

### **27.11 Attendance at private hearings [as amended by PD36J]**

(1) This rule applies when proceedings are held in private, except in relation to –

(a) hearings conducted for the purpose of judicially assisted conciliation or negotiation;

(b) proceedings to which the following provisions apply –

(i) Part 13 (proceedings under section 54 of the Human Fertilisation and Embryology Act 2008);

(ii) Part 14 (procedure for applications in adoption, placement and related proceedings); and

(iii) any proceedings identified in a practice direction as being excepted from this rule.

(2) When this rule applies, no person shall be present during any hearing other than –

(a) an officer of the court;

(b) a party to the proceedings;

(c) a litigation friend for any party, or legal representative instructed to act on that party's behalf;

(d) an officer of the service or Welsh family proceedings officer;

(e) a witness;

(f) duly accredited representatives of news gathering and reporting organisations;

**(ff) duly authorized lawyers attending for journalistic, research or public legal educational purposes; and**

(g) any other person whom the court permits to be present.

(3) At any stage of the proceedings the court may direct that persons within paragraph (2)(f) **and (ff)** shall not attend the proceedings or any part of them, where satisfied that –

(a) this is necessary –

(i) in the interests of any child concerned in, or connected with, the proceedings;

(ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or

(iii) for the orderly conduct of the proceedings; or

(b) justice will otherwise be impeded or prejudiced.

(4) The court may exercise the power in paragraph (3) of its own initiative or pursuant to representations made by any of the persons listed in paragraph (5), and in either case having given to any person within paragraph (2)(f) (and ff) who is in attendance an opportunity to make representations.

(5) At any stage of the proceedings, the following persons may make representations to the court regarding restricting the attendance of persons within paragraph (2)(f) and (ff) in accordance with paragraph (3) –

(a) a party to the proceedings;

(b) any witness in the proceedings;

(c) where appointed, any children’s guardian;

(d) where appointed, an officer of the service or Welsh family proceedings officer, on behalf of the child the subject of the proceedings;

(e) the child, if of sufficient age and understanding.

(6) This rule does not affect any power of the court to direct that witnesses shall be excluded until they are called for examination.

(7) In this rule –

(a) ‘duly accredited’ refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this rule by the Lord Chancellor.

(b) ‘duly authorized lawyer’ means –

- i. A person who is authorised by a practising certificate to conduct litigation or exercise a right of audience in the family court;
- ii. a lawyer working for the Law School, Faculty or Department of a Higher Education Institution designated as a recognised body pursuant to section 216 of the Education Reform Act 1988; or
- iii. a lawyer attending on behalf of a registered educational charity the name, objects and registered charity number of which have been provided to the President of the Family Division;

(c) “lawyer” means a person who –

- i. holds a qualifying law degree as defined by the Bar Standards Board or Solicitors Regulation Authority;
- ii. holds or has completed
  - (aa) the Common Professional Examination (CPE);
  - (bb) an approved Graduate Diploma in Law (GDL) course or the Solicitors Qualifying Examination (SQE);
  - (cc) a postgraduate legal qualification; or

(dd) the CILEx Level 6 Diploma in Law and Practice or the CILEx Graduate Fast Track Diploma.

**Practice Direction 27B Attendance of Media Representatives at Hearings in Family Proceedings (High Court and County Courts) [as amended by PD36J]**

This Practice Direction supplements FPR Part 27

**1 Introduction**

1.1 This Practice Direction supplements rule 27.11 of the Family Procedure Rules 2010 ('FPR 2010') and deals with the right of representatives of news gathering and reporting organisations ('media representatives') to attend at hearings of family proceedings which take place in private subject to the discretion of the court to exclude such representatives from the whole or part of any hearing on specified grounds<sup>1</sup>. It takes effect on 27 April 2009.

**2 Matters unchanged by the rule**

2.1 Rule 27.11(1) contains an express exception in respect of hearings which are conducted for the purpose of judicially assisted conciliation or negotiation and media representatives do not have a right to attend these hearings. Financial Dispute Resolution hearings will come within this exception. First Hearing Dispute Resolution appointments in private law Children Act cases will also come within this exception to the extent that the judge plays an active part in the conciliation process. Where the judge plays no part in the conciliation process or where the conciliation element of a hearing is complete and the judge is adjudicating upon the issues between the parties, media representatives should be permitted to attend, subject to the discretion of the court to exclude them on the specified grounds. Conciliation meetings or negotiation conducted between the parties with the assistance of an officer of the service or a Welsh Family Proceedings officer, and without the presence of the judge, are not 'hearings' within the meaning of this rule and media representatives have no right to attend such appointments.

The exception in rule 27.11(1) does not operate to exclude media representatives from:

- Hearings to consider applications brought under Parts IV and V of the Children Act 1989, including Case Management Hearings, any Further Case Management Hearings and Issues Resolution Hearings
- Hearings relating to findings of fact
- Interim hearings
- Final hearings.

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<sup>1</sup> It does not, accordingly, apply where hearings are held in open court where the general public including media representatives may attend as of right, such as committal hearings or the hearing of matrimonial or civil partnership causes.

The rights of media representatives to attend such hearings are limited only by the powers of the court to exclude such attendance on the limited grounds and subject to the procedures set out in paragraphs (3)–(5) of rule 27.11.

2.2 During any hearing, courts should consider whether the exception in rule 27.11(1) becomes applicable so that media representatives should be directed to withdraw.

2.3 The provisions of the rules permitting the attendance of media representatives and the disclosure to third parties of information relating to the proceedings do not entitle a media representative to receive or peruse court documents referred to in the course of evidence, submissions or judgment without the permission of the court or otherwise in accordance with Part 12, Chapter 7 of the Family Procedure Rules 2010 and Practice Direction 12G (rules relating to disclosure to third parties). (This is in contrast to the position in civil proceedings, where the court sits in public and where members of the public are entitled to seek copies of certain documents<sup>2</sup>).

2.4 The question of attendance of media representatives at hearings in family proceedings to which rule 27.11 and this guidance apply must be distinguished from statutory restrictions on publication and disclosure of information relating to proceedings, which continue to apply and are unaffected by the rule and this guidance.

2.5 The prohibition in section 97(2) of the Children Act 1989, on publishing material intended to or likely to identify a child as being involved in proceedings or the address or school of any such child, is limited to the duration of the proceedings. However, the limitations imposed by section 12 of the Administration of Justice Act 1960 on publication of information relating to certain proceedings in private apply during and after the proceedings<sup>3</sup>. In addition, in proceedings to which s 97(2) of the Children Act 1989 applies the court should continue to consider at the conclusion of the proceedings whether there are any outstanding welfare issues which require a continuation of the protection afforded during the course of the proceedings by that provision.

### **3 Aims of the guidance**

3.1 This Practice Direction is intended to provide guidance regarding:

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<sup>2</sup> See *GIO Services Ltd v Liverpool and London Ltd* [1999] 1 WLR 984.

<sup>3</sup> See *Clayton v Clayton* [2006] EWCA Civ 878. In particular proceedings which

(a) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;

(b) are brought under the Children Act 1989; or

(c) otherwise relate wholly or mainly to the maintenance or upbringing of a minor.

- the handling of applications to exclude media representatives from the whole or part of a hearing; and
- the exercise of the court's discretion to exclude media representatives whether upon the court's own motion or any such application.

3.2 While the guidance does not aim to cover all possible eventualities, it should be complied with so far as consistent in all the circumstances with the just determination of the proceedings.

#### **4 Identification of media representatives as 'accredited'**

4.1 Media representatives will be expected to carry with them identification sufficient to enable court staff, or if necessary the court itself, to verify that they are 'accredited' representatives of news gathering or reporting organisations within the meaning of the rule.

4.2 By virtue of paragraph (7) of the rule, it is for the Lord Chancellor to approve a scheme which will provide for accreditation. The Lord Chancellor has decided that the scheme operated by the UK Press Card Authority provides sufficient accreditation; a card issued under that scheme will be the expected form of identification, and production of the Card will be both necessary and sufficient to demonstrate accreditation.

4.3 A media representative unable to demonstrate accreditation in accordance with the UK Press Card Authority scheme, so as to be able to attend by virtue of paragraph (2)(f) of the rule, may nevertheless be permitted to attend at the court's discretion under paragraph (2)(g).

#### **4A 'Identification of lawyers as "authorised"'**

4A.1 Lawyers will be expected to carry with them identification sufficient to enable court staff, or if necessary the court itself, to verify that they are "authorised" lawyers within the meaning of the rule.

4A.2 The following forms of identification provide sufficient information, and production of such identification will be both necessary and sufficient to demonstrate that the lawyer is "authorised" within the meaning of rule 27.11(7)(b)(i), (ii) and (iii) respectively –

(a) a current practising certificate accompanied by picture identification of the lawyer and a signed written statement by the lawyer which complies with paragraph 4A.3;

(b) confirmation on headed notepaper from the relevant Higher Education Institution (or Law School, Faculty or Department of that Institution) of the lawyer's position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer which complies with paragraph 4A.3;

(c) confirmation on headed notepaper from the relevant registered educational charity (specifying the registered charity number) of the lawyer's position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer which complies with paragraph 4A.3.

4A.3 The signed written statement required by paragraph 4A.2 must –

(a) confirm that the lawyer's attendance is for journalistic, research or public legal educational purposes and that the lawyer has no personal interest in the proceedings and that he or she is not attending in the capacity of agent or instructed lawyer for any client; and

(b) confirm that the lawyer is aware of and will abide by any restrictions on publication, whether arising by operation of law (for example under section 97 of the Children Act 1989 and section 12 of the Administration of Justice Act 1960) or imposed by order of the court, which follow from the proceedings being in private.

4A.4 The information about a registered educational charity required by rule 27.11(7)(b)(iii) is to be submitted using Form FP300 (Request by educational charity to attend family proceedings for authorisation by the President of the Family Division) by e-mail to [pdf.office@judiciary.uk](mailto:pdf.office@judiciary.uk), or by post to: The Office of the President of the Family Division, Royal Courts of Justice, Strand, London WC2A 2LL. It will be entered on a list maintained by that office, and therefore need be submitted only once.

## **5 Exercise of the discretion to exclude media representatives from all or part of the proceedings**

5.1 The rule anticipates and should be applied on the basis that media representatives have a right to attend family proceedings throughout save and to the extent that the court exercises its discretion to exclude them from the whole or part of any proceedings on one or more of the grounds set out in paragraph (3) of the rule.

5.2 When considering the question of exclusion on any of the grounds set out in paragraph (3) of the rule the court should –

- specifically identify whether the risk to which such ground is directed arises from the mere fact of media presence at the particular hearing or hearings the subject of the application or whether the risk identified can be adequately addressed by exclusion of media representatives from a part only of such hearing or hearings;
- consider whether the reporting or disclosure restrictions which apply by operation of law, or which the court otherwise has power to order will provide sufficient protection to the party on whose behalf the application is made or any of the persons referred to in paragraph (3)(a) of the rule;
- consider the safety of the parties in cases in which the court considers there are particular physical or health risks against which reporting restrictions may be inadequate to afford protection;
- in the case of any vulnerable adult or child who is unrepresented before the court, consider the extent to which the court should of its own motion take steps to protect the welfare of that adult or child.

5.3 Paragraph (3)(a)(iii) of the rule permits exclusion where necessary ‘for the orderly conduct of proceedings’. This enables the court to address practical problems presented by media attendance. In particular, it may be difficult or even impossible physically to accommodate all (or indeed any) media representatives who wish to attend a particular hearing on the grounds of the restricted size or layout of the court room in which it is being heard. Court staff will use their best efforts to identify more suitable accommodation in advance of any hearing which appears likely to attract particular media attention, and to move hearings to larger court rooms where possible. However, the court should not be required to adjourn a hearing in order for larger accommodation to be sought where this will involve significant disruption or delay in the proceedings.

5.4 Paragraph (3)(b) of the rule permits exclusion where, unless the media are excluded, justice will be impeded or prejudiced for some reason other than those set out in subparagraph (a). Reasons of administrative inconvenience are not sufficient. Examples of circumstances where the impact on justice of continued attendance might be sufficient to necessitate exclusion may include:

- a hearing relating to the parties’ finances where the information being considered includes price sensitive information (such as confidential information which could affect the share price of a publicly quoted company); or any hearing at which a witness (other than a party) states for credible reasons that he or she will not give evidence in front of media representatives, or where there appears to the court to be a significant risk that a witness will not give full or frank evidence in the presence of media representatives.

5.5 In the event of a decision to exclude media representatives, the court should state brief reasons for the decision.

## **6 Applications to exclude media representatives from all or part of proceedings**

6.1 The court may exclude media representatives on the permitted grounds of its own motion or after hearing representations from the interested persons listed at paragraph (5) of the rule. Where exclusion is proposed, any media representatives who are present are entitled to make representations about that proposal. There is, however, no requirement to adjourn proceedings to enable media representatives who are not present to attend in order to make such representations, and in such a case the court should not adjourn unless satisfied of the necessity to do so having regard to the additional cost and delay which would thereby be caused.

6.2 Applications to exclude media representatives should normally be dealt with as they arise and by way of oral representations, unless the court directs otherwise.

6.3 When media representatives are expected to attend a particular hearing (for example, where a party is encouraging media interest and attendance) and a party intends to apply to the court for the exclusion of the media, that party should, if practicable, give advance notice to the court, to the other parties and (where appointed) any children’s guardian, officer of the service or Welsh Family Proceedings officer, NYAS or other representative of the child of any intention to seek the exclusion of media representatives from all or part of

the proceedings. Equally, legal representatives and parties should ensure that witnesses are aware of the right of media representatives to attend and should notify the court at an early stage of the intention of any witness to request the exclusion of media representatives

6.4 Prior notification by the court of a pending application for exclusion will not be given to media interests unless the court so directs. However, where such an application has been made, the applicant must where possible, notify the relevant media organisations [and should do so by means of the Press Association CopyDirect service, following the procedure set out in the Official Solicitor/CAFCASS Practice Note dated 18 March 2005]<sup>4</sup>.

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<sup>4</sup> The additional words in square brackets were added by the President in *Re Child X (Residence and Contact: Rights of Media Attendance – FPR r 10.28(4))* [2009] 2 FLR 1467, FD, at [87].