

THE TRANSPARENCY REPORTING PILOT

GUIDANCE FROM THE PRESIDENT OF THE FAMILY DIVISION

INTRODUCTION TO THE TIG

1. In October 2021, I published Confidence and Confidentiality: Transparency in the Family Court, a review of the issue of transparency in family justice. I made several recommendations for achieving better and purposeful transparency in the family justice system.
2. In November 2021, I set up the Transparency Implementation Group. The aim of the TIG is to pilot and oversee implementation of the recommendations within my report. The TIG had its first meeting in December 2021 and has been working to implement the recommendations since, mainly in sub-groups with allocated responsibilities.
3. In the report, I said:

“My overall conclusion is that the time has come for accredited media representatives and legal bloggers to be able , not only to attend and observe family court hearings , but also to report publicly on what they see and hear. Reporting must be subject to very clear rules to maintain both the anonymity of the children and family members who are before the court, and confidentiality with respect of intimate details of their private lives. Openness and confidentiality are not irreconcilable, and each is achievable. The aim is to enhance public confidence significantly, whilst at the same time firmly protecting continued confidentiality.”

4. Since December 2021, a sub-group led by Mrs Justice Lieven and consisting of a litany of different stakeholders from the TIG has been designing a pilot scheme to allow reporting of family proceedings as the default position.
5. I have invited three DFJ areas in England and Wales to road test what is known as the Reporting Pilot (“RP”). The areas have been carefully chosen to ensure a representative mix for sampling and evaluation, a mix of rural and urban communities. The areas that will take part in the RP are Cardiff, Leeds and Carlisle. The pilot will run from January 2023 – January 2024.
6. This document sets out the basis of the pilot and the rules. It is intended to be authoritative guidance for all those who take part in the pilot.

AIMS OF THE PILOT

7. The pilot will run over a period of 12 months and be subject to independent evaluation.
8. The aim of the RP is that in the designated courts, accredited journalists and 'legal bloggers' (i.e. 'duly authorised lawyers' for the purposes of Family Procedure Rules 2010, r.27.11) will be allowed to report on what they see and hear in court ("the transparency principle").
9. All reporting will be subject to the principles of protection of the anonymity of any children involved unless the Judge orders otherwise ("the anonymity principle").
10. The Court may depart from the transparency principle in any case. In deciding whether to restrict reporting, the Court must ensure the rights of the family and parties to a fair trial under Article 6 ECHR and must balance the rights to a private and family life under Article 8 ECHR, and the rights of the press, public and parties under Article 10 ECHR (or any other relevant rights which may be engaged).

WHO MAY ATTEND AND REPORT ON FAMILY PROCEEDINGS IN THE PILOT?

11. Only "pilot reporters" may attend and report on proceedings taking place in a designated RP Court.
12. The meaning of "pilot reporters" is any duly accredited representative of a news gathering or reporting organisation or duly authorised lawyer (legal blogger) who may attend a hearing under FPR r.27.11. Terms defined in, or under, FPR r.27.11 will have the same meaning in the RP.
13. At present, a duly accredited journalist, which means a journalist who carries a UK Press Card, or a legal blogger may attend a family court hearing as of right. The right of a journalist or blogger to do so in any pilot court is unchanged.
14. The Court retains a discretion to permit attendance by a person other than a pilot reporter pursuant to FPR r.27.11(2)(b), including but not limited to non-UK Press Card Authority accredited media (FPR Practice Direction 27B, para 4.3).
15. Where a pilot reporter attends a hearing, their name and contact details should be recorded on the case management order from the hearing.

THE TRANSPARENCY ORDER

16. The Court will consider whether to make a Transparency Order in any case where a pilot reporter attends a hearing (remotely or in person). The Court retains a discretion to direct that there should be no reporting of the case.
17. There will be a standard form of Transparency Order, but the Court may modify the terms of the standard order as appropriate on the facts of the case. The Court may do so of its own motion, or by invitation. The Court retains a discretion to (later) vary or discharge the Transparency Order or to direct that there should be no (further) reporting of the case. This discretion may be exercised of the Court's own motion or on application by a party or a pilot reporter.
18. The standard Transparency Order will state that it remains in place until any child to whom the proceedings relate reaches the age of 18.
19. The standard Transparency Order will provide that, in any reporting about the proceedings, the following must not be reported to the public at large, or a section of the public, without the express permission of the Court:
 - a. The name or date of birth of any subject child in the case;
 - b. The name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the child(ren) being identified;
 - c. The name of any person who is a party to, or intervening in, the proceedings;
 - d. The address of any child or family member;
 - e. The name or address of any foster carer;
 - f. The school/hospital/placement name or address, or any identifying features of a school of the child;
 - g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;
 - h. The names of any medical professional who is or has been treating any of the children or family member;
 - i. In cases involving alleged sexual abuse, the details of such alleged abuse;
 - j. Any other information likely to identify the child as a subject child or former subject child.
20. For the avoidance of doubt the Transparency Order does not prevent publication by a parent of information that they would ordinarily be permitted to publish, for example information concerning their child, if it does not relate to or refer to the proceedings,

the child's involvement in those proceedings or the evidence concerning that child within the case.

21. Unless the Court orders otherwise the following agencies or professionals may be named:
 - a. The local authority/authorities involved in the proceedings;
 - b. The director and assistant director of Children's Services within the LA (but usually not the social workers working directly with the family, including the Team Manager, unless the Court so orders);
 - c. Senior personnel at Cafcass but not normally the Guardian named in the case.
 - d. Any NHS Trust;
 - e. Court appointed experts;
 - f. Legal representatives and judges;
 - g. Anyone else named in a published judgment.

22. In accordance with FPR r.27.11(3), the Court has a discretion to exclude pilot reporters from a particular hearing, or part of a hearing, but this should only be done for specific reasons and these should be recorded in the case management order. The Court may also determine that there should be no reporting, or restricted or delayed reporting of all, or part, of the proceedings (see paragraphs above relating to the content of a Transparency Order). The Court may also consider whether reporting should be restricted for a certain period or up to an event, for example a criminal trial.

23. The Transparency Order will permit the parties to discuss the proceedings with a pilot reporter (see below). It **will not permit the parties** to themselves publish information from the proceedings where this would be restricted by section 12 AJA1960 and/or the Rules of Court. This includes re-publishing any media articles or blogs written about the case under the pilot, where accompanied by comment that may identify the child concerned.

24. Through the means of the Transparency Order the restrictions on publication contained within s.12 Administration of Justice Act 1960 are varied. No contempt of Court will be committed so long as the terms of the Transparency Order are complied with

25. In any event, s.97 Children Act 1989, protecting the anonymity of the child, will continue to apply for the duration of the proceedings. The effect of the transparency

order, where made, is to extend that protection until the child's 18th birthday.

26. The fact that the media are aware of the existence and terms of the pilot (which are publicly available), are able to identify the cases to which it applies from the published list, and know in general terms what the terms of a Transparency Order are likely to involve, and that the media may if they wish attend such hearings and make representations about the terms of any individual order are, in combination, sufficient to meet the notice requirements of s12(2) Human Rights Act 1998, and prior notice of the court's intention making of making a Transparency Order is therefore not required.
27. The standard Transparency Order is attached to this guidance. Whether the Order is made in the standard form or in amended form by the judge, the Order needs to be specific, so those to whom it applies know exactly what it permits. This gives everybody clarity, and ensures that the Court will be able to act on any alleged contempt.

CASES WITHIN THE RP

28. The following cases will be part of the RP:
 - a. All applications for public and private law Orders under Parts II and IV Children Act 1989, including applications to discharge, vary or enforce existing Orders. The pilot will commence with public law cases and shortly thereafter extend to private law cases.
 - b. All applications for placement orders where the application is made within care proceedings, up to the point at which any placement order is made or the application for a placement order or otherwise is concluded.
 - c. All applications under the inherent jurisdiction of the High Court, including applications to authorise the deprivation of a child's liberty.
29. The pilot does not apply to financial remedy cases or applications under Family Law Act 1996. Section 12 Administration on Justice Act 1960 does not usually apply to such hearings except where the application is wholly or mainly about the upbringing of a child. Section 97 Children Act 1989 does not apply unless those proceedings are consolidated with proceedings under that Act (or insofar as publication of information relating to the FLA/FR proceedings might identify the child as a subject of current but separate children act proceedings). The issue of transparency in financial remedy cases is being looked at by another sub-group of the TIG and does not form part of

this guidance.

30. Rule 27.11 FPR in its current form will continue to apply even in pilot courts, so pilot reporters will not be able to attend hearings currently excluded from r27.11, unless permitted by the Court pursuant to rule 27.11(2)(g).
31. The RP will apply to all the above categories of case heard by any level of judge of the family court, or in the Family Division of the High Court, save that initially the RP will begin with district, circuit and High Court judges, and then will be phased to include magistrates at an appropriate point. Depending on the Court centre and the level of interest, the types of cases within the pilot may be phased in.
32. Rule 27.11 FPR in its current form will continue to apply in pilot courts, so reporters (including pilot reporters) will still be able to attend the specified hearings before magistrates in the family court. If there is a request in those proceedings to report on the case, the magistrates will have to consider whether a Transparency Order should be made, and the reporting allowed. It is not considered that this would justify re-allocating the case to district or circuit judge level. Until the pilot is rolled out to include the magistrates, it is expected that a judge should discharge a Transparency Order if at any time they re-allocate the matter to the magistrates.
33. The RP does not apply to the Court of Appeal (Civil Division).

CASES THAT REQUIRE SPECIAL CONSIDERATION

34. When deciding whether to make, or vary, a Transparency Order the following categories of case will require careful consideration:
 - a. Cases where matters relevant to the case are subject to criminal charges, investigation or proceedings, where reporting may cause prejudice to those proceedings;
 - b. Applications that are made without notice, where reporting and or/publication of the hearing or facts would cause prejudice to the applicant.
 - c. Cases where it is particularly difficult to achieve anonymity for the child.
35. Where a pilot reporter would wish to report on a without notice application, the appropriate course of action is to postpone a decision on permission to report, or making a Transparency Order, until a hearing where the parties are on notice.

ACCESS TO PAPERS AND DOCUMENTS

36. The standard Transparency Order should provide that pilot reporters attending any hearing must be given a copy of the Transparency Order. It should also provide that, on request, pilot reporters are entitled to be provided with copies of, see, and quote from:
 - a. Documents drafted by advocates or the parties if they are litigants in person: Case outlines, skeleton arguments, summaries, position statements threshold documents and chronologies.
 - b. Any indices from the Court bundle.
37. Any requests for such documents by pilot reporters must be made at or before a hearing that the pilot reporter is attending in accordance with r.27.11 FPR.
38. Any requests for copy documents must be made to, and complied with, by the party who, or whose advocate, drafted the document in question. The copy documents must be provided to the pilot reporter at a hearing that the pilot reporter is attending in accordance with r.27.11 FPR or within a reasonable time thereafter. Pilot reporters should be prepared to offer a secure email address for digital transmission of documents by lawyers or lay parties. As the pilot courts are paperless, hard copy documents will not be provided and lawyers, or the Court, are not expected to provide these.
39. Any quotes from these documents must not breach the requirements for anonymity (see above).
40. Where any document referred to above quotes from a document which the pilot reporter would not automatically be entitled to see (such as source evidence), the passage quoting may not be reproduced or reported without permission of the Court.
41. Any pilot reporter wishing to see any other document from the proceedings must apply to the Court for permission. Such other documents may not be disclosed to pilot reporters without that permission, even if the parties consent to its disclosure.
42. Even if a document is referred to in the hearing, that does not necessarily entitle the pilot reporter to see that document in its entirety, although an application may be made at the hearing for access to the document in question.

43. The Court may permit disclosure to reporters at the outset of a hearing to assist the reporter to understand and follow the proceedings, even though reporting of the contents of the document may be restricted.

PROCEDURE IN PILOT COURTS

44. The Court will consider whether to make a Transparency Order in any proceedings where a pilot reporter attends a hearing (in accordance with rule 27.11 FPR). The Transparency Order will contain provision for parties to make representations if they seek any amendment to the standard order.
45. The Transparency Order will apply to pilot reporters who attend a hearing, and any further reporting of the proceedings. The Court should recite the details of the reporter who requests the making of the Order in the case management order.
46. The Court may at any time, either on application or of its own motion, vary or remove the Transparency Order.
47. Although a pilot reporter may attend the Court hearing without giving notice to the Court or the parties, pilot reporters are strongly encouraged to inform the Court and (if known) the parties of their plans to attend and report on a particular hearing. This can be done by emailing the general family inbox or telephoning the Court.
48. If the hearing is an attended (as opposed to a remote) hearing, no additional provision for remote attendance by a pilot reporter will normally be made.
49. Pilot reporters are asked to attend the hearing at or before the listed start time of the hearing if possible. If a pilot reporter arrives once the hearing is underway, this may be disruptive, and may be a reason for the judge to refuse or defer a decision about reporting.
50. All parties are obligated to assist the Court in furthering the Overriding Objective: FPR r.1.3. Parties and their advocates are expected to be prepared to address the Court on whether a Transparency Order should be made, and to what extent. This is particularly important where the hearing being attended is a short listing (e.g. 30 minutes).
51. For each hearing, the Court order must record the name and contact details of any pilot reporter who attended, and that the pilot reporter has seen the Transparency Order. **The pilot reporter must complete form FP301 if a legal blogger, or produce**

ID at the outset of the hearing if a member of accredited media:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748313/FP301-1018.pdf.

REPORTING PRINCIPLES

52. Pilot reporters are bound by the terms of the Transparency Order; s.97 Children Act 1989 and their professional rules and codes of conduct.
53. The TIG has agreed the following principles by which pilot reporters and professionals involved in pilot cases are asked to abide:
 - a. Assist the Court to achieve the Overriding Objective in FPR r.1.1., which is to resolve cases justly having regard to the welfare issues involved.
 - b. To minimise disruption to the proceedings, and by raising issues in advance of hearings in writing with the Court and the parties, where possible.
 - c. To work constructively with the parties.
 - d. To be sensitive to the feelings and possible vulnerabilities of parties in the family court and at all time act with appropriate discretion. Reporters must not interfere with pre-hearing discussions.
 - e. If the party has a lawyer, any interview request must be made through that lawyer.
54. Lawyers acting in proceedings within the RP may approach the reporters, whether directly or through their press body, on behalf of their clients if so instructed.
55. Lawyers and lay parties are expected to work constructively with pilot reporters.

THE RELATIONSHIP BETWEEN LAY PARTIES AND PILOT REPORTERS

56. The standard Transparency Order will include provision to ensure that it would not be a Contempt of Court for parties to disclose information relating to proceedings to pilot reporters, for the purpose of discussing the case and informing the pilot reporter of the circumstances of the case. It remains a potential Contempt of Court for parties to share documents other than those specified above. It is not a contempt for a person

to share details of the date, location, and time of a hearing, or to indicate the category of hearing or proceedings concerned.

57. Any onward disclosure of information received from a party by the pilot reporter will be governed by the Transparency Order, as outlined earlier in this document.

58. The TO retrospectively permits parties and their representative to have discussions inviting reporters to attend a hearing. However no permission is granted to report such discussions or to see any documents until the TO is made.

59. Any onward disclosure of information received from a party by the pilot reporter will be governed by the Transparency Order, as outlined earlier in this document.

FURTHER INFORMATION

60. For any further information, please contact the TIG secretary, Jack Harrison, by email: pilots@thetig.org.uk.

61. In addition, each pilot area has a liaison appointed from the junior bar who will act as a first point of contact for any issues that may arise, or any support that may be needed. These liaisons are:

- Cardiff: Laura Beattie, Cathedral Chambers, Cardiff.
- Carlisle: Jack McCabe, 15 Winckley Square Chambers, Preston.
- Leeds: Connie Purdy, Spire Chambers, Leeds.

62. Training materials and further information will be published on the TIG homepage on the Judiciary website, accessed via our web link: www.thetig.org.uk.

Rt Hon. Sir Andrew McFarlane

President of the Family Division

29 November 2022

APPENDIX I: DRAFT TRANSPARENCY ORDER



**In the Family Court at
Cardiff/Leeds/Carlisle**

Case no.

(Delete as appropriate)

The Children Act 1989

The Senior Courts Act 1981

The Inherent Jurisdiction of the High Court

TRANSPARENCY ORDER MADE BY [JUDGE] ON [DATE]

TO ANYBODY WHO HAS SEEN THIS ORDER OR IS AWARE OF ITS CONTENTS: You must obey the terms of this order. If you do not, you may be held in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law.

Notice and Definitions:

1. This case has been included in the Reporting Pilot, which allows pilot reporters to, subject to the terms of this order, discuss certain aspects of the case with the parties, and report on what they see and hear in court hearings that they attend.
2. This order is an injunction, which means that you must do what the order says.
3. The point of contact for any pilot reporter is the Court Office. The details are at the foot of this order.
4. Nothing in this Order affects the ability of parties or their representatives to publish or communicate information as permitted by Family Procedure Rules 12.73, 12.75 or Practice Directions 12G (para 2.1) and 12E to the Family Procedure Rules 2010.

5. In this order, "pilot reporters" means duly accredited representatives of news gathering and reporting organisations and duly authorised lawyers attending for journalistic, research or public legal educational purposes (legal bloggers) (together referred to in this order as 'pilot reporters') who are entitled to attend a hearing under r.27.11 of the Family Procedure Rules 2010 ('FPR').
6. Section 12 Administration of Justice Act 1960 continues to operate save and insofar as this Order varies it. This means that any publication of information relating to the proceedings which is not permitted by this Order is a Contempt of Court.

Who does this order apply to?

7. The Order applies to:
 - a. The parties and their lawyers;
 - b. Any witnesses in the case;
 - c. Anybody who attends some or all of a hearing in the case;
 - d. Any authority, body or organisation (and their officers, employees, servants and agents) for whom any such person works, is employed, engaged or is giving evidence.
 - e. Anybody who is served with a copy of this order or is aware of its contents.
8. This Order will be served on the parties and their lawyers, and any pilot reporter who attends a hearing and wishes to report on what they see, read, and hear.

It is ordered that:

9. This Order will remain in force until [date; usually the 18th birthday of the youngest child].
10. Except where allowed by this Order, no person is permitted to publish, or to communicate information relating to the proceedings except as already permitted under Family Procedure Rules 12.73, 12.75 or Practice Directions 12G (para 2.1) and 12E to the Family Procedure Rules 2010, or by discussion between a party to the proceedings (or their legal representative) and a pilot reporter as permitted under the terms of this order.
11. This order applies to any person who is aware of its contents, including those set out in paragraph 6.

What may and may not be published?

12. A pilot reporter may publish any information relating to the proceedings save to the degree restricted below.

13. No person may publish any information relating to the proceedings to the public or a section of it, which includes:
 - a. The name or date of birth of any subject child in the case.
 - b. The name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the child(ren) being identified;
 - c. The name of any person who is a party to, or intervening in, the proceedings;
 - d. The address of any child or family member;
 - e. The name or address of any foster carer;
 - f. The school/hospital/placement name or address, or any identifying features of a school of the child;
 - g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;
 - h. The names of any medical professional who is or has been treating any of the children or family member;
 - i. In cases involving alleged sexual abuse, the details of such alleged abuse;
 - j. For the purposes of s.97(2) Children Act 1989, any other information likely to identify the child as a subject child or former subject child.

14. This Order does not disapply s.97(2) Children Act 1989 unless expressly stated.

15. For the avoidance of doubt, no body, agency or professionals may be identified in any information relating to the proceedings published to the general public or a section of it by a pilot reporter, save for:
 - a. The local authority/authorities involved in the proceedings;
 - b. The director and assistant director of Children's Services within the LA (but usually not the social workers working directly with the family, including the Team Manager);
 - c. Cafcass (but usually not the Guardian appointed for the Child);
 - d. Any NHS Trust;
 - e. Court appointed experts (but not treating clinicians or medical professionals);
 - f. Legal representatives and judges;
 - g. Anyone else named in a published judgment.

Documents

16. A pilot reporter who attends a hearing in family proceedings in accordance with FPR r.27.11, or who indicates in advance that they wish to attend a hearing, is entitled to see, quote from, or publish:

- a. Documents drafted by advocates (or litigants if a party is self-representing):
i.e. Case outlines, skeleton arguments, summaries, position statements
threshold documents and chronologies.
 - b. Any indices from the Court bundle.
 - c. Any suitably anonymised Orders within the case.

17. Parties to the proceedings and their representatives may not disclose documents from the proceedings to pilot reporters, except as specified above, or with the specific permission of the court. This includes where a document is referred to or quoted from in court that the pilot reporter would not otherwise have access to.

18. Any such requests for copy documents must be made at or before a hearing which the pilot reporter has attended pursuant to FPR r.27.11.
 - a. Upon a request being made, the author of the document shall as soon as practicable provide a copy of the document to the pilot reporter.

 - b. The pilot reporter may quote from or publish the contents of the document, save that the details at paragraphs 13 of this Order may not be published. Where any document referred to above quotes from a document to which the pilot reporter would not be entitled to see (such as source evidence), the passage quoted may not be reproduced or reported without permission of the court.

19. No other document may be provided to a pilot reporter without permission of the court.

20. A pilot reporter may share documents or information with their editorial team or legal advisor responsible for the publication of their proposed report of the case, providing that they also provide any such person with a copy of this order which will be binding upon that editorial team or legal advisor.

Discussions between pilot reporters and parties and their representatives

21. The parties to the proceedings and their representatives may disclose information from proceedings, and share any hearing dates, with a pilot reporter for the purpose of discussing the case and informing the pilot reporter of the circumstances of the case.

22. Where the parties or their representatives have invited reporters to attend a hearing, permission is given retrospectively for any discussions that took place with reporters.

Operation

23. Permission to report is not effective until the end of the hearing at which this Order is made.

Other Orders

24. Permission for this Order to be served by email. Email shall be effective service for the purposes of FPR Part 6 and FPR Part 37.
25. Liberty to the parties and any pilot reporter to apply on notice to vary or discharge this Order.
26. Any application to vary or discharge this Order should be made by way of C2 application, with the fact and nature of any objection being clearly set out in an accompanying position statement.
27. At the start of the hearing, they must confirm that they have read and understand the terms of the Order.

**Sir Andrew McFarlane,
President of the Family Division**

November 2022