

## **OPEN JUSTICE FAMILY COURT REPORTING PILOT – RATIONALE**

This document explains the rationale behind the structure of the pilot as proposed, and the basis of the decisions made in respect of the pilot design.

### **Approach**

Throughout the design of the pilot we have had in mind the needs and interests of all those who might be impacted by it : families, judges, lawyers and other professionals, court staff, reporters, the public. We have tried to anticipate practical difficulties and areas of potential anxiety or confusion, and to design a scheme that is as simple as possible to understand and use, and which mitigates, resolves or avoids any potential issues as far as possible.

### **Key aspirations**

- Flexible but clear and workable - minimise disruption to court process / additional workload for professionals / court / judiciary
- Safe and respectful of the privacy of families and children
- Consistent with the law and the administration of justice
- Promote co-operative working and engagement with open justice principles •  
Promote cultural change and judicial / professional confidence
- Learning opportunity

### **Core structure – open, but not in open court**

The Court of Protection now sits largely in public, following a successful pilot that ran from 2016 and was subsequently adopted as a permanent feature of that jurisdiction. We have considered a pilot whereby the court would sit in public in family cases but have rejected that in favour of an approach whereby the court continues to sit in private, but relaxes the reporting restrictions that flow from sitting in private (pursuant to s12 AJA 1960) to enable reporting.

and the public will not be able to access hearings as a consequence of the operation of the pilot. Whilst there have been significant numbers of members of the public attending Court of Protection hearings since the pandemic-related shift to remote hearings in 2020 without any problem, we think that in the Family Court the dynamics are somewhat different. Anecdotally, most observers at Court of Protection hearings have had some professional, academic or learning interest in cases, whereas there is probably more potential for disruption – or anxiety about potential disruption – in the context of family cases. We think for the purposes of this pilot it is sensible to limit access to hearings to the current position under the FPR and PD36J i.e. access to reporters including accredited journalists and duly authorised lawyers (legal bloggers) only. One of the main aims of the pilot is to establish whether, without the disincentive / chilling effect of s12 more reporters might make use of their right of access to hearings than they have done for the 11 years that these rights have been available.

We have adopted the practice of the Court of Protection insofar as we have drawn up standard template ‘Transparency Orders’ which provide for the protection of the identity of the subject of the proceedings (and family members) and which can be adapted to suit the particular needs of the case. We propose that this order is, in the first instance, issued at gatekeeping / allocation stage, and that it can be reviewed (if and insofar as is necessary) at the first inter partes hearing. This is more streamlined and straightforward than expecting judges / professionals to resolve the terms of a transparency order from scratch at first hearing stage, but enables proper inter partes consideration to be given to adjusting the order (or to the removal of a case from the pilot), where any party raises an issue. The Transparency Order is drawn so that in most cases it will not require a great deal of data entry or adjustment before issue.

### **Guidance rather than Practice Direction**

We initially took the view that a pilot of this sort should be a formal pilot rather than guidance, as with the Court of Protection Pilot and the Legal Bloggers Pilot.

In reaching that initial view we bore in mind the strongly embedded cultural resistance of many working in the family justice system to public scrutiny of their work, and the understandable reluctance to embrace anything that might further increase workloads in a

system under chronic and acute pressure. Whilst we thought a formal practice direction would send a far stronger message than the issuing of guidance, we have reflected that the pilot will in the first instance only likely be operating in courts where there is already 'buy in' from local leadership judges, who can themselves support the local legal community to embrace the pilot. Ultimately, guidance is both simpler and quicker, and is easier to tweak in the event of any unforeseen issues.

We have designed the scheme so that it will not be unduly burdensome on those required to work within it : however, being realistic and drawing on the example of poor judicial take up of the 2014 Guidance on publication of judgments, we predict that judges may be reluctant to embrace any scheme that they *perceive* to be potentially onerous. At the outset when the arrangements are unfamiliar there will undoubtedly be some level of additional work, but we have attempted to minimize this wherever possible through design and drawing up of explanatory materials and templates.

The intention is to secure funding for a formal independent evaluation of the pilot. However, we would encourage the Rules Committee and MoJ Officials who support the committee to monitor and evaluate the pilot themselves, in order to inform any future amendment of rules or practice directions.

### **Access to documents and anonymisation**

We have taken the view that for reporters to be able to follow, understand and accurately report proceedings that they observe under the auspices of the pilot it will be necessary for them to have access to certain specified documents. We have defined a set of core documents which reporters should generally be given access to. The use to which those documents can be put, and the extent to which their contents can be published (in whole or in part) is regulated by s12, as modified by the Transparency Order.

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We have considered whether or not to provide for the anonymization of those documents prior to their provision to reporters, but have ultimately concluded that this is neither necessary nor desirable. Firstly, the entire scheme is predicated upon the basis that reporting restrictions will be adhered to, and that sanctions could be imposed if they are not.

In the rare cases where journalists do attend hearings pursuant to existing rights of access it is commonplace for them to be provided with skeleton arguments / position statements and / or case outlines to aid understanding and facilitate accuracy of reporting. In such cases s12 automatically prevents onward publication of the contents of documents (unless permitted), and s97 is also in operation. The appropriate safeguard in respect of the contents of documents is reporting restrictions rather than anonymization prior to provision – the identity of the children / families will be acquired in any event from mere attendance at the hearing with or without documents (such hearings are not conducted by using ciphers or pseudonyms to refer to the parties). S97 prevents the publication of the identity of the child (and in effect their family members) in any event. Here the Transparency Order will reiterate those protections.

We have ultimately concluded that the task of anonymization would be an unwelcome additional burden on the professionals required to carry it out, and it is simply not necessary in most cases. The court would be at liberty to provide for anonymisation if the particular features of the case require it.

### **Training**

The presence of observers in court will be unfamiliar for many judges and practitioners involved in family court work, and will require some adjustment. We think that it is only fair that training is offered to those who might be operating in pilot courts so that they understand both the purpose and practical expectations of the scheme and can adjust their practice accordingly without undue stress and without causing undue stress to other participants.

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Similarly, attendance at family court hearings is also unfamiliar territory for reporters, and can be uncomfortable and anxiety inducing, particularly given the potential consequences of getting things wrong. We think that reporters also deserve support in understanding how the family courts work and where they might fit in, so that they can adjust their practice accordingly without undue stress and without causing undue stress to other participants.

We hope that the training will help all participants to embrace the goals of the scheme and that it will be an early building block in promoting cultural change and acceptance of the

potential benefits and 'do-ability' of greater transparency, without harm to the process or the families the system is aiming to serve.

**Lucy Reed and Louise Tickle**  
**March 2021**

## **OPEN JUSTICE FAMILY COURT REPORTING PILOT – PROTOCOL**

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This protocol explains how the Open Justice Family Court Reporting Pilot (the Pilot) will operate.

### **EXPLANATORY NOTE : WHAT DOES THE PILOT DO?**

This pilot enables journalists and legal bloggers to attend and report certain types of family court hearings on an anonymous basis, where otherwise this would not be possible. The pilot operates by relaxing the default restrictions on publication and setting out clearly what

residual restrictions there are on publication, particularly in respect of identification of children and families. This is contained in a Transparency Order, which can be tailored to the needs of the case. The pilot builds in a range of safeguards to ensure that the twin principles of transparency and anonymity are respected and in balance. This protocol explains in detail how the pilot will operate.

The Pilot commences on DATE and ends on DATE.

The Pilot will operate only in Pilot Courts. The Pilot Courts are [3 or 4 courts tbc].

For the purposes of the Pilot ‘reporter’ means:

- any accredited journalist entitled to attend private family court hearings pursuant to FPR 27.11, and
- any duly authorised lawyer (legal blogger) within the meaning of Practice Direction [‘PD’] 36J

who has been accredited to the Pilot.

As a condition of accreditation to the Pilot, a reporter must undertake to the court to adhere to the Protocol (the undertaking to be in such form as may from time to time be specified by the President of the Family Division).

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What cases will be included in the pilot

The Pilot will apply to the following cases, subject to the exceptions specified below:

- Private Law Cases: Applications under section 8 of the Children Act 1989 (child arrangements, prohibited steps orders and specific issue orders) and issued in a Pilot Court after [start DATE] (unless at the first case management hearing the court orders that the case should exit the Pilot) and cases ongoing in a Pilot Court as at [start DATE] (where the court at the first hearing following [start DATE] so orders). These cases are generally shown on court lists with a ‘P’ case number – see Annex C, which explains the case numbering system.
- Public Law (Care) Cases: Applications under section 31 of the Children Act 1989 (care and supervision orders including applications for extension or discharge of

such orders, and applications pursuant to section 34 for contact) and issued in a Pilot Court after [start DATE] (unless at the first case management hearing the court orders that the case should exit the Pilot) and cases ongoing in a Pilot Court as at [start DATE] (where the court at the first hearing following DATE so orders). These cases are generally shown on court lists with a 'C' case number – see Annex C, which explains the case numbering system.

- Applications for non-molestation or occupation orders where the parties are also involved in concurrent private or public law proceedings as described above which are issued or ongoing in a Pilot Court after [start DATE]. These cases are generally shown on court lists with an 'F' case number – see Annex C, which explains the case numbering system.

The Pilot will NOT apply to the following cases:

- Cases involving allegations of sexual abuse of a subject child (and where such issues emerge after the case has entered the Pilot the court should consider whether it is appropriate for the case to remain in the Pilot or not, depending on the circumstances).

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- Freestanding applications under the Adoption and Children Act 2002 or FPR Part 14 FPR (adoption applications).
- Cases under the Human Fertilisation and Embryology Act 2008 (typically surrogacy or IVF).
- Financial Remedy cases:
  - under the Matrimonial Causes Act 1975 (money claims on divorce) or ○ under Schedule 1 to the Children Act 1989 (financial support for children outside marriage and the normal child support regime).
- Part IV Family Law Act cases which are not connected to ongoing Children Act proceedings.

Where there are associated criminal proceedings ongoing or anticipated the court will have to consider whether or not the case should exit the Pilot, or whether it can remain in the Pilot subject to a postponement of any relaxation on reporting (so as not to prejudice the criminal trial). 'Associated criminal proceedings' means proceedings which involve one or

more of the parties to the family court proceedings and which are material to the decision that the family court is being asked to make.

Entry of a case to the Pilot is not conditional on whether or not any reporter has expressed an interest in it, or whether or not it is thought likely that a reporter will attend.

### The Transparency Order

The Transparency Order is key to the operation of the Pilot. In every Pilot Case:

- The court will make an injunctive order (the Transparency Order) in accordance with a standard template, adjusted as appropriate to the facts of the particular case. There are separate standard templates for Private Law cases (Annex A) and Public Law Cases (Annex B).

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- The Transparency Order will regulate those matters which may and may not be reported in accordance with section 12(4) of the Administration of Justice Act 1960 read in conjunction with FPR rule 12.73(1)(b).
- The court may, at any time, either of its own motion or following an application from any party or reporter, make an order adjusting the terms of the Transparency Order. • It is expressly acknowledged that the appropriate form of Transparency Order in any particular case will be dependent upon:
  - o the balancing of any relevant competing ECHR rights (most often Articles 6, 8 and 10),
  - o having regard to both the Anonymity Principle and the Transparency Principle (see below), and
  - o applying the principles of necessity and proportionality.

In most cases, where the parties and reporters are working cooperatively, it should be possible to identify the appropriate balance, in particular between the Anonymity Principle and the Transparency Principle. Where this is not possible the court will need to resolve the



matter:

- Such disputes should be drawn to the court's attention at the earliest opportunity and the extent of the disagreement summarised in the case outline prepared by the first represented party's lawyer or in the position statements filed by each party for the relevant hearing as appropriate.
- Any reporter may submit a position statement dealing with their proposals if they so wish, but any such document *must* be circulated to the court and all represented parties (being forwarded by the first represented party's lawyer to any unrepresented party for expediency).
- In many cases a dispute as to the terms of the Transparency Order will be capable of summary resolution after brief submissions. In some cases this may not be possible.

The parties, the reporter and the court will no doubt wish to have in mind the President's Practice Guidance: Family Court – Anonymisation Guidance of December 2018.

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General principles

Under the terms of the Pilot, reporters who attend private family hearings will be permitted to report upon the case where such reporting would normally be prohibited by the 'automatic restraints' imposed by the operation of section 12 of the Administration of Justice Act 1960. However:

- The relaxation of the automatic restraints imposed by section 12 of the Administration of Justice Act 1960 will apply
  - o only to reporters attending proceedings; and
  - o only on the terms set out in the Transparency Order.
- It will not permit the parties themselves to publish information about their case, though it does not prohibit a parent from speaking to a reporter.
- Section 97 of the Children Act 1989 (protecting the anonymity of a subject child during proceedings) will continue to apply, and the Transparency Order will usually provide for its effect to be extended until 31 December in the year of the youngest subject child's 18th birthday: see *Clayton v Clayton* [2006] EWCA Civ 878.
- Any person entitled to anonymity as a result of having made a complaint regarding

sexual offences will continue to be entitled to that anonymity.

The Protocol seeks to afford due respect to two principles:

- Children and their relatives who are parties to family law cases heard in private are almost always entitled to anonymity (the Anonymity Principle).
- The work of the state in the form of the family court and the agencies associated with it should be as transparent as possible in order to command public confidence, to promote best practice and to facilitate public accountability (the Transparency Principle).

Inevitably, there will at times be tensions in realising both these principles simultaneously.

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### The Anonymity Principle

The anonymity of children and their relatives should be respected and protected. Going into specific detail will often *not* be editorially vital to a reader's understanding of the important issues in a case. Although including personal details has the benefit of humanising individuals, preserving a child and family's anonymity should be the reporter's priority in their choices as to what details should be omitted, blurred or, in some cases (which, as with normal editorial practice, will tend to be noted at the end of a piece of reporting) altered.

Children and their families / carers must not be named, either during the case, or after it has concluded, unless exceptionally this is specifically permitted by the court. Normally, and as required by section 97 of the Children Act 1989, reporters will NOT, without permission of the court:

- name any child, parent or step-parent, sibling or step/half sibling, other relative or carer who is the subject of, party to or otherwise associated with the proceedings; • name any other family member; or
- publish any photograph of any of the above.

In addition, the following must NOT be reported unless the Transparency Order specifically permits in the individual case:

- a child's birth date (year is acceptable);

- a child's home address or postcode (county or city is acceptable in most cases, but the Transparency Order may provide otherwise in the individual case);
- the name or address of any school, or educational, childcare, leisure or hospital setting attended by a child involved in a case or of any other child-specific locations;
- the name or address of a parent's workplace (county or city is acceptable in most cases, but the Transparency Order may provide otherwise in the individual case).

Other identifying features: Reporters must consider carefully:

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- whether a child's ethnicity, religion, disability or other particular identifying characteristic (such as the date of a parent or other relevant person's conviction) is important to a reader's understanding of the case; and
- whether in the context of the court centre they are attending, publishing that information might more easily lead the identification of a child or their family.

### The Transparency Principle

Subject to any specific prohibitions in the Transparency Order in the individual case, the following agencies and professionals may be named:

- A local authority involved in a family law case either as applicant, as reporter under section 7 of the Children Act 1989, or as holding or who it is proposed should hold an order under section 31 of the Children Act or a Family Assistance Order under section 16 of the Children Act 1989.
- The director of children's services, or other members of the children's services senior directorate where that local authority is the applicant.
- A court Guardian or s7 report writer
- CAFCASS or Cafcass Cymru, or other organisation representing a child.
- Any NHS Trust or other government or public body involved in the case.
- Court appointed experts who provide written or oral evidence to the court.
- Legal representatives and judges.
- Any other person named in a published judgment in the case.

The following professionals may NOT be named unless specific permission is granted to do so:

- Social workers beneath the level of assistant director of children's services.
- Individual treating health professionals (nor must their specific workplaces or units be identified).

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- Teachers, residential unit or hospital staff, therapists or agencies working with any member of the family.

### Procedure in a Pilot Case

In a Pilot Case:

- When a case is issued (started), the court will 'gatekeep' the case by making standard 'directions on issue' without a hearing. In any case which meets the criteria for entry to the pilot case the gatekeeper will also issue a Transparency Order and will include in the directions on issue provision for the court to consider any representations regarding :
  - o the terms of the transparency order, if they need to be adjusted
  - o Whether the case should continue in the pilotat the first hearing, the expectation being that the parties and representatives will have considered any such issues in advance.
- In cases which have bypassed the gatekeeping stage (generally urgent applications), the judge conducting the first hearing will make appropriate directions either immediately before or at the first hearing at which both parties are present.
- The court may, at any time, either of its own initiative or following an application from any party or reporter:
  - o make an order adjusting the terms of the Transparency Order; or
  - o direct that a Pilot Case should exit the Pilot.
- The Transparency Order will include:

- o details of the nominated point of contact for the purposes of enquiries by reporters about attendance or access to documents; and
- o as an annex, a case description in the terms of the standard template (Annex E).
- The published court list in every Pilot Court will specify:
  - o whether or not each case is a Pilot Case;

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- o where a case is a Pilot Case (or where Pilot directions on issue have been made and the court is scheduled to further consider the application of the pilot at the hearing in question), the contact details specified in the Transparency Order for the purposes of enquiries by reporters about attendance or access to documents;
- o where a case is a Pilot Case (or where Pilot directions on issue have been made and the court is scheduled to further consider the application of the pilot at the hearing in question), the category of hearing and time estimate, e.g. IRH 2 hours, FINAL HEARING 2 days.
- The court or nominated point of contact will, upon enquiry, provide any reporter with the case description annexed to the Transparency Order.

In the first instance the court and the first represented party are jointly responsible for providing a copy of any Directions made on issue which concern this pilot and Transparency Order but any other party may do so on request by a reporter who has expressed an intention to attend a particular hearing.

A reporter attending or expressing an intention to attend the hearing is entitled to be provided with any existing Transparency Order and the contact details of the legal representative of any represented party.

Service of the Transparency Order by email upon any reporter will be good service, even if in unsealed form.

The court should record on the face of the order for each hearing :

- the name of any reporter who has attended, and

- that any such reporter has been provided with the terms of the Transparency Order and protocol
- whether or not that reporter has been provided with documents and if so which documents.

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Exiting the Pilot

The fact that a case is allocated to a particular level of judge does not in itself mean that the case should not remain in the Pilot.

The fact that a particular case involves litigants in person or does not involve any lawyers does not in itself mean that the case should not remain in the Pilot.

At any stage of the proceedings the court may direct that the Pilot shall not apply to a particular hearing or that the case should exit the pilot, where satisfied that:

- this is necessary:

- in the interests of any child concerned in, or connected with, the proceedings;
- for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or
- for the orderly conduct of the proceedings; or
- justice will otherwise be impeded or prejudiced.

The court may make such a direction of its own initiative or pursuant to representations made by any party, and in either case having given to any person who is in attendance an opportunity to make representations.

In any case where the court is considering a restriction on the application of the Pilot or exit from the Pilot it should also consider whether or not to exercise its powers under FPR rule 27.11 to exclude reporters from the hearing or proceedings; however, one does not necessarily flow from the other. It may be sufficient to prohibit or postpone reporting, or to postpone a decision as regards what may be reported.

Access to documents

The standard terms of the Transparency Order provide (subject to modification in the particular case) that:

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- any reporter attending or proposing to attend a specific hearing in a Pilot Case is entitled to be provided on request with a copy of any case outline, position statement or skeleton argument and the hearing specific index (core documents) prepared in respect of the hearing they propose to attend,
- *on condition that* the core documents must not be distributed or copied and that their contents may be published only in accordance with the restrictions set out in the Transparency Order (save that it is permissible for a reporter to confidentially share any such documents with their any editors or legal adviser responsible for advising on or for making publication decisions).

A reporter may request access to other specified documents from the index either at the hearing or prior to the hearing by emailing the point of contact. If all parties agree, the reporter may be provided with those documents on the terms provided for in the Transparency Order and without further order. If not agreed, the court will determine the issue at the next hearing (or if the request is made during a hearing at the next convenient point).

Requests for access to a document which requires onerous redaction or editing are unlikely to be approved.

#### Expectations – general

By FPR 1 the court, parties and lawyers are required to seek to give effect to the overriding objective, namely to deal with cases justly, having regard to any welfare issues involved. Dealing with a case justly includes, so far as is practicable:

- ensuring that it is dealt with expeditiously and fairly;
- dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- ensuring that the parties are on an equal footing;
- saving expense; and

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- allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

### Expectations – reporters

Reporters attending hearings and benefiting from the Pilot are expected:

- to assist the court to further the overriding objective;
- in particular, to attempt wherever possible to minimise disruption to the proceedings through their attendance or involvement, in particular by raising issues by email prior to any hearing with legal representatives where all parties are represented or with the court where they are not;
- to adhere to the terms of the Transparency Order in the particular case and to the terms of the Protocol;
- to publish only in accordance with the Transparency Order applicable in the case, noting that failure to do so will be a contempt of court;
- to operate according to the principles set out in the Protocol, in particular the Anonymity Principle;
- to work constructively with the parties, their representatives and the court to identify the terms upon which the Transparency Order may be drawn or adjusted to meet properly the Anonymity Principle and the Transparency Principle, for example by suggesting that if a particular identifying fact is prohibited from publication it may be possible for a case to remain in the Pilot;
- to raise any query about the meaning or terms of the order promptly in order that it can be clarified or resolved;
- to keep all documents securely and confidentially and to return or destroy them if required by the court.

If a reporter is unsure in any way about what they may or may not report under the Protocol or the Transparency Order, they commit, *before publishing*, to:

- raise their concern with their own organisation's lawyers(if applicable), for discussion and guidance, and/or,



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- raise their concern with the lawyers for the parties, for discussion and proposed resolution outside court, which should then be presented for a final decision by the judge in court;
- if there are no lawyers involved in the case, they will raise the question with the judge orally in court, or by email via the judge's clerk (or other nominated email address specified in the Transparency Order) during or immediately after the conclusion of the case.

Contact with the parties:

- Because parties to family proceedings are likely to have multiple vulnerabilities and be experiencing acute distress, reporters must not behave in a way which is likely to impede the ability of parties to engage with the court or their legal representatives, or which is likely to cause upset or distress.
- Particular care needs to be taken in the public areas of court, prior to or following hearings.
- While it is entirely up to a party if they wish to approach a reporter, it will not usually be appropriate for a reporter to directly approach a party for interview in the court building on the day of a hearing, though they may make an interview request via a party's lawyer, where they are represented.
- For the avoidance of doubt there is no prohibition on a reporter engaging in discussion at court or before a hearing in order to explain their role and approach, to offer explanation or reassurance as regards their intentions and interests, or to discuss the possible terms of a Transparency Order so as to assist the court and promote the Anonymity Principle and the Transparency Principle.

Training: A training programme, offered before the start of the Pilot and repeated regularly, will be made available to reporters. Whilst it is not possible to make completion of such training a pre-condition to attendance at a Pilot hearing that a reporter would otherwise have been entitled to attend, the completion or non-completion of such training by any reporter

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attending or expressing an intention to attend future hearings in a Pilot Case may be a relevant consideration if any party seeks to argue that the case should exit the Pilot.

#### Expectations – court professionals involved in Pilot Cases

The duty to assist the court pursuant to the overriding objective applies to all parties and professionals and applies to the smooth running of the Pilot.

A training course, available before the start of the Pilot and an online version that can be accessed throughout the Pilot, will be offered to judges and other court professionals.

#### Lawyers

Communication between lawyers and any reporter prior to a hearing may be appropriate in order to identify or resolve any issue regarding attendance, access to documents or the terms of the Transparency Order.

Where appropriate any such issues may be best discussed at the advocates meeting scheduled to precede the next hearing, and by parallel liaison with any relevant reporter.

Where an issue or request has been communicated by a reporter to the legal representatives of any party they are expected to take reasonable steps to obtain instructions on those issues in advance of the next hearing and to incorporate their position on any issue concerning this pilot in their position statement for that hearing.

Where a request is made by a reporter for access to a core document in a Pilot Case in advance of a hearing that document, if it is one to which the reporter is entitled in accordance with the Transparency Order must be provided promptly; this is *not* subject to client consent (unless the Transparency Order so provides).

#### Social workers

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Social work professionals should be prepared to articulate the basis for any objection to the case joining or continuing in the Pilot, or as regards the terms of any Transparency Order, based on the specific facts of the case, and the needs of the individual children.

#### Expectations – cases without lawyers

The mere fact that no party is represented does not in itself mean that the case is not suitable for the Pilot. It is arguably more important that proceedings are observed in such cases than where parties are represented. The absence of lawyers does however give rise to potential practical challenges.

Where one or more parties is not represented, the court will need to specify in the Transparency Order the most appropriate mechanism for communication about pilot issues.

A Plain English explanation of how the Pilot works is provided at Annex D.

#### ANNEXES

- A Directions on Issue
- B Transparency order
- C Key to case numbering and listing abbreviations
- D Leaflet/explanatory information for litigants [NB - yet to be drafted] • E

Case Description

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**IN THE FAMILY COURT SITTING AT [XXX] CASE NO: IN THE MATTER OF  
[THE CHILDREN ACT 1989]  
[ADOPTION AND CHILDREN ACT 2002]**

**B E T W E E N :**

**[APPLICANT]**

**Applicant**

**and**

**[FIRST RESPONDENT]**

**First Respondent**

**and**

**[SECOND RESPONDENT]**

**Second Respondent**

**And**

**[THIRD RESPONDENT]**

**Third Respondent**

***STANDARD WORDING FOR DIRECTIONS ON ISSUE / ALLOCATION***

**UPON IT APPEARING TO THE COURT** that this case is eligible for inclusion in [THE PILOT – refer to eligibility paragraph/section]

**AND UPON IT APPEARING TO THE COURT** that this is a case which should continue to be heard in private and to which [THE PILOT] should apply

**AND UPON** THE COURT HAVING MADE A SEPARATE TRANSPARENCY ORDER

**AND UPON** the court enclosing a copy of the [PILOT LEAFLET] with this order which the parties are encouraged to read before the hearing

**IT IS ORDERED** that:

1. The Applicant [or first represented party where Applicant is not represented] must complete a Case Description Form (Pilot Annex E) prior to the first hearing.
2. Any party who objects to the case entering [the pilot] should, where practicable, set out the basis of their objection (referable to the specific facts of the case) in their position statement in advance of the hearing.
3. The court will consider representations from any party opposing the continuation of the case in the pilot scheme and the terms of the transparency order at the First Case Management Hearing.
4. The Applicant [or first represented party where Applicant is not represented] must on request provide a copy of its case outline, the case description form and this order to any reporter (as defined in FPR PD36J/ FPR27.11) expressing an intention to attend a hearing in the case. For the avoidance of doubt the provisions of s12 Administration of Justice Act 1960 and s97 Children Act 1989 continue to apply to this case and the publication of the contents of any such case outline or any information likely to lead to the identification of the child remains prohibited pending further order.
5. The point of contact for any reporter will be the Applicant's email address asset out in the C110A, subject to any alternative direction that may be made at the next hearing.

**IN THE FAMILY COURT SITTING AT [XXX] CASE NO: [ ] IN THE MATTER OF [THE CHILDREN ACT 1989]**

**[ADOPTION AND CHILDREN ACT 2002]**

**B E T W E E N :**

**[APPLICANT]**

**Applicant**

**and**

**[FIRST RESPONDENT]**

**First Respondent**

**and**

**[SECOND RESPONDENT]**

**Second Respondent**

**And**

**[THIRD RESPONDENT]**

**Third Respondent**

**IMPORTANT**

**If any person disobeys the order made by paragraphs 4 to 8 (the Injunction) they may be found guilty of contempt of court and may be sent to prison, fined or have their assets seized.**

**They have the right to ask the court to vary or discharge the order.**

**UPON READING / HEARING [...as appropriate]**

**AND UPON IT APPEARING TO THE COURT** that this is a case to which [THE PILOT] should apply and that the terms of this order seek to balance the various applicable ECHR rights

**IT IS ORDERED** that:

**Relaxation of the restrictions imposed by s12 Administration of Justice Act 1960 in respect of reporters**

1. All hearings under [case no] will be heard in private and as such rule 27.10 and 27.11 (as amended by PD36J) shall apply.

2. Subject to any further order of the Court it shall not be a contempt of court pursuant to s12 Administration of Justice Act 1960 for

a. any accredited representatives of a news gathering and reporting organization within the meaning of FPR 27.11 and Paragraph 4 of FPR PD27B, or

b. any duly authorised lawyer within the meaning of FPR 27.11 as amended by FPR PD36J

who has attended a hearing in this case pursuant to rule 27.10 as modified by PD36J and who has undertaken to comply with the terms of the [Pilot Reporting Protocol]

(‘a Reporter’) to publish any information concerning the case, save that which is expressly prohibited below at paragraphs 5 and 6.

3. Practice Direction [usually 12G] (which permits the communication of specified material and information to third parties in certain circumstances) and s97(2) Children Act 1989 (which prohibits the identification of the children who are the subject of these proceedings as subject children) shall continue to apply to these proceedings.

#### **Who is bound by the Injunction**

4. The following persons (“the Persons Bound by this Injunction”) are bound by the order made in paragraphs 4 to 8 hereof (the Injunction)
  - (i) the parties and their representatives,
  - (ii) the witnesses,
  - (iii) all persons who attend all or any part of a hearing in this case,
  - (iv) all persons who by any means obtain or are given an account or record of all or any part of a hearing or of any order or judgment made or given as a result of a hearing in this case,
  - (v) all persons who are provided with or by any means obtain documents and information arising from this application, and
  - (vi) any body, authority or organisation (and their officers, employees, servants and agents) for whom any such person works or is giving evidence.

#### **The subject matter of the Injunction**

5. The material and information (‘the Information’) covered by this Injunction is: a. any material or information (including pictures or videos) that identifies or is likely to identify that:
  - i. Any child[ren] [is/are] the subject of these proceedings, or that
  - ii. any person is a member of the family of the subject of these proceedings, or that
  - iii. any individual is a party to these proceedings, or
- b. any material or information that identifies or is likely to identify where any person listed in paragraph 5.a. lives, is being cared for, is receiving medical or therapeutic treatment, or any educational establishment attended by them or their contact details.

#### **What the Injunction prevents people from doing**

6. Subject to further order of the Court and save as provided by paragraph 2 and 8 of this order or as otherwise permitted by [PD12G] the Persons Bound by this Injunction shall not by any means (and so orally or in writing or electronically by way of social media, email or in any other way) directly or indirectly :

- a. publish or communicate the Information or any part or parts of it to any person not listed as a person bound at paragraph 4 i.-iii. above, or
- b. cause, enable, assist in or encourage the publication of the Information or any part or parts of it.

#### **Duration of the Injunction**

7. This Injunction shall have effect until [31 December 20XX in the year when the youngest subject child is expected to attain the age of 18] unless varied or discharged before that date.

#### **What the Injunction does not prevent people from doing and does not apply to**

8. Subject to further order of the Court this Injunction:

- a. does not prevent the Persons Bound by this Injunction:
  - i. reporting or commenting upon these proceedings, save in so far as such reports or comments are prohibited pursuant to paragraph 5 and 6 above, ii. reporting or commenting upon proceedings in the Family Court generally or in relation to applications similar to this one,
  - iii. publishing information relating to any part of a hearing in a court in England and Wales (including a coroner's court) in which the court was sitting in public and did not itself make any order restricting publication,
  - iv. complying with an order of any court with competent jurisdiction, and v. disclosing information in furtherance of child protection duties in respect of the child[ren]
- b. does not prevent the Persons Bound by this Injunction from communicating information relating to these proceedings to the persons and in the circumstances set out in Practice Direction [12E or 12G] insofar as they are applicable (which permits the communication of specified material and information in certain circumstances), or from communicating information to a



Reporter, the court authorising such communication pursuant to FPR 12.75.

- c. does not apply to a public hearing of, or to the listing for hearing of, any application for committal.

### **Variation of this order**

9. The parties and any person affected by this order may apply to the Court for an order (and the Court may of its own motion make an order) that:
  - a. varies or discharges this order or any part or parts of it, or which
  - b. permits the publication of any of the Information on the basis that it is lawfully in the public domain or for such other reason as the Court thinks fit.

### **Further orders**

10. Subject to further order of the Court any transcript of a hearing of and any judgment or order given in these proceedings shall be anonymised so that it shall contain no reference by name or address to the persons or bodies referred to in paragraph 5 and shall refer to them by initial or pseudonym, but when the person served or provided with any transcript, judgment or order needs to know the identity of any anonymised person that document is to be served on or provided to that person with a copy of this order and a confidential key that provides the necessary identification.
11. At any time the Court may give such directions as it thinks fit (including directions relating to anonymisation, payment, use, copying, return and the means by which a copy of a document or information may be provided) concerning the provision of information or copies of documents put before the Court and the terms on which they are to be provided to any Reporter who attends a hearing.

### **Other directions applicable to this case in consequence of its inclusion in the Pilot**

[NB IN A CASE WHERE THERE ARE NO LAWYERS THE COURT MAY NEED TO ADJUST THE BELOW SAMPLE WORDING – SOME ISSUES MAY NEED TO BE DEALT WITH AT THE OUTSET OF THE HEARING IN ‘HOUSEKEEPING’]

12. The point of contact for any reporter concerning the operation of this order or the pilot shall be [EMAIL ADDRESS of e.g. ALLOCATED JUDGE or APPLICANT / 1<sup>st</sup> REPRESENTED PARTIES’ LEGAL REPRESENTATIVE]
13. Any Reporter may request a copy of the bundle index, any case outline, position

statement or skeleton argument ('core documents') prepared in respect of the hearing they propose to attend by email sent to the legal representative of the party on whose behalf such document has been prepared (or where that party is NOT represented by email to the litigant themselves). The legal representative of the requested party (or unrepresented party so requested) must promptly provide a copy of the same unless an objection has been notified to the court on notice to the parties and Reporter. Where provided, the Reporter must comply with paragraph 6 above, and the Reporter must not publish the contents of any such documents or any extract of such a document until the conclusion of

the hearing for which any such document has been prepared or provided, in order to enable any representations to be made about the extent of publication of its contents.

14. A reporter may request access to other specified documents from the index prior to the hearing by emailing the point of contact, and a copy of any such document shall be provided to them if all parties agree, on the basis that the Reporter must comply with paragraph 6 above and the Reporter must not publish the contents of any such documents or any extract of such a document until the conclusion of the hearing for which it has been prepared or provided, in order to enable any representations to be made about the extent of publication of its contents.

15. The legal representative for the [Applicant / First Represented party / Court] must serve a copy of this order upon any Reporter attending any hearing in these proceedings or expressing an intention to attend future hearings. Email service will be good service and any person aware of the terms of this order will be bound by it. Any party may provide a copy of this order to an accredited media representative or duly authorized lawyer who has expressed an intention to attend a particular hearing.

16. The [court or nominated point of contact] will provide any Reporter with the case description annexed to this order upon enquiry and any other party may do so on request.

17. The court office will ensure that the published court list contains the information specified in the protocol.

Date

**OPEN JUSTICE FAMILY COURT REPORTING PILOT**

**PROTOCOL ANNEX C :**

## Key to case numbering and listing abbreviations

### CASE NUMBERS

Every case issued in either the Family Division or the Family Court is given a unique number on issue in the following form, for example : BS19C00050.

Each case number breaks down into four components : [BS] [19] [C] [00050]

- The first two letters identify the court, typically but not always by an abbreviation of its name. Thus, BS = Bristol.
- The next two numbers identify the year of issue: here 19 = 2019.
- The subsequent single letter in the sequence identifies the type of case. The following are in use:
  - C = public law (care); D = divorce (including ancillary financial relief); ○ F = applications under the Family Law Act 1996 (primarily non-molestation and occupation orders, but also including FGM and Forced Marriage Protection Orders);
  - P = private law (predominantly child arrangements, but also including wardship);
  - DX / Z = adoption and placement.
- The final numbers identify the sequential number of the case amongst all the cases in that category issued at that court in that year. Thus, this was the fiftieth care case issued in Bristol in 2019.

### LISTING ABBREVIATIONS

Although practice varies to an extent from court to court the following abbreviations are in regular use :

- FDHRA = First Hearing Dispute Resolution Appointment (private law) •  
DRA = Dispute Resolution Hearing (private law)
- CMH = Case management hearing (generally public law)
- DIRS = Directions
- FCMH = Further Case Management Hearing (sometimes First Case Management

Hearing) (generally public law)

- IRH = Issues Resolution Hearing (public law)
- PTR / PHR = Pre-Trial Review/ Pre-Hearing Review
- FH = Final hearing
- FF / FOF = Fact finding hearing
- INT = Interim hearing (probably denotes contested issue of some sort).
- ICO = (generally denotes interim removal hearing)
- GRH = Ground rules hearing

Some court lists will include a time estimate in hours or days e.g. 1 of 4 or 1/4 denotes the first day of a four day fixture.

ANNEX D

To Follow

**OPEN JUSTICE FAMILY COURT REPORTING PILOT**

**PROTOCOL ANNEX E : CASE DESCRIPTION TEMPLATE**

This template should be completed prior to the first hearing in any case where the court has made standard Pilot directions on issue and should be kept up to date by the legal representatives of the Applicant (or first represented party where the Applicant is not represented).

**THIS IS THE CASE DESCRIPTION FOR CASE NUMBER :  
THIS DOCUMENT MUST NOT BE PUBLISHED OR DISTRIBUTED.**

**TYPE OF CASE :**

**DATE THIS FORM WAS COMPLETED (dd/mm/yyyy) :**

**DATE THIS FORM WAS UPDATED (dd/mm/yyyy) :**

**NAME & ROLE OF PERSON COMPLETING THIS FORM :**

**NUMBER OF SUBJECT CHILDREN :**

**AGE BRACKETS OF SUBJECT CHILDREN**

BABY (0-1 YRS)

1-5 YRS

5-11 YRS 11+ YRS **ADULT PARTIES AND RELATIONSHIP TO CHILD** LOCAL AUTHORITY (IF

APPLICABLE)

MOTHER

FATHER

PROPOSED SPECIAL GUARDIAN

EXISTING SPECIAL GUARDIAN

OTHER INTERVENER OR PARTY

COMPETENT CHILD INSTRUCTING SOLICITOR DIRECTLY

select all that apply select if more than one

**LEVEL OF JUDGE** (and name where known)

LEGAL ADVISOR ONLY NAME :

LAY MAGISTRATES

DISTRICT JUDGE

CIRCUIT JUDGE / RECORDER

HIGH COURT JUDGE

**DATE OF ISSUE** (dd/mm/yyyy) :

**STAGE OF PROCEEDINGS**

(E.G. JUST ISSUED / ASSESSMENTS UNDERWAY / TIMETABLED TO IRH / FH)

**FUTURE HEARING DATES**

DATE / DAY 1 OF NEXT HEARING) (dd/mm/yyyy) :

TYPE :

TIME ESTIMATE :

FORMAT / LOCATION :

LOCATION (IF IN PERSON / HYBRID)

DATE / DAY 1 OF ANY SUBSEQUENT HEARING) (dd/mm/yyyy): TYPE :

TIME ESTIMATE :

FORMAT / LOCATION :

LOCATION (IF IN PERSON/ HYBRID)

**SUMMARY OF ISSUES (select all that apply or are alleged to apply)**

Contact / living arrangements – dispute between parents C1A / allegations of harm or domestic abuse made

Alienation

Interim removal of child before final decision

Removal of baby at or shortly after birth

Harm suffered / risk of harm – factual dispute

Neglect

Physical harm

Psychological / emotional harm

Future risk of emotional harm only (no actual harm to date) Parental drug or alcohol abuse

Sexual risk

Parental offending behaviour / parent in custody

Parental domestic abuse

Parental mental ill health

Parental learning disability

Child beyond parental control

Child with special (ed or health) needs receiving inpatient / residential care Fabricated / induced illness

Gang involvement

Radicalisation

Religious issues

FGM/C

Parent with cognitive /communication difficulty or lacking capacity Secure accommodation or deprivation of liberty

Suspected non accidental injury to subject child

Suspected non accidental injury / death of a non subject child Multiple experts instructed or likely

Connected / concurrent criminal proceedings pending or possible Possible adoption

Trafficking

Abduction