

CONSULTATION RESPONSE FORM

Consultation Questions									
1	<p>Do you consider that the Civil Procedure Rules and Practice Directions adequately cater for the needs of those who litigate in this area?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No [Go to 2]</p>								
2	<p><i>If you answered No to Q1 - What two changes to the CPR or PD would you most like to see implemented?</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #cccccc;"> <th style="width: 40%; padding: 5px;">Rule or PD:</th> <th style="padding: 5px;">Change</th> </tr> </thead> <tbody> <tr> <td style="height: 20px;"> </td> <td> </td> </tr> <tr> <td style="height: 20px;"> </td> <td> </td> </tr> </tbody> </table>	Rule or PD:	Change						
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3	<p>What do you see as the single most important case management issue to be considered in this context?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 70%; padding: 5px;">(a) Costs budgeting</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 5px;">(b) Delay</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 5px;">(c) Other (please specify below)</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> <tr> <td style="height: 20px;"> </td> <td> </td> </tr> </tbody> </table>	(a) Costs budgeting	<input type="checkbox"/>	(b) Delay	<input type="checkbox"/>	(c) Other (please specify below)	<input type="checkbox"/>		
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(c) Other (please specify below)	<input type="checkbox"/>								
4	<p>It has been suggested that the statistics on injunctions restraining freedom of expression are incomplete. What is your response to the following propositions?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 55%; padding: 5px;">(a) The collection of statistics is worthwhile</td> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/> Agree</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/> Disagree</td> </tr> <tr> <td style="padding: 5px;">(b) The system of data collection is adequate</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/> Agree</td> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/> Disagree</td> </tr> </tbody> </table> <p style="text-align: right; margin-top: 5px;">[Go to 5]</p>	(a) The collection of statistics is worthwhile	<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	(b) The system of data collection is adequate	<input type="checkbox"/> Agree	<input checked="" type="checkbox"/> Disagree		
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5	<p><i>If you do not consider the system of data collection is adequate, what is your response to the proposition that the legal representatives should</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 55%; padding: 5px;">(a) complete and submit the data form</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/> Agree</td> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/> Disagree</td> </tr> <tr> <td style="padding: 5px;">(b) prompt the Judge to complete the form</td> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/> Agree</td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/> Disagree</td> </tr> </tbody> </table>	(a) complete and submit the data form	<input type="checkbox"/> Agree	<input checked="" type="checkbox"/> Disagree	(b) prompt the Judge to complete the form	<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree		
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6	<p>Would you find it helpful to have a meeting for users of the Media & Communications List?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>								
7	<p>Would you support the creation of a Media & Communications List Users' Committee?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>								

About the individual completing this form ¹

1	Your name: Mr Paul Magrath; Dr Julie Doughty; Dr Judith Townend						
2	<p>In what capacity are you are responding to this consultation?</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%; border: 1px solid black; padding: 5px;"><input type="checkbox"/> Solicitor (private practice)</td> <td style="width: 16.6%; border: 1px solid black; padding: 5px;"><input type="checkbox"/> Barrister (private practice)</td> <td style="width: 16.6%; border: 1px solid black; padding: 5px;"><input type="checkbox"/> In- house Lawyer</td> <td style="width: 16.6%; border: 1px solid black; padding: 5px;"><input type="checkbox"/> Clerk</td> <td style="width: 16.6%; border: 1px solid black; padding: 5px;"><input checked="" type="checkbox"/> Journalist</td> <td style="width: 16.6%; border: 1px solid black; padding: 5px;"><input checked="" type="checkbox"/> Other (please specify below)</td> </tr> </table> <p>Paul Magrath, journalist, barrister and Head of Product Development & Online Content at ICLR; Dr Julie Doughty, lecturer in law, Cardiff University and Dr Judith Townend, journalist and lecturer in media and information law, University of Sussex.</p>	<input type="checkbox"/> Solicitor (private practice)	<input type="checkbox"/> Barrister (private practice)	<input type="checkbox"/> In- house Lawyer	<input type="checkbox"/> Clerk	<input checked="" type="checkbox"/> Journalist	<input checked="" type="checkbox"/> Other (please specify below)
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3	<p>Are you responding as a representative of any other(s)?</p> <p><input checked="" type="checkbox"/> Yes [Go to 4] <input type="checkbox"/> No</p>						
4	<p><i>If you answered Yes to 3</i> Please identify the other(s) (eg, firm, chambers, publisher, organisation)</p> <p>The Transparency Project. We write in both a personal and representative capacity as members of the Transparency Project.</p> <p>The Transparency Project aims to promote the transparency of court proceedings in England and Wales through providing straightforward, accurate and accessible information for litigants and the wider public (registered charity: 1161471). The charity primarily focuses on the family courts, but its members have a wider interest in access to the courts in the context of media and information law.</p> <p>Note: We have not answered questions 1-3 as they are not applicable to us. We do, however, have views on the collection of statistical data on privacy injunctions. Below, we offer a few suggestions and observations with regard to Question 5.</p> <p>We welcomed the Master of the Rolls' recommendation in 2011 for HMCTS to examine the feasibility of introducing a data collection system for all interim non-disclosure orders, including super-injunctions and anonymised injunctions.</p> <p>Prior to this, there had been much confusion in the media and on social media about the number and type of injunctions that had been granted. There was some criticism of media exaggeration and distortion but at the same time, no reliable source of information existed with which to check the claims that were being made. At a press conference marking the launch of the release of the Master of the Rolls' report, Lord Neuberger said he 'would not like to say precisely how many' super injunctions or anonymous injunctions had been granted since 2000. The number could not be ascertained because no reliable records had been kept.</p> <p>It is our view that it is wholly unacceptable that no reliable information exists for how many injunctions were granted historically. We were pleased therefore when the Ministry of Justice began publishing results twice a year. However, we</p>						

¹ Personal details of individuals are requested primarily for analytical purposes. They will not be made public without consent.

do not think the system is reliable or complete, as has recently been observed on the Infromm media law blog. It is worrying that HMCTS and the MOJ did not appear to notice the incompleteness of the data.

We recommend that judges should record all interim and final non-disclosure orders, including super injunctions and anonymised injunctions and relating to publication of private and confidential information (by mainstream media organisations or other publishers including individuals) - as defined in Practice Direction 40F.

We have two concerns about the process to date despite the PD being in force:

First, that not all such orders have been recorded. We do not know the reason for this. It is important that PD 40F is followed and enforced. Although we ticked option 5b, we do not think the judge's completion of the form should rely solely on legal representatives prompting the judge to complete the form as they may have no incentive to do so. HMCTS should also ensure that the data has been correctly completed by the judge. Therefore, as part of the data collection exercise, HMCTS should have an audit procedure for ensuring data is being correctly and systematically collected.

Second, we do not think that the format of the data is accessible or as useful as it could be. We think that the anonymised case names should be published alongside the statistics to allow for verification of the data and cross-referencing with any published judgments (there would be rare exception where a 'true' super injunction was in force). We think the MOJ and HMCTS should also collect information relating to the eventual outcome: when an order is discontinued or expires, for example.

Given the narrow remit of this consultation, we will keep these comments brief. However, we have other ideas for how transparency and access to information in media proceedings could be improved with view to improving public understanding and education in these types of proceedings. We would welcome the opportunity to discuss these with you and would like to join any future meeting and discussions of users of the Media and Communications List.

5 Do you (and any others on whose behalf you are responding) consent to the identification of any individuals as the person(s) providing these consultation responses?

Yes

No