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| **APPLICATION FOR ACCESS TO A VIDEO RECORDING OF CROSS-EXAMINATION AND RE-EXAMINATION MADE UNDER SECTION 28,**  **YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999**  *(Criminal Procedure Rules, rr.3.5(2)(k), 5.8(7) and 5.10; Criminal Practice Directions, para. 6.3)* |

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| This form is for use ONLY on an application for access to a recording or recordings of the cross-examination and re-examination of a witness under section 28 of the Youth Justice and Criminal Evidence Act 1999 FOR USE IN FAMILY COURT PROCEEDINGS. See also the important notes at the end of this form.  **Criminal court case details**  Name(s) of defendant(s): ……………………………………………………………………………………………..  Court: ……………………………………………………………………………………………………………………  Case reference number / URN: ………………………………………………………………………………………  Date(s) of section 28 recording(s) (if known): ………………………………………………………………………  Name(s) of the witness(es) whose evidence was recorded: ………………………………………………………  ……………………………………………………………………………………………………………………………  Age(s) of the witness(es): ……………………………………………………………………………………………..  If under 18, name(s) of parent or guardian: ………………………………………………………………………...  **Applicant**  Name of applicant: ……………………………………………………………………………………………………..  Applicant’s legal representative: ………………………………………………………………………………………  Address: …………………………………………………………………………………………………………………  CJSM email address:[[1]](#footnote-1) …….……………….……………………………………………………………………………  Telephone number: ……………………………………………………………………………………………………  **Do you want this application to be dealt with at a hearing?**  Yes  No  If yes, explain why**:**  **Family court case details**  Court: ………………………………………………………………………………………………………………….…  Case reference number: …………………………………………………………………………………………….…  Allocated judge (if known): …….………………………………………………………………………………………  Nature of proceedings: …..……………………………………………………………………………………….……  Date of next hearing: ……………………………………………………………………………………………….….  Date of any fact finding hearing (if known): ……..…………………………………………………………………..  *Parties and representatives:*  (1) Name: …………………………………………………………………………………………….…………………  Legal representative: ……………………………………………………………………………………………….…  Address: …………………………………………………………………………………………………………………  CJSM email address:1 …….……………….……………………………………………………………………………  Telephone number: ………………………………………………………………………………………………….…  (2) Name: …………………………………………………………………………………………….…………………  Legal representative: ……………………………………………………………………………………………….…  Address: …………………………………………………………………………………………………………………  CJSM email address:1 …….……………….……………………………………………………………………………  Telephone number: ………………………………………………………………………………………………….…  (3) Name: …………………………………………………………………………………………….…………………  Legal representative: ……………………………………………………………………………………………….…  Address: …………………………………………………………………………………………………………………  CJSM email address:1 …….……………….……………………………………………………………………………  Telephone number: ………………………………………………………………………………………………….…  (4) Name: …………………………………………………………………………………………….…………………  Legal representative: ……………………………………………………………………………………………….…  Address: …………………………………………………………………………………………………………………  CJSM email address:1 …….……………….……………………………………………………………………………  Telephone number: ………………………………………………………………………………………………….…  *[Add others as required.]*  **How to use this form**  1. Give the information required above.  2. At box 1 below give the reasons for the application.  3. At box 2 below name the people for whom access to the recording is sought. **Access requires a CJSM email account.**[[2]](#footnote-2)  4. Ask the family court judge to add comments at box 3 below.  5. Sign and date the completed form.  6. Send a copy of the form to the criminal court.  7. Send a copy of the form to each other party to the proceedings in each court.  If you use an electronic version of this form, the document will expand. If you use a paper version and need more space, you may attach extra sheets. |

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| **1) Reasons for application for access**  Is this application made at the direction of a family court judge?  Yes  No  Explain in detail for what purpose access to the recording of cross-examination and re-examination is sought. See the notes at the end of this form. |

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| **2) People for whom access is sought**  The applicant must list those for whom access to the recording is sought. Give their names and functions. See also the draft directions by the criminal court judge listed beneath.  This application is for access by the following:  ……………………………………………….…………………………………………………………………………….  ……………………………………………………….…………………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….…………………………………………………………….  ……………………………………………………………….……………………………………………………………. |

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| **3) Family court judge’s comments**  This box is for the family court judge’s use. If the applicant has asked the judge to comment (see the notes at the end of this form) the judge will make observations on the materiality of the recording to the proceedings in the family court.  Signed: …………………………………….……………..…………………………………………………………...…  Name: ………………………….……………………..…………..…..… [Judge]  [District Judge (Magistrates’ Court)]  [Justice of the Peace]  Date: …………………………. |

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| Signed: …………………………………….……………………………………………………………………………...  (applicant / applicant’s representative)  Date: ……………………………………………………………………………….. |
| **Criminal court judge’s decision**  I [allow] [refuse to allow] the access sought because:[[3]](#footnote-3)  *If the court allows access to the recording the court’s directions must be as follows, with only such adaptations as the court considers essential:*  1. Within 2 business days of this order the applicant must serve a copy on the family court and on all parties to the proceedings in the family court.  2. Within 10 business days of this order:   1. each advocate in the proceedings in the family court who wishes to view the recording must provide the applicant with that advocate’s individual CJSM email account details (if not already done);2 and 2. if the family court so requires, a member of the staff of that court must provide the applicant with details of a CJSM email account accessible only to staff of that court (if not already done).   3. Within 12 business days of this order the applicant must relay those account details to HM Courts and Tribunals Service.  4. Within [5 business days of the conclusion of the criminal trial, or retrial if there is one] [ …… business days of this order][[4]](#footnote-4) HMCTS must provide account links to:   1. each such advocate; 2. a member of the staff of the family court, or a justices’ legal adviser in that court if appropriate; and 3. the ejudiciary address of *[the judge of the family court]* ……………………………………………..   5. Access to the recording under this order is permitted (i) only on the following conditions, any breach of which will constitute contempt of the criminal court, and (ii) only on such other conditions of access as may be imposed by HMCTS consistently with these directions:   1. access is permitted only for the following purpose: *[define the purpose permitted by the criminal court]*   …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….   1. access is permitted only for the following persons: *[name those to be allowed access. See paragraphs (g), (h), (i) and (j) beneath.]*:   …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….  …………………………………………………………………………………………………………………….   1. access is permitted subject to any direction given by the criminal court which restricts the extent to which the defendant can see the recorded image of the witness; 2. the making of any recording or copy of the section 28 recording, and any attempt to make any such recording or copy, is prohibited; 3. the making of any transcript of the section 28 recording, or of any copy of such a transcript, is prohibited unless: 4. it is explicitly authorised in writing by a judge of the criminal court, or 5. the transcript is of proceedings in public in the criminal court during which the recording is played; 6. the dissemination of any account of the recorded evidence obtained from access under this order is prohibited, except among those who are party to the criminal proceedings, or to the request for access to the recording, or to the proceedings in the family court; 7. an advocate to a party to the application or to proceedings in the family court may view the recording alone and in private at any address; 8. the advocate for the applicant may view the recording at that advocate’s professional address, or at the applicant’s business address, or at the address of the family court, together with: 9. the applicant’s legal representative, 10. a member or members of the applicant’s staff who is named, or described by office or function, in this direction, 11. any expert witness in proceedings before the family court who is named or described in this direction, 12. any intermediary in proceedings before the family court who is named or described in this direction; 13. the advocate for any guardian appointed for the witness or for another person affected by the application may view the recording at that advocate’s professional address, or at that guardian’s business address, or at the address of the family court, together with that guardian and that guardian’s legal representative; 14. each advocate for any other party or person affected by the application may view the recording at that advocate’s professional address, or at the address of the family court, together with that advocate’s client, that client’s legal representative, and any interpreter or intermediary for that client; 15. identifiable members of the staff of the family court may view the recording at that court’s address: 16. together with the member or members of that court, 17. together with any expert witness in proceedings before that court, 18. together with any unrepresented party in proceedings before that court, and 19. during proceedings before that court in the presence of such participants as that court permits; 20. any advocate, and any member of court staff, who views the section 28 recording with others and otherwise than during proceedings before the family court is responsible for recording those others’ names and for those others’ adherence to these conditions.   6. Where an advocate to whom an account link has been supplied ceases to be instructed:   1. that advocate must so notify the applicant within 10 business days of that event; 2. the applicant must so notify HMCTS within 5 business days so that that link may be discontinued; and 3. a substitute advocate may be provided with a substitute link on the same terms.   7. Within 5 business days of the conclusion of the proceedings for which access to the recording is permitted the applicant must so notify HMCTS so that the links permitting access all may be discontinued.  Signed: ………………………………………..…………………………………………………………...…  Name: ………………………………………..…………..…..… [Judge]  [District Judge (Magistrates’ Court)]  [Justice of the Peace]  Date: …………………………. |

**NOTES FOR APPLICANTS**

1. A criminal court may give a special measures direction under [section 28 of the Youth Justice and Criminal Evidence Act 1999](https://www.legislation.gov.uk/ukpga/1999/23/section/28) for the video recording of a witness’ cross-examination and re-examination in advance of the rest of the trial. The recording is made for the criminal court itself, not for the prosecutor or the defendant. Access to the recording is controlled by the criminal court. In the interests of justice, including the integrity of the criminal proceedings and the rights and expectations of the witness, access is allowed only sparingly and is closely controlled. An applicant for access by someone who is not a party to the criminal proceedings must submit a request under [CrimPR 5.8(7) and 5.10](https://www.legislation.gov.uk/uksi/2020/759/part/5/crossheading/3). If the request is for the use of the recording in family court proceedings then [CrimPR 3.5(2)(k)](https://www.legislation.gov.uk/uksi/2020/759/rule/3.5) also applies.

2. The question for the criminal court is whether the public interest in restricting access to the recording is outweighed by the benefit of allowing access. Except for the parties themselves, access to a witness’ evidence in criminal proceedings usually is achieved by attending court when that evidence is given or by reference to records of evidence given in public, including by recording and transcription in the Crown Court. Benefits of access to a section 28 recording may include (i) relieving the witness of the burden of giving evidence again in related proceedings, and (ii) assisting a court in related proceedings to identify matters in issue in those proceedings. The principal factors of which the criminal court must take account include:

1. the reasons why access to the recording is sought and why no substitute is said to suffice;
2. whether access is to post-date or, exceptionally, to pre-date the criminal trial, and if the latter then how the integrity of the criminal trial can be protected; and
3. the witness’ own informed views, or if appropriate the views of a parent, guardian or other person responsible for the witness’ care, and the views of others assisting the witness.

3. The applicant’s request must:

1. identify the applicant and explain the applicant’s reason for making the request, including whether that is for the purposes of, or at the direction of, the family court. Any other request requires particular caution.
2. identify all those who are party to or affected by the request, their legal representatives and any who are not represented. (Criminal Procedure Rules, and this form, distinguish between legal representatives and advocates: see [CrimPR 2.2(1)](https://www.legislation.gov.uk/uksi/2020/759/rule/2.2).)
3. identify each witness to the recording of whose evidence access is sought, including the age of a witness who is under 18 and any such witness’ parent or guardian.
4. identify any intermediary, and any witness companion or supporter, assisting the witness in the criminal proceedings.
5. explain from whom, when, for what purpose, and under what circumstances, the applicant, or the family court for the benefit of which the request is made, obtained access to the video recording of the witness’ evidence in chief which is the subject of the criminal court’s direction under section 27 of the YJCEA 1999. This explanation will help the criminal court to understand and assess the request for access to the cross-examination.
6. explain in detail for what purpose access to the cross-examination is sought. The criminal court will not assume that evidence relevant to the criminal case inevitably will be relevant in related proceedings or circumstances. Another court’s assessment of the materiality of the recording to proceedings before that other court is likely to be compelling and if that court is dealing with related family proceedings then that court’s assessment of materiality may be all but determinative of that question. Ultimately, however, the criminal court is responsible for that assessment as part of the criminal court’s assessment of the public interest. The applicant should invite the family court judge’s comments accordingly.
7. give the date on which access to the cross-examination is sought, and if that date precedes the date of trial in the criminal court then explain what is proposed to avoid any risk of pre-trial publicity for the witness’ evidence or other potential prejudice to the criminal proceedings. Allowing access to the recording before the recorded evidence is given at trial in the criminal court requires particular caution, and robust protection for the integrity of the criminal proceedings. The privacy of proceedings in the family court will be a significant, but not the only, consideration.
8. explain why transcript of the witness’ evidence to the criminal court at trial will not suffice. Evidence given in the Crown Court usually can be transcribed.
9. identify those in addition to advocates for whom access to the recording is sought. Access to a recording by an unrepresented party can only be arranged under the superintendence of another party’s representative or a member of the staff of the family court.

4. Other parties and other participants must ensure that the criminal court receives, as well as their own representations:

1. the witness’ own informed views, or if appropriate the views of a parent, guardian or other person responsible for the witness’ care.
2. the views of all others affected by the request, including those of any intermediary, and any witness companion or supporter, assisting the witness in the criminal proceedings.

1. See “How to use this form” beneath. [↑](#footnote-ref-1)
2. To obtain an account, see <https://cjsm.justice.gov.uk/signup/how_to_apply.html>. [↑](#footnote-ref-2)
3. Delete as applicable, and give brief reasons for your decision. [↑](#footnote-ref-3)
4. Delete and complete as applicable. [↑](#footnote-ref-4)