borough, or if so rare as to be identifying in itself.
(iii) Criminal convictions	• Redacting the date, court and judge dealing with criminal proceedings, to a suitable generalised summary may be sensible if identification is a worry - the date and location of a conviction can make it very easy to identify a family through search engines; • Consider redaction of identifying detail of incidents (see below); • the judge could be asked to publish a short note acknowledging the existence of a qualifying judgment

	withheld temporarily from publication to avoid prejudicing a criminal trial with date of next review.
(iv) Future criminal trial likely or intended	It will often be inappropriate to publish anything whilst criminal investigations / proceedings are pending. This does not always mean that no publication will ever be possible, so it is worth thinking about what mechanism will be used to ensure the question is reconsidered at the appropriate point (when the criminal matters have finished).
(v) Social media postings	Consider whether there are any feasible steps to avoid unnecessary risk of jigsaw identification through a published judgment being linked with known or likely social media postings identifying the child. In some cases it may be possible to minimise likelihood of 'linking' by avoiding certain unnecessary detail in the judgment.
(v) Unnecessary detail including graphic sexual abuse	Draft and check for redundant detail that can be generalised or left out if it unnecessarily increases risk of children or families being unintentionally identified. In particular consider asking for the redaction of graphic sexual details to a summary, perhaps identifying for future reference where any fuller detail is to be found.

	Where this sort of detail is redacted it is a good idea to use square brackets or similar to show that something has been taken out.
WHO TO NAME	
Naming local or treating practitioners / professionals	Naming of GPs, dentists, health visitors, teachers, school staff, ambulance workers, paramedics, A&E staff, contact workers, foster carers, local CAMHS staff or any other local, treating professionals or their practices may add little by way of useful information, but may increase the risk of identification of a family or individual children within their local community or school. In some cases there may be relevance to naming an individual, for example if there have been professional failings. If professionals are anonymised a judgment should use initials to distinguish clearly between individual professional witnesses. Occasionally a judge will anonymise the names of the lawyers involved in a case for added protection, but this is not normally needed or justified.
Naming non-local, non-treating, court appointed experts	Professionals not working directly in the family's local community, such as court appointed Independent Social Workers, consultants, psychologists, assessment centres, guardians etc. can usually be named without a particular risk of jigsaw identification.

Naming the local authority (LA)	The LA can normally be named without a particular risk of jigsaw identification – but in some cases there may be a risk of identification of a family by the local community through combination of family details in a judgment and geography (e.g. if a LA is very small), particularly if picked up by local press.
Naming the social workers, Independent Reviewing Officers, CAFCASS Guardians / officers)	If the judge criticises poor practice consider: o What level of practitioner should be named e.g. managers or heads of service / Directors or individual practitioners? [13] o whether good practice is also adequately publicised in the relevant area; o the full range of options for accountability and reform.

PART 3 – EXPLANATORY NOTES

[1] British and Irish Legal Information Institute, www.bailii.org (A repository of published judgments maintained by a small charity)
[2] Transparency in the Family Courts: Publication of Judgments: Practice Guidance (The Judges' Guidance): https://www.judiciary.gov.uk/publications/transparency-in-the-family-courts/
[3] https://www.judiciary.uk/publications/practice-guidance-family-court-anonymisation-guidance/
[4] J Doughty, A Twaite and P Magrath Transparency through publication of family court judgments: An evaluation of the responses to, and effects of, judicial guidance on publishing family court judgments involving children and young people (the Cardiff research) http://orca.cf.ac.uk/99141/ A summary is published here http://www.nuffieldfoundation.org/news/family-court-transparency-plans-fall-short-judges-struggle-find-time-publish-judgments-safely
[5] The Cardiff research (as above)
[6] IPSO is the Independent Press Standards Organisation, which regulates most national and local newspapers by reference to its Editors' Code of Practice, https://www.ipso.co.uk/editors-code-of-practice/)
[7] *Media Guide: Attending and reporting family law cases*, March 2017, http://www.transparencyproject.org.uk/media
[8] *Re X (A Child) (No 2)* [2016] EWHC 1668 (Fam) explains what the rubric is, when it is or is not required, and what it's for.
[9] *R (C) v The Secretary State for Justice* [2016] UKSC 2; (citing *Re S (a child) (identification: restrictions on publication* [2005] 1 AC 593) ; *Re: J (Reporting Restriction: Internet: Video)* [2013] EWHC 2694 (Fam); [2014] 1 FLR 523, *Re W (Children)* [2016] EWCA Civ 113; [2016] 4 WLR 39
[10] Child and Family Court Advisory and Support Service (CAFCASS or CAFCASS Cymru in Wales), www.cafcass.gov.uk
[11] Paragraph 18 of the Judges' Guidance
[12] Several High Court Judges use their own personalised versions of the standard rubric. The following is a hybrid of them: This judgment is being handed down [in private] on [DATE]. It consists of [x number] paragraphs/pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the children and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the child will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. [A reporting restriction order is / is not also in force]. [Applies also to law reports]
[13] Recent caselaw shows a pattern of judges declining to name individual frontline social workers where it is clear that the root of a problem lies with management.

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