

Practice Direction 20 April 2009

Attendance of Media Representatives at Hearings in Family Proceedings

This Practice Direction below is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by Bridget Prentice, Parliamentary Under Secretary of State, by the authority of the Lord Chancellor.

1. Introduction

1.1 This Practice Direction supplements rule 10.28 of the Family Proceedings Rules 1991 (“FPR 1991”) and deals with the right of representatives of news gathering and reporting organisations (“media representatives”) to attend at hearings of family proceedings which take place in private subject to the discretion of the court to exclude such representatives from the whole or part of any hearing on specified grounds.¹ It takes effect on 27 April 2009.

2. Matters unchanged by the rule

2.1 Rule 10.28(1) contains an express exception in respect of hearings which are conducted for the purpose of judicially assisted conciliation or negotiation and media representatives do not have a right to attend these hearings. Financial Dispute Resolution hearings will come within this exception. First Hearing Dispute Resolution appointments in private law Children Act cases will also come within this exception to the extent that the judge plays an active part in the conciliation process. Where the judge plays no part in the conciliation process or where the conciliation element of a hearing is complete and the judge is adjudicating upon the issues between the parties, media representatives should be permitted to attend, subject to the discretion of the court to exclude them on the specified grounds. Conciliation meetings or negotiation conducted between the parties with the assistance of an officer of the service or a Welsh Family Proceedings officer, and without the presence of the judge, are not “hearings” within the meaning of this rule and media representatives have no right to attend such appointments.

The exception in rule 10.28(1) does not operate to exclude media representatives from:

- Hearings to consider applications brought under Parts IV and V of the Children Act 1989, including Case Management Conferences and Issues Resolution Hearings
- Hearings relating to findings of fact
- Interim hearings
- Final hearings.

¹ It does not, accordingly, apply where hearings are held in open court where the general public including media representatives may attend as of right, such as committal hearings or the hearing of matrimonial or civil partnership causes.

The rights of media representatives to attend such hearings are limited only by the powers of the court to exclude such attendance on the limited grounds and subject to the procedures set out in paragraphs (4)-(6) of rule 10.28.

- 2.2 During any hearing, courts should consider whether the exception in rule 10.28(1) becomes applicable so that media representatives should be directed to withdraw.
- 2.3 The provisions of the rules permitting the attendance of media representatives and the disclosure to third parties of information relating to the proceedings do not entitle a media representative to receive or peruse court documents referred to in the course of evidence, submissions or judgment without the permission of the court or otherwise in accordance with Part 11 of the FPR 1991 (rules relating to disclosure to third parties). (This is in contrast to the position in civil proceedings, where the court sits in public and where members of the public are entitled to seek copies of certain documents²)
- 2.4 The question of attendance of media representatives at hearings in family proceedings to which rule 10.28 and this guidance apply must be distinguished from statutory restrictions on publication and disclosure of information relating to proceedings, which continue to apply and are unaffected by the rule and this guidance.
- 2.5 The prohibition in section 97(2) of the Children Act 1989, on publishing material intended to or likely to identify a child as being involved in proceedings or the address or school of any such child, is limited to the duration of the proceedings³. However, the limitations imposed by section 12 of the Administration of Justice Act 1960 on publication of information relating to certain proceedings in private⁴ apply during and after the proceedings. In addition, in proceedings to which s.97(2) of the Children Act 1989 applies the court should continue to consider at the conclusion of the proceedings whether there are any outstanding welfare issues which require a continuation of the protection afforded during the course of the proceedings by that provision.

3 *Aims of the guidance*

- 3.1 This Practice Direction is intended to provide guidance regarding:
- the handling of applications to exclude media representatives from the whole or part of a hearing: and
 - the exercise of the court's discretion to exclude media representatives whether upon the court's own motion or any such application

² See *GIO Services Ltd v Liverpool and London Ltd* [1999] 1 WLR 984

³ See *Clayton v Clayton* [2006] EWCA Civ 878

⁴ In particular proceedings which

- (a) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
- (b) are brought under the Children Act 1989; or
- (c) otherwise relate wholly or mainly to the maintenance or upbringing of a minor

3.2 While the guidance does not aim to cover all possible eventualities, it should be complied with so far as consistent in all the circumstances with the just determination of the proceedings.

4 *Identification of media representatives as “accredited”*

4.1 Media representatives 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 within the meaning of the rule.

4.2 By virtue of paragraph (8) of the rule, it is for the Lord Chancellor to approve a scheme which will provide for accreditation. The Lord Chancellor has decided that the scheme operated by the UK Press Card Authority provides sufficient accreditation; a card issued under that scheme will be the expected form of identification, and production of the Card will be both necessary and sufficient to demonstrate accreditation.

4.3 A media representative unable to demonstrate accreditation in accordance with the UK Press Card Authority scheme, so as to be able to attend by virtue of paragraph (3)(f) of the rule, may nevertheless be permitted to attend at the court’s discretion under paragraph (3)(g).

5 *Exercise of the discretion to exclude media representatives from all or part of the proceedings.*

5.1 The rule anticipates and should be applied on the basis that media representatives have a right to attend family proceedings throughout save and to the extent that the court exercises its discretion to exclude them from the whole or part of any proceedings on one or more of the grounds set out in paragraph (4) of the rule.

5.2 When considering the question of exclusion on any of the grounds set out in paragraph (4) of the rule the court should -

- specifically identify whether the risk to which such ground is directed arises from the mere fact of media presence at the particular hearing or hearings the subject of the application or whether the risk identified can be adequately addressed by exclusion of media representatives from a part only of such hearing or hearings;
- consider whether the reporting or disclosure restrictions which apply by operation of law, or which the court otherwise has power to order will provide sufficient protection to the party on whose behalf the application is made or any of the persons referred to in paragraph (4)(a) of the rule;
- consider the safety of the parties in cases in which the court considers there are particular physical or health risks against which reporting restrictions may be inadequate to afford protection;
- in the case of any vulnerable adult or child who is unrepresented before the court, consider the extent to which the court should of its own motion take steps to protect the welfare of that adult or child.

5.3 Paragraph (4)(a)(iii) of the rule permits exclusion where necessary “for the orderly conduct of proceedings”. This enables the court to address practical problems presented by media attendance. In particular, it may be difficult or even impossible physically to accommodate all (or indeed any) media representatives who wish to attend a particular hearing on the grounds of the restricted size or layout of the court room in which it is being heard. Court staff will use their best efforts to identify more suitable accommodation in advance of any hearing which appears likely to attract particular media attention, and to move hearings to larger court rooms where possible. However, the court should not be required to adjourn a hearing in order for larger accommodation to be sought where this will involve significant disruption or delay in the proceedings.

5.4 Paragraph (4)(b) of the rule permits exclusion where, unless the media are excluded, justice will be impeded or prejudiced for some reason other than those set out in sub-paragraph (a). Reasons of administrative inconvenience are not sufficient. Examples of circumstances where the impact on justice of continued attendance might be sufficient to necessitate exclusion may include:

- a hearing relating to the parties’ finances where the information being considered includes price sensitive information (such as confidential information which could affect the share price of a publicly quoted company); or
- any hearing at which a witness (other than a party) states for credible reasons that he or she will not give evidence in front of media representatives, or where there appears to the court to be a significant risk that a witness will not give full or frank evidence in the presence of media representatives.

5.5 In the event of a decision to exclude media representatives, the court should state brief reasons for the decision.

6 *Applications to exclude media representatives from all or part of proceedings*

6.1 The court may exclude media representatives on the permitted grounds of its own motion or after hearing representations from the interested persons listed at paragraph (6) of the rule. Where exclusion is proposed, any media representatives who are present are entitled to make representations about that proposal. There is, however, no requirement to adjourn proceedings to enable media representatives who are not present to attend in order to make such representations, and in such a case the court should not adjourn unless satisfied of the necessity to do so having regard to the additional cost and delay which would thereby be caused.

6.2 Applications to exclude media representatives should normally be dealt with as they arise and by way of oral representations, unless the court directs otherwise.

6.3 When media representatives are expected to attend a particular hearing (for example, where a party is encouraging media interest and attendance) and a party intends to apply to the court for the exclusion of the media, that party should, if practicable, give advance notice to the court, to the other parties and (where appointed) any children's guardian, officer of the service or Welsh Family Proceedings officer, NYAS or other representative of the child of any intention to seek the exclusion of media representatives from all or part of the proceedings. Equally, legal representatives and parties should ensure that witnesses are aware of the right of media representatives to attend and should notify the court at an early stage of the intention of any witness to request the exclusion of media representatives

6.4 Prior notification by the court of a pending application for exclusion will not be given to media interests unless the court so directs. However, where such an application has been made, the applicant must where possible, notify the relevant media organisations.

Sir Mark Potter
President of the Family Division