



## BACKGROUND

In October 2021, the President of the Family Division, Sir Andrew McFarlane recommended that journalists and legal bloggers should be able to report on what they see and hear in Court, subject to strict rules of anonymity.

Following a two year successful pilot, journalists are now able to attend Family Court Hearings. The aim of the Pilot was that, in designated areas, accredited journalists and 'legal bloggers' (i.e. 'duly authorised lawyers' for the purposes of Family Procedure Rules 2010, r.27.11) would be allowed to report on what they see and hear in court. The aim of the Pilot was to increase public understanding and awareness of the Family Courts.

The Pilot was staggered and first applied to public law care cases, then private cases (excluding financial remedy cases along with applications under the Family Law Act 1996, such as Non-Molestation Orders) and lastly to the magistrates courts.

Reporting of these cases is subject to the principles of protection of the anonymity of any children involved unless the Judge orders otherwise (the anonymity principle). In deciding whether to restrict reporting, the Court should balance the rights of the family and parties to a fair trial under Article 6 and to a private and family life under Article 8 and of the press, parties and public under Article 10 (or any other relevant rights which may be engaged).

In the case of Sara Sharif, a High Court Judge decided to release documents covering the family's case but did direct that the Judge's name shouldn't be published. Journalists have the right to appeal against decisions to withhold some information. In this case, the appeal was successful and the Judge's names were therefore made public. Sir Geoffrey Vos, Master of the Rolls and the most senior civil judge in England and Wales, found in favour of the media stating 'the whole idea of anonymising the judge was, I have to say, misguided'

Journalists will soon be able to report from any family court in England and Wales, as this is now in force.

## HOW CAN A JOURNALIST APPLY?

When a journalist attends a Hearing and wishes to report, they will need to ask the Judge to make a Transparency Order. Judges retain the power to decline a request but there is a presumption that these orders will be granted in every case, unless there is a good and legitimate reason not to.

## WHAT DO YOU NEED TO BE AWARE OF?



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Journalists can attend the Court hearing without giving notice to the Court or the parties. However, they are strongly encouraged to inform the Court and (if known) the parties of their plan to attend and report on that Hearing.

The method of attendance of the report should match that of the Hearing, this can be either attended, remote or hybrid.

Where a reporter attends the Hearing, issues of transparency should be dealt with at the outset of the hearing, if possible.

The Court retains discretion as to whether to direct that there should be no reporting of the case.

Unless the Court order otherwise, the following may be named:

- The local authority
- The director and assistant director of Children's Services within the local authority (but no other person from the local authority, including the social worker, without express permission of the Court)
- Cafcass (but not the children's guardian without express permission of the Court)
- Independent Social Workers appointed by the Court pursuant to FPR r.25 (but not Independent Social Workers instructed by the local authority only and taking the place of the social worker in the preparation of assessments or work with the child)
- Any NHS Trust
- Court appointed experts (but not treating clinicians or medical professionals)
- Legal representatives and judges

Parties and their advocates are expected to address the Court on whether a Transparency Order should be made, and to what extent at the start of that hearing. The draft Transparency Order sets out the default position and this should be used as a basis to raise any issues. Parties and advocates must consider the issue of transparency prior to the Hearing and this should form part of the agenda for every advocates' meeting or pre-hearing discussions. It should be noted that requests for adjournment on the basis that the advocates have filed to consider this issue prior to the Hearing may not be granted.

The Transparency Order allows family members to speak to journalists reporting under the Order without being at risk of contempt of Court. For parents, it should be noted that this does not allow them or any party to publish anything about their case. This includes commenting or interacting with any media posts, as this could lead to them or the child(ren) being identified.

## TRANSPARENCY ORDER

There is a standard form of Transparency Order. However, the Court has discretion to modify the terms of the standard order as appropriate due to the facts of the case. This can be done on the Courts own motion or by invitation. The standard Transparency Order states that it remains in place until any child to whom the proceedings relate reaches the age of 18.

The standard Transparency Order provides that certain information must not be reported to the public at large, or a section of the public, without the express permission of the Court. There are some restrictions as to what information can be made public. This includes, but is not limited to, anything that could identify the family, such as name, date of birth of any subject child, the name of the child's school or employer details, name of any medical professional involved, photographs or images of the child and parents or any identifying person, family members who are mentioned in the case, or whose name may lead to the identification of the subject child(ren). Where cases involve sexual abuse, reports are not allowed to enclose details of the alleged abuse.

For each hearing, the Court order must record the name and contact details of any journalist who attended and confirm that they have seen the Transparency Order.

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## DOCUMENTS

Journalists will be able to access, on request, copies of documents and be able to quote from documents drafted by advocates or the parties if they are litigants in person, subject to effective anonymisation. This includes case summaries, skeleton arguments, position statements, threshold documents and any other documents from the Court bundle, as long as parties are still kept anonymous and no personal details are shared. The Transparency Order will set out exactly what journalists can and cannot share in each individual case. Any requests for such documents by the journalist must be made at or before the Hearing that they are attending. Thereafter, a copy of the documents must be provided to the journalist at a hearing the journalist is attending or within a reasonable time thereafter.

The journalist must offer a secure email address for receiving the documents by professionals or lay parties. It is important to note that there are no GDPR implications for the party complying with the Order and sending over the documents.

If the journalist wishes to see any other document not mentioned to be disclosed within the Transparency Order, they must apply to the Court for permission. Such documents should not be disclosed to the journalist without that permission, even if the parties consent to its disclosure.

## About Pathfinder Legal Services Ltd's Childcare Team

We have a highly skilled team of Lawyers and Paralegals who have a wealth of both Public and Private sector experience concerning safeguarding children and children's welfare. Our Lawyers have extensive experience in conducting Advocacy in all tiers of the Courts, including undertaking the more complex cases, enabling continuity and consistency of service to be delivered. Our Team is able to use their expertise in understanding the "real" child protection landscape, including parameters of good practice, Social Work demands and Budgetary restraints. We are key contributors to the workings of the Local Family Justice Boards that our Clients serve, ensuring that we maintain regular and good dialogue with the local Judiciary and other Partner Stakeholders involved in child protection.

## About Pathfinder Legal Services Ltd

As a 'social enterprise law firm', Pathfinder Legal Services Ltd is one of the first of its kind to be established in the UK and is wholly owned by Cambridgeshire County and Central Bedfordshire Councils. We are experts in our field and provide a tailored legal service exclusively to the public and not-for-profit sectors, our clients are key, and our fees reflect this: our charging rates are substantially reduced and our billing system transparent. Our credibility, values and focus remain paramount to all that we do as a publicly owned legal service provider, with clients including Local Authorities, Integrated Care Boards, Foundation Trusts, Charities and Fire Services. In 2021 the firm was awarded 'Law Firm of the Year' (under its previous trading name of LGSS Law Ltd) at the prestigious Cambridgeshire Law Society's legal awards.

If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at [operations@pathfinderlegal.co.uk](mailto:operations@pathfinderlegal.co.uk)

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