



Media Guide

Attending and reporting family law cases

This Guide is designed to assist journalists and others to approach issues relating to publicity in court proceedings. Nothing written here should be treated as legal advice on individual cases or circumstances.

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March 2017

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(Charity Registration No. : 1161471)

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PART 1

WRITING ABOUT FAMILY PROCEEDINGS : WHAT ARE THE RULES & RESTRICTIONS?

The rules about who can and cannot attend and report on hearings in family law cases are complicated and even experienced journalists may unwittingly fall foul of them. This Guide sets out the main points you need to consider.

For more detailed information, there is official guidance provided by the Judiciary and the Society of Editors in the following documents:

- a. **The Family Courts: Media Access and Reporting (2011)** (the Family Reporting Guidance) <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/family-courts-media-july2011.pdf> (NB This has not been updated and does not take into account the Transparency Guidance issued in 2014 on publication of judgments not heard in open court and more recent case law and rules.)
- b. **Reporting Restrictions in the Criminal Courts (April 2015, revised May 2016)** (the Crime Reporting Guidance) <https://www.judiciary.gov.uk/wp-content/uploads/2015/07/reporting-restrictions-guide-may-2016-2.pdf>

Where appropriate, we refer in this Guide to the relevant parts of the official guidance in those documents, as well as other sources, such as legislation and court practice directions. There is a list of these and other relevant documents at the end of this guide (section 9).

PART 2

THE COURT SYSTEM

2.1 FAMILY COURTS

The first thing to realise when attending family court hearings is that different rules apply depending on the type of court and the type of hearing in that court. At the time the Family Reporting Guidance was written in 2011, there were three types of first instance court hearing family matters:

- A Magistrates' Court specially constituted as a Family Proceedings Court
- A County Court
- The High Court (Family Division)

From 2014, a unified 'Family Court' was introduced, replacing the Family Proceedings Court and the County Court's family jurisdiction.

The court rules and practice directions have also been significantly revised and consolidated since the Family Reporting Guidance was published in 2011.

They are now to be found in Rule 27(11) and Practice Direction 27B of the 2014 version of the Family Procedure Rules 2010 (FPR) https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_27#IDATP0HC

2.2 APPEAL COURTS

Within the Family Court,

- appeals from Magistrates (sometimes called Lay Justices) are heard by a District Judge (with any second appeal heard by a Circuit Judge),
- appeals from a District Judge go to a Circuit Judge (and any second appeal is heard by the Court of Appeal).
- Appeals from a Circuit Judge or Recorder sitting in the Family Court are heard by
- a High Court Judge or the Court of Appeal (Civil Division) depending on the type of case; and then (if appropriate) the UK Supreme Court.
- Appeals from a High Court Judge are heard by the Court of Appeal (and then the UK Supreme Court if appropriate).

2.3 OTHER COURTS

Hearings in other courts may involve matters relating to families and children. For example:

- Criminal proceedings in the Magistrates' Court or the Crown Court may involve matters such as domestic violence or involve children accused of criminal behaviour.
- Civil proceedings in the Queen's Bench Division of the High Court involving human rights or judicial review may cover issues such as local authority powers and duties, education etc. that affect families and children such as children in care, care leavers and unaccompanied asylum seeking children.
- Immigration Tribunal and Immigration Appeal Tribunal hearings may impact on the family life or childcare arrangements of immigrants and refugees.

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- The Court of Protection makes decisions on financial or welfare matters for people (aged 16 and over) who can't make decisions at the time they need to be made (they 'lack mental capacity').
- Committal Hearings, where someone is accused of being in contempt of court (e.g. for breaching a court order, which might have been in family proceedings) and may be sent to prison for it.

All of these hearings are subject to different rules and exceptions. Although we don't aim to cover these ancillary areas in detail, we will flag up the main exceptions where relevant.

See: Courts and Tribunals Judiciary: Going to court <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/>

PART 3

OPEN JUSTICE

As a general rule, courts sit in public (“open court”), and members of the public as well as journalists can attend hearings and write about them afterwards, provided they behave respectfully in court and do not interrupt or distract the proceedings and any report they publish is fair and accurate.

NB. If a report about open court proceedings is not fair and accurate and/or creates a substantial risk of serious prejudice or impediment to the proceedings, then it may be punishable as an offence under the Contempt of Court Act 1981.

The principle of open justice (that justice must not only be done, but must be seen to be done) is long established under the common law, dating back to the middle ages. It is reinforced by statute (Act of Parliament) – notably by the Human Rights Act 1998, which incorporated the European Convention on Human Rights (ECHR) into domestic law, and protects the right to a fair trial under article 6 and freedom of expression under article 10.

However, the general rule or principle of open justice is subject to a number of well-established exceptions, derived from both UK and international law.

The ECHR protects, under article 8, the right to respect for family life and privacy, and this has to be balanced against the right to freedom of expression under article 10. Moreover, protection against intrusive and damaging publicity for children caught up in court proceedings may also be found in the UN Convention on the Rights of the Child (article 16).

The open justice principle is subject to exceptions under a number of specific provisions in statute or rules of court in most first instance family proceedings (“first instance” means the original proceedings, as opposed to any appeal from a decision of a lower judge), and in proceedings in the Court of Protection, which have normally been heard in private. The main reasons for hearing cases in private are that such proceedings involve children or other

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vulnerable parties, or the nature of the proceedings is confidential and it would defeat their purpose, or harm the interests of those involved, to hold them in public.

NB. The fact that proceedings are heard in private does not mean they are “secret” hearings or that anything sinister is going on “behind closed doors”, as is sometimes suggested. It is simply a procedural step taken to protect legitimate matters of privacy and confidentiality, like drawing curtains round a patient's bed in a public hospital ward, when being examined by a doctor.

Journalists are usually allowed to attend hearings in private in the Family Court if they are accredited (see section 4.4 of this Guide); The court can allow others (e.g. academics or non-accredited reporters) to attend hearings on application. The court can exclude people from a hearing, including accredited media, in some circumstances.

In the Court of Protection journalists may attend if they apply to the court for permission. (NB At the time of writing a pilot scheme is in operation in the Court of Protection which means that most cases are currently held in public and therefore journalists, whether accredited or not, and members of the public can attend.)

A journalist can only report what has gone on in a private hearing (beyond certain basic facts: see section 6.4 below) to the extent permitted by the court, or by reference to an openly published judgment.

See:

Family Reporting Guidance: paras 3-9.

Family Procedure Rules (FPR) 2010, rules 27.10, 27.11 and Practice Direction 27B.

https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_27#IDATPOHC

Court of Protection Rules 2007, rules 90-92 and Practice Direction 13A.

<https://www.judiciary.gov.uk/wp-content/uploads/2015/06/copd-pd-13a-hearings-reporting-restrictions.pdf>

PART 4

WHAT HEARINGS CAN I ATTEND?

4.1 HEARINGS IN OPEN COURT

Members of the public including journalists can usually attend any hearing in open court, including hearings involving family matters if held in open court. This is the general rule.

However, courts may impose restrictions where necessary, e.g. for public safety, if someone is disrupting proceedings, or while hearing certain types of application, e.g. about the admissibility of evidence.

Most civil proceedings and nearly all criminal proceedings are held in open court. Court of Protection hearings about serious medical treatment of a person who lacks capacity to consent have normally been held in open court, but under the current Court of Protection pilot scheme it is expected that most other cases in that court will be held in public.

Hearings concerning an allegation of contempt of court against a person (e.g. for defying a court order) must always be heard in open court, even if the proceedings to which the contempt related were held in private. Occasionally, Family Court hearings are held in public, but this is currently the exception rather than the rule.

See:

*Practice Direction 'Committal for Contempt of Court – Open Court' dated 26 March 2015 :
<https://www.judiciary.gov.uk/wp-content/uploads/2015/03/practice-direction-committals-for-contempt.pdf>*

Family appeals in the Court of Appeal are usually heard in public, sometimes with reporting restrictions.

Family appeals in lower courts are not usually heard in public, but there is power to adopt the same approach as the Court of Appeal where appropriate.

4.2 HEARINGS IN PRIVATE

Where any court is sitting in private (or “in chambers”) the public and media are usually excluded; only the parties and their lawyers may attend. However, under the Family Procedure Rules, duly accredited media reporters are entitled to attend most private hearings in the Family Court or the Family Division of the High Court, subject to a power to exclude them where necessary in the interests of justice. (This power may be exercised by the court in response to an application from one of the parties, but it would be for that party to satisfy the court that it is necessary to exclude the media. Alternatively, the court may decide of its own motion to do so.)

The right of accredited media representatives to attend private hearings in the Family Court does not include the right to report them (which is subject to other rules: see section 6 below) and the right to attend does not extend to all hearings. Placement Order Hearings and Adoption Order Hearings in particular are still excluded, as are those hearings which have as their main purpose negotiation and settlement: i.e. “dispute resolution hearings” in both children and financial matters.

See:

Family Reporting Guidance page 7

FPR 2010 rules 27.10 & 11

The general rule is that hearings in the Court of Protection have been heard in private, except hearings about serious medical treatment. Journalists did not have a right to attend the Court of Protection, as they do in the Family Court. However, under the current transparency pilot scheme, all cases are normally expected to be held in public, but there will be reporting restrictions imposed.

See: Practice Direction on Court of Protection Transparency Pilot Scheme

4.3 HEARINGS IN CAMERA

Some hearings are held “in camera” (or “in chambers”), which means they are closed to anyone except the parties and their representatives. Not even accredited reporters can attend. This is usually for reasons of confidentiality or to avoid frustrating the administration of justice. Criminal proceedings and some civil claims may be held wholly or partly in camera on grounds of national security or to protect sources such as whistle-blowers.

See: Family Reporting Guidance paras 12-30.

4.4 I’M A REPORTER : HOW DO I GET ACCREDITED?

You will need a press card issued by the UK Press Card Authority.

The authority’s scheme is managed by 17 gatekeeper organisations, such as the National Union of Journalists, the BBC, News Media Association, Sky News etc. Full details of how to apply may be found at the authority’s website: <http://ukpresscardauthority.co.uk/>

If you do not have the approved accreditation, you may still be permitted to attend (as indeed may a member of public) at the court’s discretion. You will need to apply to the court first.

See:

Family Reporting Guidance paras 18, 25.

Practice Direction 27B: Attendance of Media Representatives at Hearings in Family Proceedings https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27b

4.5 I'M INTERESTED IN A CASE. HOW DO I FIND OUT ABOUT IT?

Most law court buildings are open to the public, although they may have security systems in place, and it may be necessary to use a different entrance to get into the public gallery, especially in the Crown Court for criminal trials. Inside a court building there will be an information point or noticeboards indicating which cases are “listed” for hearing each day.

Cause lists (lists of cases to be heard) are available for the High Court, Court of Appeal and various tribunals on the Ministry of Justice website, and the Supreme Court has its own website which lists all forthcoming cases and also carries judgments of the cases it has already heard. Cause lists for cases heard in County Courts and other courts outside London can be found on the CourtServe website.

Cause lists generally only list the name of the case and in many family cases the names are not identified, so the information may not be particularly helpful unless you know someone who can tell you which court the case will be heard in.

Where a case has been heard, but judgment has not yet been given (judgment has been “reserved”), the cause list may not announce the fact that judgment is to be given on a particular day until the day (or even the night) before it happens. However, the lawyers in the case and of course the parties should know. Failing that, you can try calling the court office.

See:

High Court: Daily Cause Lists <http://www.justice.gov.uk/courts/court-lists>

Supreme Court: Current case list <https://www.supremecourt.uk/current-cases/index.html>

County Courts: weekly cause lists via Courtserve

<https://www.courtserve.net/courtlists/current/county/indexv2county.php>

PART 5

WHAT DOCUMENTS CAN I SEE?

There are different rules about what documents a person can see during or after a court hearing, which are discussed in this section, and about the extent to which the contents of any documents seen can be quoted or commented on in any report of the proceedings (which are discussed in a separate section below).

The general rule is that where documents have been placed before a judge and referred to in the course of proceedings the media is entitled to have access to those documents in accordance with the open justice principle. This is subject to variations and restrictions according to the nature of the proceedings.

5.1 ACCESS TO DOCUMENTS IN CIVIL PROCEEDINGS

The general rule in civil proceedings is that documents relied on by the court in reaching its decision may be provided to third parties, though not the whole Court File. This may include Affidavits (a sworn statement of evidence by a witness or party) and Exhibits (documents appended to an affidavit, for whose origin and accuracy the person signing the affidavit has vouched), and any document disclosed in the proceedings which has been read out or referred to in a hearing in open court.

Copies of documents used to begin proceedings, such as a Claim Form (what used to be called a Writ), a Defence (a statement of the grounds on which the claim is opposed) or an Appellant's Notice in the case of an appeal, are kept by the clerk of the court in the Court File, and may be shown to reporters and other members of the public on request, but custom and practice varies from court to court and the rules are not entirely clear. Court clerks are more likely to comply where the person asking is an accredited or recognised (e.g.

because they work for the local paper) reporter, rather than a member of the public. However, the court will not provide other documents from the Court File.

After the proceedings have been concluded, it is possible to apply to the court office to obtain (for a fee) a copy of a statement of case (but not any document filed with or attached to it) or a copy of the judgment or order made in public. Access to such documents may be restricted on the application of a party to the proceedings, in which case you will need to make an application (giving notice to that party) to have the order relaxed in order to see the document.

See:

Family Reporting Guidance : para 35

Civil Procedure Rules (CPR) rule 31.22 and Practice Direction PD5.4C

5.2 ACCESS TO DOCUMENTS IN FAMILY PROCEEDINGS

In most family proceedings, media representatives are not entitled to receive or view court documents referred to in the course of evidence, submissions, or judgment.

In family proceedings, especially when heard in private, a media representative will need to apply to the judge to see documents referred to during proceedings. The judge must then carry out a balancing exercise, considering on the one hand the right of the litigants (if they object to disclosure) to privacy and a fair trial, and on the other the right of the media to be able to follow and to report the proceedings fairly and accurately.

Documents which a media representative may be shown, if the court permits, include Witness Statements (particularly if they stand as evidence, i.e. like an Affidavit) and Expert Reports. However, the purpose for which they are shown is to enable the reporter to follow and understand the proceedings; the disclosure of their contents is subject to different rules (see section 6 below).

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Under the Family Procedure Rules a party may only disclose information from family proceedings to certain other persons for specific purposes only, e.g. for the purposes of an appeal, or to take advice - but not to journalists or members of the public generally. The rules do not permit the communication of information (or disclosure of documents) from family proceedings to the press or give the press any right to see documents.

See:

Family Reporting Guidance: paras 31 – 38.

FPR Rule 12.73 and Practice Direction 12G – Communication of information

FPR Rule 9.46 and Practice Direction 9B – Communication of Information from Financial Remedy Proceedings

5.3 ACCESS TO DOCUMENTS IN CRIMINAL COURTS

The general rule permitting media access to any documents, photographs, films and recordings relied on in proceedings, if required for proper journalistic purposes, applies equally to cases in criminal courts. However, the court may refuse access where, having carried out a proportionality exercise, the court concludes disclosure of the material would be sufficiently harmful to the interests of justice or those involved in the proceedings as to outweigh the public interest in disclosure.

Media access to materials provided by the prosecution in criminal proceedings is governed by a protocol between the Association of Chief Police Officers (ACPO), the CPS and the Media entitled “Publicity and the Criminal Justice System” (2005) which is available on the CPS website.

See : CPS guidance on Publicity and the Criminal Justice System

5.4 ACCESS TO DOCUMENTS IN THE COURT OF APPEAL

An accredited reporter, or a member of the public with permission of the court, can ask to see public documents such as the judgment being appealed against, the Appellant's Notice (setting out the grounds of appeal), and the advocates' Skeleton Arguments (a written outline of what they plan to say). In relation to the latter, where a party is represented in the Court of Appeal, the representative must bring and deposit with the court usher two spare copies of his or her Skeleton Argument for provision to accredited court reporters.

Apart from the Skeleton Arguments (which are supposed to be drafted in suitably anonymised form in any event), some of these documents may have been drafted on the assumption that matters discussed in them would remain confidential to the parties and their advisers, so there may be legitimate reasons not to show them to anyone else. The person to ask is the Clerk of the Court, who keeps a copy of these documents in the Court File.

Sometimes the Court of Appeal is only hearing an application, for example for permission to appeal (PTA), in which case there will be limited documentation and it is unlikely it would be shown to anyone else.

See: CPR Practice Direction 52C, para 33 – Documents to be provided to court reporters at the hearing of an appeal <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part52/practice-direction-52c-appeals-to-the-court-of-appeal>

5.5 DOCUMENTS FROM THE PARTIES

Generally, a party to proceedings may disclose documents or information relating to their own confidential affairs to media representatives subject to any restrictions that would apply to the publication of that information (e.g. contempt of court, or because it identifies a minor or vulnerable party). Specifically, in family and other proceedings which are held in private, no documents can be released to the media without the permission of the court

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(this doesn't include a person's own documents which they had, or had a right to, independently of the court case – subject to questions of confidentiality of third parties). (See section 5.2 above about communication to third parties.)

Where a party has only disclosed information (to another party or to the court) under compulsion (because they were legally required to disclose it, e.g. about their assets in a family financial dispute) then that material cannot be disclosed to any third party, such as a media representative, let alone a member of the public, unless and until that material is revealed in open court (or the court gives permission).

See : Family Reporting Guidance : paras 39 – 43.

PART 6

WHAT CAN I REPORT?

The general rule is that what happens in open court, including the identity of the parties and the contents of any documents relied on in the hearing, may be reported afterwards. But this general rule is subject to a number of restrictions under statute law and court rules.

The same applies to private hearings, but these are subject to even more restrictions. The nature of the restrictions depends on the type of hearing. Moreover, different restrictions apply during the hearing to those that may apply after judgment has been given.

See : Family Reporting Guidance: paras 44-46.

6.1 REPORTING DURING THE HEARING

6.1.1 Audio or visual reporting

You cannot draw, take photographs or video film in court or inside the court building in England and Wales: it is prohibited by statute (section 41 of the Criminal Justice Act 1925). That is why newspapers employ professional court artists who have to leave the court before they can actually start drawing anything.

Some appeal hearings and sentencing remarks in open court are filmed by or on behalf of the court and broadcast by official licence. Thus the UK Supreme Court records hearings and judgments and broadcasts these on its own YouTube channel. In addition, some hearings in the Court of Appeal (Criminal Division) are filmed by official licence and extracts may be broadcast on TV or via the Internet. The UK Supreme Court can also give permission to draw within the court. These are exceptions to the general statutory prohibition (see above) on drawing or photography in court, which a judge has no discretion to relax.

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Audio recording is also prohibited by statute (section 9 of the Contempt of Court Act 1981) but accredited reporters can apply for permission to make audio recordings purely for their own benefit, i.e. to assist them in reporting. They would not be allowed to use the recording in a broadcast, unless the court specifically permitted this.

Hearings and extempore (i.e. unwritten) judgments in the High Court and Court of Appeal are officially recorded by the Mechanical Recording Department of Her Majesty's Courts & Tribunals Service, and a transcript may later be obtained from the official shorthand writers to the court, on payment of a fee (There is a panel of different companies who provide this service, listed in HMCTS Guidance on transcripts).

Parties to proceedings and any members of the public in attendance are not permitted to make audio recordings during court hearings, whether in private or open court, unless (very exceptionally) they have first obtained the permission of the court to do so. Any unauthorised publication of such a recording, e.g. by posting it on Facebook or YouTube, or sending it to another person or to a media organisation (even if it was not used by them) would be a serious contempt of court which could result in a prison sentence.

See : HMCTS guidance on obtaining court transcripts

<https://formfinder.hmctsformfinder.justice.gov.uk/ex107-info-eng-20160121.pdf>

6.1.2 Social media reporting

The rules on using Twitter and other forms of “live text-based communications” to report from within the court during hearings have been relaxed in some types of cases in recent years, under Practice Guidance issued by the Lord Chief Justice in 2011. However, this does not apply to family proceedings.

In cases that are not classed as private, the guidance provides different rules for members of the public and media representatives. Members of the public need to apply to the court for permission to use a device such as a mobile phone, tablet or laptop in silent mode, and then only for the purpose of making text-based communications during the hearing. The

request can be made informally via court staff but must have been granted before any device is used.

Media representatives should not normally need to apply to the court for permission to “live tweet” or otherwise use live text-based communication in open court, since it is assumed they will do so in order to provide a fair and accurate report of the hearing. However, they should certainly ask in the case of private family law hearings (when it is unlikely they will be granted permission unless the case is one involving a very high public interest).

See : Practice Guidance: the use of live text-based forms of communication (including twitter) from court for the purposes of fair and accurate reporting
<https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/ltbc-guidance-dec-2011.pdf>

6.1.3 Reporting criminal cases during the hearing

Pre-trial hearings, and appeals on points of law or practice arising in the course of the trial, while the trial is adjourned, may not be reported until the main trial has been concluded. For this reason, judgments given in the Court of Appeal (Criminal Division) will often not be released or published until after the trial has concluded, or will only be released in anonymised or redacted form.

During the trial, orders may be given restricting the identification of certain witnesses, for example victims of sexual offences, or of genital mutilation, or for reasons of national security or to protect an informer: any report of the trial would have to avoid identifying them directly (i.e. by name) or indirectly (by facts from which their identity could be worked out).

The court may also restrict any reporting of proceedings involving, or in so far as they relate to, children. Publicity in all cases heard in the Youth Court is automatically restricted (apart from anti-social behaviour cases, where it may still be imposed at the discretion of the court), although the press can be present and the court can decide to lift reporting

restrictions in some circumstances. The identity of defendants, victims and witnesses aged under 18 will automatically be protected but the court can lift restrictions if this is in the public interest (Children and Young Persons Act 1933, ss 45, 47, 49).

Criminal proceedings against children in the Crown Court are usually also subject to reporting restrictions which may be lifted on sentence if the judge agrees to the request to do so by a party to the proceedings or, more usually, the media (Youth Justice and Criminal Evidence Act 1999, s 45).

See: Crime Reporting Guidance: section 3.

CPS guidance on Reporting Restrictions - Children and Young People as Victims, Witnesses and Defendants http://www.cps.gov.uk/legal/p_to_r/reporting_restrictions/

6.1.4 Taking notes

Anyone attending a trial in open court, whether sitting in the press bench or the public gallery, is allowed to take notes. You do not need to ask permission. If the hearing is a private one to which you have been admitted as an accredited media representative, or by permission of the court, then you may need to ask permission to take and retain notes of what is happening. In very extreme cases, such as those involving national security, even accredited journalists have been asked to hand their notes back to the court and not to take them away, but this is exceptional and no such practice should be required for ordinary cases either in open court or private hearings.

6.2 REPORTING AFTER THE HEARING

If the hearing is in open court, and the court has not made any order restricting or preventing reporting, then as a general rule anything that happened in the hearing can be reported. This includes the contents of any documents read out or referred to in the hearing, unless otherwise directed, and anything said by the witnesses and the parties or their lawyers in the hearing.

After a criminal trial, the verdict may be reported unless there are multiple charges on the indictment, or more than one defendant on trial, and not all the verdicts on all the charges have been given yet. Only when the trial has been concluded in respect of all the charges, or they have been dropped, can the verdicts be reported. Restrictions imposed during the trial, e.g. on the identification of witnesses, victims et al, may continue. An order will usually be made, but any uncertainty can be resolved by contacting and asking the court.

In addition, where a retrial is or may be ordered, either because a trial collapses or because such an order has been made following an appeal, the case may continue to be subject to reporting restrictions until the conclusion of the retrial. The court can also order the postponement of any reporting of a trial, for example until the conclusion of another, related trial.

A private family law hearing to which accredited media representatives have been given access will generally be subject to reporting restrictions, which may continue after the conclusion of the case. (The main ones are that only certain basic facts can be reported unless the Judge orders otherwise, even after proceedings end; and the child must not be identified while they are subject to ongoing proceedings: see section 6.4 below for more detail.) It is always advisable to ask the court whether, and if so what, can be reported.

See :

Family Reporting Guidance : paras 44-46.

Crime Reporting Guidance: section 4.

6.3 REPORTING THE JUDGMENT

If and when a judgment has been published, then anything in the judgment can be reported. Most judgments given in open court can be found on the website of the British and Irish Legal Information Institute (BAILII) (www.bailii.org). In family and Court of Protection hearings, there is practice guidance (the “Transparency Guidance”) on the types of case that

should have judgments published on BAILII. However, not all such judgments necessarily do appear on BAILII.

Judgments and sentencing remarks may also be available from the Judiciary website, particularly if they are likely to be of interest to the media.

(<https://www.judiciary.gov.uk/judgments/>)

Judgments are also available from a number of legal publishers, including ICLR (the Incorporated Council of Law Reporting), LexisNexis and Westlaw, though usually only on payment of a subscription. Individual judgments may be purchased from the official transcribers via the court.

The judgments from most family cases are delivered ‘in private’. The published version on BAILII may appear with a “rubric” at the top, indicating the need to preserve the anonymity of some or all of the parties, lawyers, local authority, etc. in any further publication. However, whether or not a rubric appears, a judgment delivered in private is automatically subject to a standard wording unless ordered otherwise in the individual case:

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 persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

If the Judgment is delivered in open court this standard ‘rubric’ permitting limited publication won’t apply since permission to publish isn’t required.

Breach of the terms of a rubric appeared (or presumed to appear) on a judgment is potentially punishable as a contempt of court, so it is important to make sure that the copy of a judgment is an official copy.

The version of the judgment handed out in court is not official unless and until it bears a statement to that effect on its cover page, or in some other way (such as by including a rubric as above) indicates that it is intended for public release. That is because, at the time

judgment is given, the contents of the judgment are subject to correction by the judge, there may be errors pointed out by the parties or their lawyers, and the terms of any orders to be made may still need to be discussed or agreed.

See:

Family Reporting Guidance : paras 76-82.

Transparency in the Family Courts: Publication of Judgments

<https://www.judiciary.gov.uk/publications/transparency-in-the-family-courts/>

Transparency in the Court of Protection: Publication of Judgments

<https://www.judiciary.gov.uk/publications/transparency-in-the-court-of-protection/>

In the Matter of X (A Child) (No 2) [2016] EWHC 1668 (Fam) (a recent case which explains the purpose and effect of the rubric and other matters)

<http://www.bailii.org/ew/cases/EWHC/Fam/2016/1668.html>

<http://www.bailii.org/ew/cases/EWHC/Fam/2016/1668.html>

6.4 REPORTING OF FAMILY LAW CASES

A number of statutes and rules may restrict the reporting of family law cases, or other types of case if they involve children or vulnerable adults (such as those under a disability). The Family Reporting Guidance discusses the effect of the main ones, but it is hard to work out their combined effect. However, the following is a rough guide.

6.4.1 Cases involving children

Most cases involving children (particularly cases held in private) are subject to reporting restrictions, preventing the identification directly or indirectly of the children (anyone under 18 years old) concerned.

Indirect identification may include “jigsaw identification” whereby a number of reported facts (such as the name of a child’s school, the number and ages of their siblings, the town

they live in, a parent's job or nationality) may be pieced together to form a clear picture of the children or family involved.

There are a number of statutory prohibitions which may apply, including the following:

Administration of Justice Act 1960, section 12 prohibits publication (at any time) of information about proceedings in private which

- relate to the High Court's exercise of the inherent jurisdiction,
- are brought under the Children Act 1989,
- are brought under the Adoption and Children Act 2002,
- relate wholly or mainly to the maintenance or upbringing of a minor,
- where the welfare of a child is a major issue (such as applications for an occupation order under Part IV of the Family Law Act 1996)
- are brought under the Mental Health Act 1983 authorising an application or reference to a court or tribunal,
- are brought under the Mental Capacity Act 2005.

Section 12 does not prevent reporting of who is involved in the case, the time and location of the hearings, and the nature of the dispute, or anything unrelated to the court proceedings or that could have been reported if those proceedings had never taken place. But it does prohibit any dissemination of what went on in front of the judge and the documents filed for the proceedings, including written evidence, reports and submissions of the advocates.

Children Act 1989, section 97 makes it a criminal offence to publish material which identifies or could identify a child involved in proceedings in which any power under the Children Act itself or under the Adoption and Children Act 2002 may be exercised. The prohibition only lasts for the duration of the proceedings and does not apply in the Court of Appeal.

In appropriate circumstances the court can dis-apply the prohibitions under either section 12 of the Administration of Justice Act 1960 or section 97 of the Children Act 1989 or both in order to permit reporting of the case or certain limited aspects of it. Otherwise, while they do not entirely prohibit reporting of anything to do with the case, in practice it will be difficult to report anything of interest without risking breaching one or other of these sections.

In addition, the **Children and Young Persons Act 1933, section 39** enables any court in any type of proceedings (except criminal) to make an order preventing the identification of a child concerned in the proceedings, whether as a party, subject or witness.

See : Family Reporting Guidance : paras 47-59, 66.

6.4.2 Divorce etc. cases

In proceedings for the dissolution or nullity of marriage or civil partnership or for a judicial separation, proceedings for financial provision in such cases, and proceedings for declarations of marital or partnership status, parentage, or legitimacy, no material may be published except:

- the names, addresses and occupations of the parties and witnesses,
- a concise statement of the charges, defences and counter-charges in support of which evidence has been given,
- submissions on any point of law and the court's decision on them, and
- the summing up of the judge, the findings of any jury involved, and the judgment.

Financial remedy proceedings in which confidential information is disclosed under compulsion are usually subject to reporting restrictions to protect that confidentiality, even if the proceedings were not heard in private (though they usually will be). (Formerly these were known as Ancillary Relief proceedings.) Information from such proceedings may be

disclosed to certain parties, e.g. for the purposes of an appeal, but not to journalists or members of the public.

See :

FPR Practice Direction 9B – Communication of Information from Financial Remedy Proceedings

Family Reporting Guidance : paras 60-65, 71-75.

Judicial Proceedings (Restriction of Reports) Act 1926, s 1(1)(b)

Magistrates' Courts Act 1980, s 71

6.4.3 Orders, injunctions, etc.

The court in any case may give directions under section 11 of the Contempt of Court Act 1981, prohibiting publication of any name or other matter withheld from the public in the proceedings.

The court has power to grant injunctions to restrain reporting in order to give effect to the rights (e.g. to privacy) of children or adults under the European Convention on Human Rights. This is the power generally relied upon in the case of “super-injunctions”, which prohibit even the reporting of the existence of the injunction, let alone anything to do with the proceedings in which it was granted. Though less drastic, injunctions may also be granted to anonymise or prevent reporting of a case involving a celebrity or politician, due to risk of their children being adversely affected.

An order “contra mundum” (against the world) is a form of injunction, made by the Family Division of the High Court under its inherent jurisdiction, which effectively binds everyone with knowledge of the order. The media must be notified of any application for such an order, so they are aware of it. This is done by way of the Press Association’s Injunction Applications Alert (formerly CopyDirect) service (and other means where appropriate).

See :

Press Association Injunction Applications Alert service (formerly CopyDirect)

<http://www.medialawyer.press.net/courtapplications/>

Family Reporting Guidance : paras 67-70, 83-87.

6.5 REPORTING COURT OF PROTECTION CASES

The general rule has been that cases in the Court of Protection could not be reported, and even if the hearing was not in private it might still be subject to reporting restrictions.

Notice of an application for reporting restrictions to be imposed can be given to the media via the Press Association's Injunction Applications Alert (formerly CopyDirect) service (see above). But the court retains the power to make orders without notice, in exceptional cases.

A person wishing to report a case which is or may be subject to reporting restrictions should apply to the court for those restrictions to be lifted.

Under the present Court of Protection pilot scheme (from January 2016 to September 2017) hearings are being held in public but the person who is subject to the proceedings must not be identified in any reports. There may be other reporting restrictions made as well in individual cases.

See :

Practice Direction 13A of the Court of Protection Rules

Practice Direction on Court of Protection Transparency Pilot Scheme

PART 7

LINKING TO AND QUOTING ONLINE MATERIALS

Where the judgment has been published, it is normally good practice to provide a link to it from an online report of the case. It helps to demonstrate that the report is based on an accurate understanding of the judgment. By contrast, failing to link to the judgment may suggest that a particular editorial slant has been taken which is not based on what actually happened in the case, and does not allow the reader to form their own view or assess the commentary provided.

It is perfectly acceptable to quote extracts from the judgment, or from other documents in the case to which access has been given for reporting purposes, provided it is made clear whether what is being said is based on evidence given or argument in the case (the usual formula is to say “the court was told X” or “the jury heard Y”) and what is based on the actual judgment (“the court said / ruled / declared” etc.). Ideally, if the judgment has paragraph numbers, it is good practice to identify them with any quoted material.

All quotations should be accurate and acknowledged, and should make clear, for example with dots... (ellipsis), where material has been omitted.

Where a case has been reported elsewhere, for example in a newspaper or journal online, it is quite normal to link to such a report in order to cite it or together with a quotation from it. It is not acceptable to quote more than a small amount of such a report (about 10 per cent is the usual maximum) since to do so would amount to substantial re-use of what is normally copyright material. The same is true of material found on someone else’s blog. The best advice is to ask first, and to provide an acknowledgement of the source.

PART 8

GLOSSARY OF TERMS USED AND MISUSED IN FAMILY COURT REPORTING

This section contains some suggested do's and don't's for reporting family cases.

Access – the proper description (since the Children Act 1989) of a court decision as to when and with whom a child should spend time is “contact”. Arrangements for regulating contact are made under a “child arrangements order”. The problem with the word “access” (as in, for example, “weekend access”) is that it gives the child a purely passive role, as though they were a document or bank account, rather than a person to be engaged with in a familial relationship.

Adoption, forced – where a birth parent opposes the adoption of their child, but the court orders it anyway, writers may wish to consider whether in the circumstances “non-consensual adoption” may be a more appropriate term.

Adoption, put up for – where a birth parent does not oppose the adoption of their child, it might better be described as an “unopposed adoption” rather than saying the child was “put up for adoption” by the parent or local authority, as though the child were a numbered lot in an auction.

Common law wife / spouse - There is no such thing as a common law wife in England & Wales. Unmarried couples are more accurately described as unmarried or cohabiting.

Custody – the proper current description (since the Children Act 1989) of a court decision as to where and with whom a child should live is “child arrangements order”. Although the word “custody” was used in older legislation and has a specific meaning in some current international conventions, it now has unfortunate proprietorial overtones and is, strictly speaking, inaccurate under current legislation.

Custody battle – Where there is a dispute between family members over who should look after a child, it should be described as a “child care dispute”. The expression “custody

battle” is demeaning to the child and imports unhelpful notions of treating the child as a piece of property.

Quickie divorce – Most divorces are not contested and are dealt with without attendance at a hearing, and pronounced in moments, and in that sense they are all quickie divorces (although a further 6 weeks must pass before the divorce can be finalized). So the expression is usually redundant. It is the financial settlement that can be far more protracted, unless agreed, and is a separate process.

Secret courts, hearings etc. – also hearings “behind closed doors”. These are emotive terms for what are essentially “private” hearings, designed to protect the privacy and confidential information about the parties involved. Both the family courts and the Court of Protection hear cases involving children and other vulnerable parties about whom it would not be fair or right to disclose information discussed in legal proceedings affecting their welfare, for reasons similar to those justifying medical confidentiality. However, since accredited journalists are usually allowed to attend them, the hearings are private but not secret.

PART 9

RELEVANT DOCUMENTS AND OTHER MEDIA RESOURCES

Judgments and court documents

British and Irish Legal Information Institute (BAILII) – for published judgments:

<http://www.bailii.org/>

Judiciary website (some published judgments; also practice directions, guidance, speeches by judges etc.): <https://www.judiciary.gov.uk/judgments/>

Court transcripts – see HMCTS guidance on obtaining court transcripts

<https://formfinder.hmctsformfinder.justice.gov.uk/ex107-info-eng-20160121.pdf>

Practice Direction on Committal for Contempt of Court – Open Court:

<https://www.judiciary.gov.uk/wp-content/uploads/2015/03/practice-direction-committals-for-contempt.pdf>

Courts and Tribunals Judiciary: Going to court

<https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/>

Practice Direction 52C, para 33 (in Civil Procedure Rules) on Documents to be provided to court reporters at the hearing of an appeal

<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part52/practice-direction-52c-appeals-to-the-court-of-appeal>

Cause lists

High Court: Daily Cause Lists

<http://www.justice.gov.uk/courts/court-lists>

Supreme Court: Current case list

<https://www.supremecourt.uk/current-cases/index.html>

County Courts: weekly cause lists via Courtserve

<https://www.courtserve.net/courtlists/current/county/indexv2county.php>

Court of Appeal case tracker: http://casetracker.justice.gov.uk/listing_calendar/index.jsp

Media links

Independent Press Standards Organisation (IPSO) (for complaints about media reporting):

<https://www.ipso.co.uk/IPSO/index.html>

Society of Editors:

<http://www.societyofeditors.co.uk/>

UK Press Card Authority:

<http://ukpresscardauthority.co.uk/>

Press Association Injunction Applications Alert (formerly CopyDirect) service for notifying the media of an application for a privacy injunction:

<http://www.medialawyer.press.net/courtapplications/index.jsp> (home page)

<http://www.medialawyer.press.net/courtapplications/standardorder.jsp> (standard order)

Family case materials

Transparency in the Family Courts: Publication of Judgments

<https://www.judiciary.gov.uk/publications/transparency-in-the-family-courts/>

The Family Courts: Media Access and Reporting (2011) (the Family Reporting Guidance)

<https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/family-courts-media-july2011.pdf>

Family Procedure Rules 2010 (FPR):

https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_27#IDATP0HC

Practice Direction 9B – Communication of Information from Financial Remedy Proceedings:

https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-9b-communication-of-information-from-financial-remedy-proceedings

Practice Direction 12G – Communication of Information

http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12g

Research Briefing - Confidentiality and Openness in the Family Courts. September 2015.

House of Commons website:

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7306>

An important recent decision of Mostyn J in the Family Division of the High Court provides a very useful survey of the law on open justice: *DL v SL* [2015] EWHC 2621 (Fam)

<http://www.bailii.org/ew/cases/EWHC/Fam/2015/2621.html>

Criminal case materials

Reporting Restrictions in the Criminal Courts (2015) (the Crime Reporting Guidance)

<https://www.judiciary.gov.uk/wp-content/uploads/2015/07/reporting-restrictions-guide-may-2016-2.pdf>

CPS guidance on Reporting Restrictions - Children and Young People as Victims, Witnesses and Defendants

http://www.cps.gov.uk/legal/p_to_r/reporting_restrictions/

CPS guidance on Publicity and the Criminal Justice System: Protocol between Chief Police Officers, Chief Crown Prosecutors and the Media

<https://www.cps.gov.uk/publications/agencies/mediaprotocol.html>

Guide for Journalists covering Criminal and Civil Cases in Scotland:

<http://www.societyofeditors.co.uk/userfiles/files/Guide%20for%20Journalists%20Jan%2012.pdf>

Court of Protection materials

Reporting restrictions in the Court of Protection (Practice Direction 13A of the Court of Protection Rules):

<https://www.judiciary.gov.uk/wp-content/uploads/2015/06/copd-pd-13a-hearings-reporting-restrictions.pdf>

Court of Protection: Pilot Scheme on holding hearings in public:

<https://www.judiciary.gov.uk/announcements/court-of-protection-to-test-increased-access-for-public-and-media/>

Practice Direction on Court of Protection Transparency Pilot Scheme

https://www.judiciary.gov.uk/wp-content/uploads/2015/11/cop_transparency_pilot_pd_18.11.15.pdf

Transparency in the Court of Protection: Publication of Judgments (Practice Guidance)

<https://www.judiciary.gov.uk/publications/transparency-in-the-court-of-protection/>

Transparency in the Court of Protection (Report on a Roundtable):

<http://sites.cardiff.ac.uk/wccop/transparency-in-the-court-of-protection-report-on-a-roundtable/>

Legislation and International materials

NB Government legislation.gov.uk website is not always reliably up to date

Administration of Justice Act 1960 (section 12)

<http://www.legislation.gov.uk/ukpga/Eliz2/8-9/65/section/12>

Children and Young Persons Act 1933 (section 39)

<http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/39>

Children Act 1989 (section 97)

<http://www.legislation.gov.uk/ukpga/1989/41/section/97>

Contempt of Court Act 1981

<http://www.legislation.gov.uk/ukpga/1981/49>

Human Rights Act 1998 (incorporating the European Convention on Human Rights)

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

UN Convention on the Rights of the Child

<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>