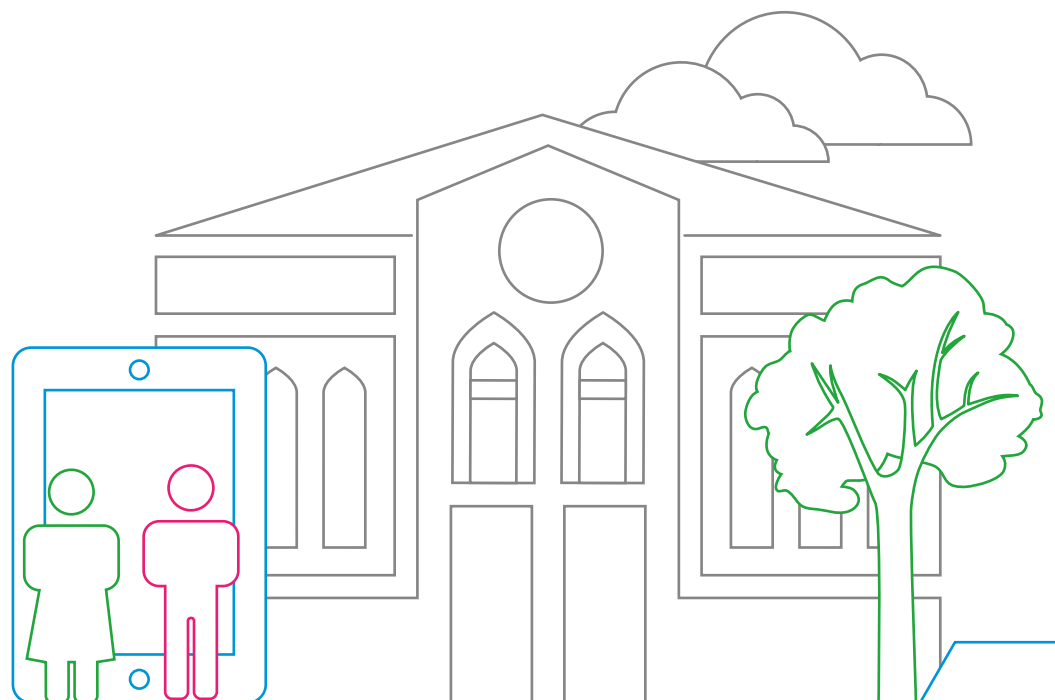




HM Courts &
Tribunals Service

Jurisdictional guidance to support media access to courts and tribunals

Family courts guide: access to, and disclosure of information from, family proceedings



Family courts

This section of the Guide relates to attendance at hearings by members of the media. The next section, below, deals with reporting information from proceedings.

References to the “family courts” are intended to cover both the family court and the High Court (Family Division).

Accredited media representatives and duly authorised lawyers (‘legal bloggers’) (referred to jointly in this document as “members of the media”) have a “presumptive right” to attend most family court hearings, and most family proceedings in the High Court. Although judges may refuse members of the media permission to attend in specific circumstances, the intention is that members of the media should be able to attend most hearings if they wish.

Being able to attend a hearing does not, however, entitle members of the media attending proceedings to report more than limited details about the case, particularly if the proceedings concern children and/or are held in private: see more details from Page 5 onwards.

Detailed guidance for the family courts on media access and reporting was developed in 2011 by the then President of the Family Division, supported by the Society of Editors. It can be found here: <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/family-courts-media-july2011.pdf>

Further guidance was issued by the current President of the Family Division, Sir Andrew McFarlane, in October 2019 and is available at <https://www.judiciary.uk/wp-content/uploads/2019/10/Presidents-Guidance-reporting-restrictions-Final-Oct-2019.pdf>

Hearings not open to members of the media:

hearings conducted for the purpose of judicially assisted conciliation or negotiation, such as Financial Dispute Resolution Hearings;

- hearings in applications for adoption, placement and related proceedings
- hearings in proceedings for parental orders under the Human Fertilisation and Embryology Act 2008; and
- hearings where the judge decides that members of the media should be excluded from the entire proceedings or for that particular hearing.

All other hearings in chambers/courtrooms (including those to be heard ‘in private’) are open to members of the media.

Where exclusion is proposed, members of the media are entitled to make representations to the judge. More details: https://www.justice.gov.uk/courts/procedure-rules/family/practice-directions/pd_part_27b

If a request is received from a member of the media to observe a court hearing conducted via the Cloud Video Platform (CVP) it will be referred to the judiciary for consideration.

Identification and accreditation

As outlined above, members of the media are allowed to attend most hearings in family proceedings which are held in private.

Members of the media, whether they are media representatives or duly authorised lawyers will be expected to carry with them identification sufficient to enable court staff, or if necessary the court itself, to verify that they are ‘accredited’ representatives of news gathering or reporting organisations or are duly authorised lawyers, within the meanings given in the Family Procedure Rules 2010.

Representatives of news gathering or reporting organisations will be expected to carry with them a card issued by the UK Press Card Authority. The production of this card will be required before courts staff can confirm accreditation.

Lawyers attending as “legal bloggers” will need to carry with them a form of identification which will enable courts staff to verify they are ‘authorised’. The following forms of identification are sufficient:

- A current practising certificate accompanied by picture identification of the lawyer and a signed written statement by the lawyer (see below for the content of that statement);
- Confirmation on headed notepaper from the relevant Higher Education Institution (or Law School, Faculty or Department of that Institution) of the lawyer’s position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer (see below);
- Confirmation on headed notepaper from the relevant registered educational charity (specifying the registered charity number) of the lawyer’s position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer (see below).

The written statement by the lawyer must confirm that the lawyer:

- is attending for journalistic, research or public educational purposes
- has no personal interest in the proceedings
- is not attending as an agent or instructed lawyer for any client
- is aware of and will abide by any restrictions on publication of information from the proceedings.

Depending on local staffing arrangements, a member of staff should escort the member of the media into the court and identify them to the judge, or the member of the media should knock on the door of the courtroom, enter, and identify themselves to the judge.

Access to documents in family cases

The only documents that court staff may give to a member of the media is the cause list and the copy of the reporting restrictions order if one is made. No other court documents are to be shown or given to members of the media unless the judge specifically directs this. Those who wish to see other documents must apply to the court. Different rules apply in appellate proceedings, where a member of the media is entitled to a copy of the judgment under appeal and the skeleton argument.

Family Procedure Rules Practice Direction 30B – Appeals

- Transparency provides for additional copies to be made of the judgment under appeal and the skeleton arguments to be supplied to the court to make available to members of the media the hearing of any appeal in the High Court And in the Civil Procedure Rules at Practice Direction 52C (paragraph 33) there is a requirement for parties to supply two extra copies of the skeleton arguments in any appeal to the Court of Appeal, including family cases, but with those in children cases redacted as necessary <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part52/practice-direction-52c-appeals-to-the-court-of-appeal>

Cause lists and identifying open/closed hearings

The cause lists will be the first indication of which hearings are in public (e.g. Decree Nisi/Conditional Order pronouncement hearings, Committal) that members of the media and other members of the public have a right to attend.

Cause lists for family proceedings concerning children which are printed for display must not show the names of the parties, because the children are entitled to anonymity. Where party names are not automatically deleted from the printed cause list, they must be removed.

Cause lists for hearings where members of the media are not allowed to attend (see above) should be edited to show clearly that the hearings are “not open to members of the media”. Cause lists should also display this warning where a previous order has been made excluding the media from the specific hearing, or the entire proceedings.

Each courtroom not open to members of the media should have a notice on the door “Accredited Media Representatives and Legal Bloggers may not enter this courtroom”. Members of the media might apply to the court for

permission to attend – and if the court consents, the notice on the door should be amended accordingly.

Members of the media: attendance in family cases – other issues

Members of the media are unlikely simply to wander into a hearing in the family court on the off-chance that there may be interesting cases on. However, in Combined Courts there may be days where members of the media may be present covering criminal trials. If they are at the courthouse on a sitting day, the question will arise about whether they can attend any particular hearing.

Courtroom seating

For each family hearing room, including chambers, court staff should consider the seating plan and identify seating available, or which could be made available, for members of the media. If there are more members of the media than seats available, seats should be allocated on a first come, first served, basis.

In some small courtrooms and chambers, there may be no separate seating area available for members of the media.

This is not a reason to refuse admission to members of the media. Consideration should be given, in discussion with the judge or bench and members of the media present, to:

- Moving the case to a different courtroom, if practicable;
- Or to seating them in general public areas of the court, or moving them to a separate room with appropriate audio-visual link so that they can see and hear all the proceedings (provided that your court has these facilities available).

Family courts - Disclosure of Information

Queries from members of the media: what information from or about family proceedings can be provided by court staff

It is not possible to draw up a definitive list of the questions members of the media might ask, but the following summarises the position for some of the most frequently asked questions:

- **Date and venue of the first/next hearing in a particular case**
 - Family proceedings not involving children: these details can be provided.
- Family proceedings involving children and adoption proceedings – it is acceptable to give this information to a member of the media, but not to the public in general or to a section of the public. This is because case law under Section 12 of the Administration of Justice Act 1960 indicates that its provisions do not prohibit publication of things like names and addresses and the date, time or place of a past or future hearing. However, section 97 of the Children Act 1989 prohibits the publication to the public in general, or to a section of the public, of either details intended, or likely to identify a child as being involved in proceedings under the Children Act 1989 or the Adoption and Children Act 2002, or an address or school of such a child.
- **Whether family proceedings involving children are pending/ongoing in relation to a person involved in criminal proceedings**
 - You should provide information in response to specific queries from individual journalists, but not to the public in general or to a section of the public. Generally, journalists need to know this information to ensure they are not in breach of reporting restriction provisions, particularly in relation to identifying children involved in proceedings. You can indicate whether such proceedings are ongoing or not.
- **Whether a reporting restriction order has been made**
 - It is important that where reporting restriction orders are made members of the media are told about them. If a member of the media asks about other aspects of a case and you are aware that a reporting restriction order has been made you should bring it to his/her attention. Members of the media should be given a copy of the reporting restriction order upon request. (DO NOT attempt to assess yourself whether the particular information is covered by the order).
 - You should provide factual information about any reporting restriction order but not advice on its effect or meaning. Members of the media should obtain their own legal advice if they are unsure.
- **Names and addresses of parties**
 - Proceedings not involving children: names of parties can be given to members of the media.
 - Proceedings involving children: names of parties can be given to members of the media, but not to the public in general or a section of the public.
 - Owing to data protection requirements, addresses of parties should not be given to members of the media, whether the case involves children or not.

Case details – provision of information about family cases

The relevant legislation, particularly in respect of children, is complex and may restrict the information which can be provided to members of the media. In some instances, members of the media might have to apply to the court for disclosure. Additionally, the court may have put specific reporting restrictions in place.

Always seek advice from the judge or family court legal adviser in the case if you are not sure if you can give information requested.

The relevant legislation includes:

- Section 12 of the Administration of Justice Act 1960: there are strict restrictions on what can be “published” from cases, including those relating to children, that are heard in private. “Published” in this context includes sharing information with others – it is not restricted to publishing in the media, for example. Members of the media should be aware of these restrictions. It is a potential contempt of court to publish information contrary to this Act.
- Section 97 Children Act 1989: where proceedings under the Children Act 1989 or the Adoption and Children Act 2002 are ongoing, this section restricts what may be published to the public, or a section of the public. In summary, nothing which might identify a child as being involved in proceedings may be published. It is a criminal offence to disclose information in breach of this section. Again, members of the media should be aware of these restrictions.

Divorce, dissolution of civil partnership etc cases

For cases in the bulleted list below, including judicial separation, divorce, dissolution and nullity, and dissolution, annulment or separation regarding a civil partnership, it is a criminal offence under section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926 to disclose information other than:

- the names, addresses and occupations of parties and witnesses;
- a concise statement of the “charges, defences and countercharges” in support of which evidence has been given;
- submissions on any point of law arising in the course of the proceedings, and the decision of the court on these;
- the summing-up of the judge and the judgment of the court and observations made by the judge in giving judgment.

The same applies to financial remedy cases which are taking place in connection with such applications (section 2 Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968).

It is important to note that there is caselaw about the privacy of information disclosed to the court in financial remedy proceedings, and the court may have put reporting restrictions in place, so you should always check with a judge before disclosing information from these types of proceedings to a member of the media.

If, however, the parties have children, you should check with the judge before giving out information which might identify a child as being involved in the proceedings.

even though it is not an offence to do so under the 1926 Act, data protection considerations mean that court staff should not disclose occupations or addresses of parties or witnesses without first referring this to a judge.

The position described above applies to the following categories of cases:

- all matrimonial causes and matters;
- all applications under Part III of the Family Law Act 1986 (declarations of status);
- all civil partnership causes and matters;
- applications under s.58 of the Civil Partnership Act 2004;
- applications under s.27 of the Matrimonial Causes Act 1973;
- applications under Part 9 of Schedule 5 to the Civil Partnership Act 2004;
- Marriage (Same Sex Couples) Act 2013.

Cases involving children

In family proceedings involving children you need to consider if the information requested by a member of the media relates to “identity information” or information about the detail of the case.

Identity information

Identity information concerns any information that could identify the child as being involved in proceedings, and will include their address or school. If in doubt, consult the judge.

Section 97(2) of the Children Act 1989 makes it a criminal offence to publish information which could identify the child whilst proceedings are ongoing. So, unless the court has made a specific order allowing publication of such information, there are limits on when such information can be published (to the general public or a section of it).

