



## **ACCESS BY THE MEDIA TO PRIVATE HEARINGS**

### **1 THE HEARINGS THE PRESS MAY ATTEND**

The new Rules, introduced on the 27th April 2009 apply to all Directions Hearings and Final Hearings governed by the Family Proceedings Rules 1991 that are currently held in private and all private law and public law children hearings governed by the Family Proceedings Courts (Children Act 1989) Rules. They do not, however, cover non-Children Act proceedings in the magistrates' courts.

The media are not entitled to be present at any hearing "conducted for the purpose of judicially assisted conciliation or negotiation." They cannot therefore attend FDR's or First Hearing Dispute Resolution appointments to the extent that they are used for this purpose. However, they would be able to attend parts of these hearings to the extent that they are not used for this purpose i.e. to give directions or adjudicate matters between the parties. They may not attend "conciliation/ negotiation meetings" where no judge is present.

### **2 WHAT THE MEDIA MAY REPORT**

Simply because the media is allowed to attend a hearing does not mean that they have a right to see documents that would otherwise be private, nor does it override the provisions of Section 12 of the Administration of Justice Act 1960 (which forbids publication of information relating to certain private proceedings) or Section 97(2) of the Children Act 1989 (which protects the identity of children involved in proceedings). Indeed, the persons between whom, and the circumstances in which information relating to proceedings may be communicated without risk of contempt of court, are specifically set out in the new rules. The very extensive list does not include communication by the media to the public at large.

While the court can give permission for communications to be made to a person or body not specifically allowed to receive information relating to proceedings, it is expressly stated that it shall not permit the communication to the public at large or any section of it of any information relating to proceedings.

It therefore appears, for the moment at least, that the media may attend some hearings but not report on the specifics of what takes place without risking being in contempt of court. It is suggested instead that their reporting will have to be of a more generalised nature commenting on "the processes involved and the principles by which decisions are made" (to quote the Lord Chancellor's foreword to Family Justice in View.)

### **3 EXCLUDING THE MEDIA**

The rules have been drawn to limit the power of the courts to exclude the media, presumably because it was recognised that without this there might well be little change in terms of media access.

The court may exclude the media only when it is necessary to do so to protect the interests of a child connected with the case; for the safety of a party or witness or person connected with them; for the orderly conduct of proceedings or if justice would be impeded or prejudiced by admitting them.

The court may exclude the media on its own motion or following representations made by a party, witness, guardian, officer of the service or Welsh family proceedings officer, or a child of sufficient age and understanding.

The President's Practice Directions set out the way in which the court should approach the question of excluding the media. Specifically the court must identify whether the risk to which such ground is directed arises from (a) the mere fact of media presence at the particular hearing, (b) the subject of the application or (c) whether the risk can be adequately addressed by exclusion of the media from part of the hearing only.

The court must also consider whether existing or court imposed reporting and disclosure restrictions would provide an adequate safeguard. However, where there is a question of a particular safety issue for a party or witness then the court must consider whether reporting restrictions alone will be adequate for their protection.

The court is also to consider on its own motion whether the media should be excluded in cases involving unrepresented vulnerable adults or children.

The Practice Direction also provides the possibility of exclusion of the media where the court room is simply inadequate to accommodate them (with court staff being enjoined to move high profile cases to larger court rooms where possible). A hearing should not be adjourned simply because the court room cannot accommodate the media if it will cause significant disruption or delay.

The media cannot be excluded simply for reasons of administrative inconvenience. Examples of where they might be excluded by reason of justice being otherwise impeded or prejudiced are given in terms of witnesses refusing to give evidence or being likely to give less than full and frank evidence in the presence of the media and where price sensitive information is being considered.

#### **4 PROCEDURE TO EXCLUDE THE MEDIA**

Generally the application will be by way of oral representations during the course of the hearing from which it is sought to exclude the media. Advance notice of the application should, if practicable, be given to the court, other parties and any representatives of the children. Prior notification by the court of the pending application for exclusion will not be given to media interests unless the court directs. Once the application has been made the applicant must, where possible, inform "the relevant media organisations". It is unclear how this will work in practice particularly with regard to who the "relevant media organisations" are. It does appear though that the media are unlikely in many cases to be able to make submissions through their legal representatives at applications to exclude them.

#### **5 HOW DOES THIS AFFECT YOU?**

I am informing you that should your case go to court the media may be present. This may be enough of a concern to you to deter you from pursuing proceedings and it is certainly something that you may wish to take into account during settlement negotiations. However I refer you to the limited use of the information above, and probably unlikely interest of the media save in high profile issues or Clients, in addition to the penalties of the contempt of Court.

#### **6 HIGH PROFILE CLIENTS**

Certain individuals will still be unwilling to have their personal lives exposed in front of the media even if they are reassured about the reporting restrictions. If the experience of other jurisdictions is anything to go by, most cases will attract no media interest. However, in cases involving high profile issues and/or clients media attention is inevitable (and sometimes fanned by one or both sides.) In such cases thought will need to be given about whether reporting and disclosure restrictions would provide sufficient protection for the parties. It cannot be assumed that they will not as the UK press is generally observant of such restrictions. However, in a world where information is easily disseminated on the internet and where

celebrity stories command high prices and are published in countries far beyond the writ of the English Court, a high profile client may be understandably nervous of having the world's media present at a private hearing. In such cases it is recommended that consideration is given to a separate application to exclude the media as soon as proceedings are issued.

## **7 WITNESSES**

Any Witnesses must be made aware of the right of media representatives to attend court. The court must be notified "at an early stage" of the intention of a witness to request the expulsion of the media. It is advised that witnesses should be informed in writing about the possibility of media attendance before they are called to give evidence and asked if they have any particular objection to the presence of the media. The Practice Direction also states that consideration should be given to an application to exclude the media where it is likely that a witness will give less than full and frank evidence (or refuse to give evidence at all) in the event that the press are present. This might be particularly important in, for example, an alleged child abuse case or in cases involving the admission of a criminal activity such as tax evasion. The extent to which the court will exclude the media in such cases remains to be seen.

## **8 SENSITIVE INFORMATION**

Consideration should be given to whether any information that may be disclosed at a hearing is sensitive such that its publication might endanger a party or person connected with the proceedings, or that it may be used to enrich a third party e.g. the whereabouts of wife seeking shelter from an abusive relationship or information about a company that is about to float. If it is likely that such information will be disclosed during the hearing, the advisability of an application to exclude the media from all or part of the hearing should be discussed with the client and, in suitable cases, with the other party. (It is possible that a joint application to exclude the media will carry greater weight with the court.)

## **9 IDENTIFICATION OF MEDIA**

Full details of all media representatives attending court should be obtained and their accreditation should be checked. In the event that a potential contempt of court is committed, it will be necessary to know who is likely to have committed it in any subsequent proceedings.

The Family Proceedings (Amendment) (No.2) Rules 2009 and  
The Family Proceedings Courts (Miscellaneous Amendments) Rules 2009

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