

This Cumbrian Local Practice Direction may be referred to in orders and other documents by the short form name CLPD8/2023

## CUMBRIAN LOCAL PRACTICE DIRECTION 8/2023

### The Transparency Pilot in Carlisle

#### APPLICATION

1. This Cumbria Local Practice Direction applies to all Public and Private Law Family Court Hearings taking place in Carlisle.
2. Carlisle is participating in the Transparency Pilot where press reporters and legally qualified bloggers (“P&LQBs”) may attend and report upon family proceedings.

#### MORE INFORMATION

3. Details of the Pilot and a Fact Sheet for parties explaining the Pilot can be found here: <https://cumbriadfj.info/transparency-pilot>.
4. The draft template Transparency Order (“TO”) is also available on the above page together with the Guidance from the President of the Family Division.

#### THE TRANSPARENCY PILOT

5. The Transparency Pilot is likely to be extended to Private Law proceedings from 15<sup>th</sup> May 2023. Prior to that date the Pilot applies to applications concerning a local authority (Care or Public Law Proceedings and applications for Deprivation of Liberty Orders).
6. At present the Pilot does not apply to the following types of cases:
  - a. Financial Relief Proceedings;
  - b. ‘stand-alone’ hearings in applications for adoption, placement and related proceedings;
  - c. hearings in proceedings for parental orders under the Human Fertilisation and Embryology Act 2008;
  - d. hearings in the Magistrates’ Court (whether conducted by Lay Justices or a District Judge sitting in the Magistrates’ Court); and
  - e. hearings where the judge decides that members of the media should be excluded from the entire proceedings or for that particular hearing.

#### AIM OF THIS CLPD

7. The aim of this CLPD is to set out the Court’s approach to the Transparency Pilot and the procedure by which the court will make decisions as to whether (a) to make a TO and (b) the procedure by which copies of that order may be obtained by journalists and legally qualified bloggers.

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## THE TRANSPARENCY PILOT

8. The Transparency Pilot aims to evaluate the effect of allowing P&LQBs to not only attend but also report anonymised details of family cases locally and nationally.
9. In order to be an effective Pilot in essence there is a rebuttable presumption that TOs are made in cases where P&LQBs attend. However, whether to make a TO or not is a matter for the individual judge hearing a case to decide, taking into account the circumstances of the case and the matters set out below.

## ATTENDANCE OF P&LBS

10. *Attendance* by reporters (and later qualified legal bloggers) at hearings has been permitted since 2009. Whilst the court has the power to exclude the media it can be explained to parties that in general terms they should only be prevented from being present in exceptional circumstances. However, the fact that a reporter is present does not mean that reporting will be allowed and the risk of attending cases that cannot then be reported resulted in a little take-up of the ability to attend.
11. A helpful guide to P&LQBs *attending* family court can be found in "[Jurisdictional guidance to support media access to courts and tribunals: Family courts guide.](#)" This page includes guidance of the type of accreditation that the court will accept as to identification etc.

## NOTICE TO PARTIES

12. It is important that parties participating in Care or Private Law cases know of the *possibility* that P&LQBs may attend a hearing.
13. Henceforth all cases which are issued in Carlisle should contain the following in the recital:

### Reporters in Family Court

It may be that reporters from the press will be present during any hearing you attend. They will not be able to report names or identifying information about the parties or any children involved. The Court may also restrict other details from being reported. Further information about this is available from <https://cumbriadfj.info/reporters-in-family-court>."

## NOTICE TO THE COURT

14. P&PBs are asked to notify the Court in advance in the event that they intend to attend a Court so that ID checks can be undertaken in advance. However, whilst a reporter will not be prevented from attending a hearing if this does not happen, it may lead to a delay.
15. This can be done by either telephoning the court office on 01228 882140 or emailing [cm-carlislefam@justice.gov.uk](mailto:cm-carlislefam@justice.gov.uk).

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## IDENTIFICATION FOR P&LBS

16. The identification requirements are the same as exist under the rules for P&LQBs attending court in non-pilot cases and can be found at paragraph 1.1 of [Jurisdictional guidance to support media access to courts and tribunals: Family courts guide](#).

## HOW THE COURT WILL DEAL WITH MAKING A TRANSPARENCY ORDER

17. At the beginning of a case at which a reporter or qualified legal blogger has attended the Court may briefly explain that attendance by reporters (and later qualified legal bloggers) at hearings has been permitted since 2009. Whilst the court has the power to exclude the media it can be explained to parties that they should only be prevented from being present where there are exceptional circumstances. However, the fact that a reporter is present does not mean that reporting will be allowed.
18. The priority for the court in every case is the welfare of the child and determining any issues pertinent to that will take priority over issues about reporting the case.
19. In short cases that have limited time allocated, the court may decide to deal with the child welfare issues first. The court will explain that its priority is the child(s) welfare and that decisions about what if anything any attending reporter will be able to report is likely to be dealt with at the end of the case, if there is time. This has the advantage of knowing what has happened at that hearing before a decision about a Transparency Order (“TO”) is made.
20. Where there is a dispute about reporting, the court will explain that the standard order prevents publication of any details that identify the child(ren) or the parties in the case. It may be appropriate to check that the parties have the ['Fact Sheet'](#). If not, they should leave court with one. This document also contains the warning against about parties publishing information themselves.
21. The court will ask the parties if they object to anonymised reporting. If a party does, the party will be asked their brief reasons as to why they object to anonymised reporting. If appropriate (and in particular if the court is minded not to make a TO) the court is likely to invite submissions or observations from the other parties and any reporters present.
22. The Court should be alert to the possibility of criminal proceedings related to issues in the case. In some cases it may be appropriate to not make a TO, alter the terms of the standard TO or delay the decision about making a TO either because of potential related criminal proceedings or ongoing criminal proceedings/investigation where there is a risk that even anonymised publicity could prejudice an investigation. In rare cases it may be appropriate to cause enquiries to be made of the relevant police force as to whether they wish to make any representations on the issue of reporting.
23. Alternatively, in some circumstances it may be appropriate to ‘embargo’ the reporting until after a certain date by the addition of a time restriction on the TO to prevent reporting before a certain date or event.
24. It may also be appropriate to provide for a copy of any TO (or any proposed draft) to be disclosed to the police so that they make representations if they wish.

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25. The Court will give a short judgment explaining its determination as to whether to make a TO (and the terms of any TO, if made) considering:
  - a. Article 8 - the right to privacy: To what extent is it likely that the child and families' right to privacy will be infringed by anonymised reporting in this case? Are there any specific factors that increase the real risk to the child's welfare if anonymised reporting is allowed in this matter?
  - b. Article 10 - the right to freedom of expression and the right of the free press to criticize the government and our public institutions without fear of prosecution - a vital feature of a democratic society. The Family Court exercises great power and anonymised scrutiny and debate is an important protection against overreach and state 'abuse' of power.
  - c. Are there any additions to the TO that would reduce a real possibility of risk to the child's welfare (including the welfare of any primary carer(s) which may impact on the child)?
26. The above summary of the balancing exercise is of course subject to more detailed consideration and guidance by way of case law in appropriate cases (see for example [BR & Ors, Re \(Transparency Order: Finding of Fact Hearing\) \[2023\] EWFC 9](#)).
27. In longer cases where there is more time, it may be appropriate to deal with the issue of reporting before the substantive case but the issues can be kept under review if circumstances change.
28. In shorter cases, if there is no time remaining to deal with the issue appropriately it is permissible to adjourn the issue to the next hearing and list the matter in such a way as to allow appropriate time for the issue to be considered. The court will indicate that the time allocated for the case has come to an end (e.g. other cases waiting etc) and that the issue of a TO will be dealt with on the next occasion. It should not normally be necessary to give directions as to the issue (unless the matter involves particularly complex matters of law) other than listing it as an issue for the next occasion and allowing time when considering the time estimate for that hearing. It is a matter for the specific journalist(s) whether they attend that hearing but the issue must be considered at that hearing even if the journalist(s) does not attend as they may still wish to report what they observed at the previous hearing.

#### OBTAINING A COPY OF THE TRANSPARENCY ORDER

29. If making a TO, the Court will explain the process by which the reporter(s) may obtain a copy and by when (i.e. a deadline by when the order *should* be available).
30. If a party is represented, the advocate for a party will be asked to email the TO and any other disclosed documents to any attending reporter(s).
31. A copy of the TO will be available from the court office on request by emailing [cm-carlislefam@justice.gov.uk](mailto:cm-carlislefam@justice.gov.uk). The email must indicate the case number and the judge before whom the case was heard. P&PBs are asked not to contact the court office until the timescale identified by the judge for the production of the order has been exceeded.

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32. The court's priority will be dealing with the production of the order about the child(ren) and the production of the TO will be dealt with as soon as time and other commitments allow. The Court Office will not be in a position to provide the TO before the timeframe identified at the hearing by the judge and should not receive requests prior to the time identified by the judge.
33. To allow P&LQBs to make appropriate plans with respect to any reporting they wish to undertake, if a 'standard' TO is to be made (i.e. no amendments to the matters that can be reported) it may be sensible for the court to give any P&LQBs attending a blank copy of the standard order). If additions/amendments to the TO are made, it would be sensible to explain what they will be in clear terms (e.g. the families' location may only be identified as being in 'Cumbria'). However, it should be explained that a TO only takes effect (and therefore matter from the case can only be reported) once it has been approved by the judge and sealed by the court.
34. A copy of the CLPD will is also available at <https://cumbriadfj.info/local-practice-directions-1>.

HHJ C Baker  
Designated Family Judge for Cumbria  
29<sup>th</sup> March 2023