

TRANSPARENCY IMPLEMENTATION GROUP

MEDIA REPORTING SUB-GROUP

27 June 2022 (at 4.30pm)

Attendees:

Mrs Justice Lieven (Chair)

Jack Harrison (Secretary)

MoJ Policy

Judicial Private Office

HMCTS Operational

HMCTS Legal Adviser

The Family Justice Young People's Board

Sian Harrison (PA Media)

Lucy Reed (Barrister)

Dr Julie Doughty

Olive Craig (Rights of Women)

Angela Frazer-Wicks (Family Rights Group)

Guy Vassall-Adams QC

Charles Hale QC

1. Apologies

Apologies were received from DJ Adem Muzaffer, Rachel Anderton, Natalie Byrom, Lisa Harker, DfE Policy and MoJ Legal.

Introduction

Mrs Justice Lieven apologised for the delay since the previous meeting; this was due to MoJ's and HMCTS's other pressing commitments together with the demands which the Reform agenda had placed on the Family Judiciary, however a small group (MoJ Policy and Legal, HMCTS, Mrs Justice Lieven and Jack Harrison) had met and worked on setting up the pilots.

Mrs Justice Lieven acknowledged there was a need to look at resources for evaluation and training. MoJ advised that the pilot scheme would need to be able to operate within

existing resources as there was no additional funding available from either HMCTS or MoJ budgets, and reducing the backlog in the family courts remained the key priority for MoJ.

2. Transparency Orders

The President had decided that, during the pilots, there would be transparency orders which reversed the presumption against reporting; once the pilots were rolled out nationally there would be a Practice Direction.

The following points were made/discussed:

- That transparency orders needed to be in place before reporters attended hearings. In addition, reporters needed to know what the key issues were in order to make an informed decision about whether to attend a hearing: they needed documentation in order to follow the hearing as well as to report accurately. A possible solution, in public law, would be generate a standard order on the digital Family Public Law Platform (which would be reviewed at the first hearing); the private law system would be digitised in 2023.
- That transparency orders were an expedient way to implement the pilots in a way that could be tailored; long term implementation would be done via a Practice Direction whereby rules would determine what was permissible. During the pilot there was nothing to prevent an application, on paper, for an order to be made if the press wanted to attend a particular hearing.
- That the administrative burden of creating transparency orders in many cases could be disproportionate to the number of cases that were actually attended; the Media Engagement Sub-group would try to establish what the level of interest might be in the pilot areas.
- That there might be a benefit in commencing the pilot in public law cases, i.e. where parties were represented, then extending it to private law cases; however, there was a public interest in many private law cases.

Action: Mrs Justice Lieven to check whether a transparency order was produced in every Court of Protection case prior to the introduction of digitisation.

3. Anonymity of social workers, Cafcass and other professionals (in press reports)

In court judgments the current position was that junior social workers were rarely named; other professionals were named unless naming them gave rise to a risk of identifying the child. The group discussed what the position should be regarding press reports, taking into account the draft Anonymisation Guidance which had recently been produced by the Anonymisation and Publication of Judgments Sub-group. The following points were made/discussed:

- There was need for a consistent, principled (i.e., the principle of open justice) approach to anonymisation across the whole justice system whereby people were

named in judgments unless anonymisation was necessary in the interests of justice e.g. to prevent the identification of a child.

- Some concerns had been expressed to Government officials about the potential for harm to professionals if they were named in cases; this could also impact on recruitment and retention, and more widely safeguarding in general. In addition, it was felt that accountability was provided via professionals' regulatory bodies. There were also concerns that naming social workers could, in some cases, lead to the identification of children via 'jigsaw identification.'
- The fear that some experts experienced in family cases might be more acute than was the case in civil cases, e.g. when they were alleged to have given incorrect opinions which led to children being removed from their homes. There was a need for professionals to be supported by the court when they had fears about the consequences if their names were published. Care had to be exercised to avoid anything which could lessen the number of experts in the system. It was also good practice to give professionals advance notice when they were going to be criticised in judgments.
- It was necessary for the individual circumstances of each case, and the expert's role in it, to be taken into account - including the seniority of the professionals in question.
- Experts were usually named in judgments so it would be difficult to justify not naming them in newspaper reports.
- Thought should be given to how reporters could make representations regarding the decision to name professionals.
- Professionals ought not be given protection in the family proceedings where they would not be able to do so in civil proceedings.
- Anonymity of experts to prevent the identification of children should not be misused in order to protect professionals' reputations.
- There was no strong evidence base detailing incidents of 'jigsaw identification,' nor resulting harm where this occurred; it was therefore possible that the problem was over-estimated.

Action: Jack Harrison to write a paper summarising the arguments re anonymity of professionals in press reports; this would then be discussed with the President of the Family Division and the relevant professional bodies.

4. The scope of the applications to be included in the pilot – eg HFEA applications, non-mols, Magistrates hearings

Public law and private law Children Act case would be included in the pilot; decisions were required regarding adoption proceedings, non-molestation domestic abuse protection orders, occupation orders and applications under the Human Fertilisation and Embryology Act (i.e., mainly surrogacy cases). The points made/discussed were:

- The press could attend adoption proceedings up to the point where the care proceedings and placement proceedings ran concurrently; once the placement order was made in principle then the press would not be allowed to attend further proceedings. Where there was a placement application the adoptive parent was never identified at that stage; this could be replicated in the pilot. Where there was a sibling involved, or a foster carer was 'minded to adopt,' the press would not be able to attend.
- Regarding ex parte orders in Family Law Act cases, evidence was provided, in statement form, from one side only: if there was reporting of this information without a further hearing there would be an issue regarding unfairness. It was, perhaps, not a case of excluding reporters, but deciding what they were able to report.
- The Rules on Family Law Act matters allowed legal bloggers and reporters to attend hearings, but they were not subject to the standard restrictions on what could be reported so there were arguments for saying that they could attend, and report anything, unless the Court made a reporting restriction.
- The presumptive starting point should be to keep the pilot as wide as possible with the court having the power to decide when it would not be appropriate for the press to report on a case.

5. AOB

- There was a need to update the public on the progress of the group's work, perhaps via the TIG Blog.
- Mrs Justice Lieven would discuss evaluation and training with Lisa Harker, Natalie Byrom and the Judicial Private Office.
- The group would aim to meet in the autumn to discuss launching the pilot and timescales.
- Listing would be put on the next meeting's agenda.

6. Date of the next meeting

4 October, at 4.45pm, via MS Teams.