



PRESIDENT OF THE
FAMILY DIVISION

Transparency Implementation Group
Subgroup 2: Publication of judgments
Minutes of meeting on 19 July 2022 at 4.30pm
(Remote meeting via Microsoft Teams)

Attendees: HHJ Madeleine Reardon [MR], (Chair of Subgroup), Jack Harrison [JH], Fatima Ali [FA], Dr Natalie Byrom [NB], Dr Julie Doughty [JD], Marie Gittens [MG], Charles Hale QC [CH], Helen Lincoln [HL], DJ Adem Muzaffer [AM], Lucy Reed [LR], Clare Walsh [CW], Tom Foley [TF], Jack Cordery [JC], 3 FJYPB members and Mark Barford [Minutes]

ACTIONS:

| Serial | Action | On/By | Status |
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Item 1 - Apologies

Apologies were received from Femi Ogunlende and Maxine Monks.

Item 2 - Minutes of meeting on 9.6.22

Minutes of 9 June 2022 were approved.

Item 3 - Group A [publication] – discussion of the group’s report and draft guidance

1. MR welcomed the 3 members of the FJYPB. She explained that at the last meeting AM had recently completed work with judges running focus groups and considering judicial publication of the numbers and types of judgments to be published. The report from AM is now complete. He has written a report, including draft wording, for published guidance about how many judgments, at different judicial levels, judges will be asked to publish. MR opened the report up for discussion.
2. AM explained that the draft had omitted consideration of fee paid judiciary; it had not been properly discussed. The collective view of the subgroup will be that there is an expectation on fee paid judiciary to publish some judgments; probably at least two judgments. It is difficult to be more prescriptive as fee paid judiciary sit different amount of days and it will be difficult to monitor and/or know exactly how many judges sit in the family jurisdiction. District judges’ numbers will vary given some do only civil work and some do only family work; this may be more of a question for the data group. However, based on the numbers in the guidance the total number of judgments published will be much greater than at present.

3. AM suggested future discussions may be needed with DFJs, given that they will be tasked with monitoring publication requirements. The group agreed to raise the difficulties of predicting precise numbers with the President (The PFD); although he recognises the barriers to publication that have been identified.
4. JD mentioned that in the report she included comments about views of some participants in the focus groups. There were different views on whether fact finding judgments and interim judgments were appropriate for publishing; this may need further exploration. MR acknowledged the differing views and felt they should be reflected in the guidance.
5. LR made a general comment about the TIG minutes not being published. There is little on the Judiciary website that reflects the work and progress of the TIG. JH reflected that the TIG page does not exist on the judiciary website. Work is under way producing a new Judiciary website and for future will have a dedicated TIG page. Pending the website JH suggested writing an update with the three secretaries to the subgroups as type of blog summary to publish either on the Judicial Office website or through the Transparency Project. LR indicated she wanted the minutes to formally reflect the fact that she has raised it again and specifically what was being done about it.
6. JH reflected on the forms for judges to register for the focus groups, and how it was stipulated that data would be used and only sent to people on a very specific basis to be used internally. The focus groups were transcribed, to be used internally and data destroyed. If intending to publish anything from the focus groups, permission would be needed from all participants; possibly in anonymized form. JD confirmed this was the process to reassure participants of confidentiality so people could speak more freely. Care is needed that nobody is identifiable.
7. AM confirmed that the agreement was in terms of the relevant parts of discussions being within the group and confidential. Participants gave permission for the anonymized data to be used for research purposes by the TIG and limited to internal usage. AM felt it proper to go back to participants and indicate that a document is going to be published, which in effect, although anonymized, goes beyond the remit of being used for research purposes.
8. LR agreed and thought it most important to return to participants to ensure we work transparently> Most judges will have anticipated an anonymized report of what they said and that it would be placed in the public domain.
9. NB thought getting more external publicity about the work of the TIG would be helpful in building will and momentum to implement actions. She was conscious from three of the TIG groups that much resource is needed, and this would help build support for the work.

Item 4 - Group B [anonymisation] – approval of current draft following amendments

10. LR has made amendments following a review of the guidance and has sought observations from an expert on reporting issues. The observations are yet to be considered by the subgroup.
11. LR advised that in view of the observations received, choices are either to press ahead and publish the draft or to consider a re-draft; this would be most time intensive. The observations received highlight that from the outsider's perspective there may be questions around why there are a list of exceptions and not publishing everything; save for not identifying children's names and addresses. In other cases, it may mean other information being removed. There is a view that judges should publish everything unless good reason not to and should not be anonymising anything unless underpinned by a welfare-based risk connected to the child in the proceedings. This is a stark contrast to the draft guidance at present, however, there is some support in the law for this type of approach but it is also inconsistent with the culture and practice of the family courts. Whatever is published needs to be consistent with the law. There is a disparity between the principle and reality.
12. CH expressed a view that there is an Inherent jurisdiction conflict and as far as the guidance is concerned, more in this case is better than less as you will encompass a broader spectrum of views

from family judges. CH did not agree that the guidance is inconsistent with the law and this will need to be determined before publishing the anonymized guidance.

13. JH reported that this was an issue encountered by subgroup one; media reporting pilot. A stalemate was reached on the range of views which required PFD intervention to provide guidance. JH suggested a solution might be to have a smaller meeting with some of the key stakeholders from subgroup one; given the issues are similar. This may provide a consistency of approach in terms of what the PFD wants.
14. AM questioned whether from an outsider's view this would change the decision-making process and whether issues such as psychological harm and consideration of the Human Rights Act would reduce publication.
15. MR felt it would not; the law already considers these factors and they are included in the guidance. A balancing of these factors, including the human rights issues and harm issue is required.
16. MR viewed this as an issue for the whole of the TIG, which is the PFD's implementation group. The PFD will have to take a decision about the direction this group takes; this will be influenced by financial remedy cases and what happens with the law.

Item 5 - Group C [Anon Unit] – update on funding bid

17. MR reported that there were intense discussions proceeding on the funding for the anonymisation unit which included a bid for funding of a small team on a 12-month basis as a pilot to consider how much work they can manage in terms of anonymisation judgments. Subject to the evidence of work there may be need for a further bid to scale up. The CEO of the Judicial Office has given permission for a bid for funds to be made.
18. MR further reported that there was a joint meeting this week with the Judicial Office, HMCTS, the MoJ and possibly the National Archives to work out the logistics of the team and how they would interact with the wider work of the National Archives and the plan. The PFD does not expect any more judgments to be published by judges without some form of additional admin support.
19. MR updated on the National Archives and the process of judgment publication. In June there had been no judgments published below High Court level because of a problem obtaining neutral citation numbers for judgments. Neutral citation numbers are an essential for judgments. A fix has been identified allowing for a few judgments to be published. Each judge is required to register for the National Archives so that they can allocate neutral citation numbers. This allows them to know which judge has produced the judgment and at which court centre. This is helpful in establishing a register of family judges.
20. MR informed that she had amalgamated the work from AM and LR into one document and formatted the same in readiness for the PFD in due course. The document includes a flow chart on the front sheet, aimed to reduce 20 pages; not to dispense with 20 pages but to provide judges with a route map to know which paragraphs to look at.
21. MR proposed that next steps are to send it to the PFD highlighting the issues discussed today. It will be sent to the PFD and members simultaneously to allow members to digest it further.
22. The FJYPB questioned what training the staff would have to ensure that what children talked about was not removed so it doesn't affect the child's voice. A main theme within the FJYPB is an accurate representation of the voice of the child. The FJYPB also questioned what training there would be for the TIG or others so that the communication isn't lost and ensure young people's voices are present at every stage;
23. The FJYPB further questioned if there would there be a framework for the anonymization (AU) to follow ensure they're getting the child's voice, but also working as a team so that the young person doesn't have to repeat themselves.

24. MR advised. on the question of training this is included in a breakdown of the bid. In terms of the approach that they follow, they will need to follow the approach set by the whole of the TIG; the guidance will be specific and detailed about how the anonymization process should work. There is already in it reference to the child's experience and the child's voice which will be followed through by the AU.
25. LR questioned the views of MR as it suggested the AU might be making decisions about what to anonymise and yet the purpose of the anonymisation guidance is to help judges to make decisions about what to tell the anonymisation unit to remove.
26. MR viewed it as a balance between both. Presently there is the draft guidance to the anonymisation unit, and the judgment is returned as finalised and checked by the judge. The AU are going to have some principles to work to.
27. LR disagreed and thought the AU should follow the instructions of the judge and had drafted the guidance accordingly; so, judges make decisions about what is consistent with the balanced rights of the party. The judge tells the AU and they implement it. LR considered it that there might be cases where it's more complicated and possible geographical markers should be removed; the AU would need to find all the geographical markers. The judge might not spell out every marker. It must be a judicial decision. The AU are not to decide what is important.
28. MR clarified that she was thinking more about how to draw up some standard principles (ie: names) to be used as a general approach for the AU to do their training.
29. LR agreed that a pro forma could be devised once the anonymization is produced. The pro forma that judges would complete could include name, ethnicity and geographical markers. However, Judges will have to specify instructions which the AU follow and check vigorously. The judge should read it through and confirm it is properly anonymised.
30. MR suggested it be worked out when the pilot commences in terms of what exactly the AU are going to do and how they're going to do it. MR is keen for judges to use the AU as much as possible.
31. LR stressed that the guidance is drafted to reflect that the question of whether you can publish is interlocked with the question of what you might need to remove to make it safe to publish; decisions to make before sending to the AU.
32. CH emphasised that the answer to the FJYPB questions were that there will be quality people who will be properly trained; most importantly. This should not be admin staff but the highest quality people that resources can afford.
33. MR summarised that in terms of next steps she will, by the summer break, put together the guidance and working with LR, make any simple amendments on what the guidance is for and reasons for making such decisions. MR will circulate the final draft to members and send to the PFD either the end of next week or the beginning of September. In terms of the next meeting, it will depend on the President's availability and interaction with other groups. PFD will have a full TIG meeting in September.
34. MR advised that the next meeting will likely to be in the autumn following the PFD's input.
35. MR thanked everyone for their input, extremely useful discussions and for their hard work but particularly from LR and AM. MR acknowledged the burden imposed on all but expressed she was extremely grateful and wished everyone a good summer break.