



Association of **Lawyers for Children**

Promoting justice for children and young people

**President's Draft Guidance as
to Reporting in the Family Courts**

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Response of the Association of Lawyers for Children

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ALC Response to President's Guidance as to Reporting in the Family Courts

The ALC welcomes the opportunity to respond to the President's draft guidance on reporting in the Family Courts.

The ALC is a national association of lawyers working primarily in the area of public child care law. It has over 1200 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Associate members include legal practitioners, students and academics, Children's Guardians, social workers and other professionals such as medical experts.

The ALC exists to promote access to justice for children and young people within the legal system in England and Wales in the following ways:

- lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the welfare, health and development of children;
- providing a forum for the exchange of information and views involving the development of the law in relation to children and young people;
- a reference point for members of the profession, Governmental organisations and pressure groups interested in children law and practice.

The ALC position on the issue of transparency in Family Court proceedings has previously been set out in our response to draft Practice Guidance on transparency and a subsequent response to proposals for amendments to Civil Procedure Rules¹. In addition, the ALC has supported and funded, together with NYAS, research into the views of young people in relation to media access to and reporting of Family Court cases and in relation to publication of judgments from Family Court Proceedings and the development of guidance for Judges to assist with anonymisation and the

¹ ALC (2014) A response to Transparency – The Next Steps: a consultation paper from the President of the Family Division and ALC (2015) A response of the ALC to the proposal for the amendment to CPR Practice Direction 52C <https://www.alc.org.uk/publications/responses/?page=2>

avoidance of the identification of children in published judgments². In formulating its position on the issue of transparency, the ALC has drawn on the direct experience of its members, research into the views of children and young people and research which has considered international approaches to transparency in family court proceedings.

Our main concern is that during and after court proceedings children's interests are properly safeguarded and the primary objective of the court rules, legislation and associated practice directions and guidance in this field should be to safeguard children and young people, promote their welfare and thus protect their privacy (ALC 2014 & 2015).

The draft guidance currently out for consultation arises directly from the case of *Re R (A Child) (Reporting Restrictions) [2019] EWCA 482 Civ*, a successful appeal against a Reporting Restrictions Order (RRO). The opening paragraph of the guidance makes it clear that the background to the appeal '*demonstrated that there remained a need for greater clarity and guidance in relation to applications by journalists to vary/lift statutory reporting restrictions; the purpose of this Practice Guidance is to meet that need.*'

The first six paragraphs of the draft guidance set out the current legislative framework under section 12 Administration of Justice Act 1960 (AJA) and section 97 Children Act 1989, the relevant rules and processes set out in the Family Proceedings Rules 2010 and the details of the relevant practice guidance issued in 2014 on transparency and in 2018 on anonymisation in judgments. The remaining paragraphs of the guidance focus exclusively on the approach that courts should take to applications by journalists to vary or lift automatic reporting restrictions under the AJA 1960 and CA 1989.

Paragraphs 7 states that a formal application to lift reporting restrictions may not be necessary 'in many cases' and paragraphs 8.2 and 8.3 suggests that where a journalist or legal blogger has attended a hearing they can apply orally to lift

² Brophy J et al (2014) Safeguarding, privacy and respect for children and young people and the next steps in media access to family courts; Brophy et al (2015) A review of anonymised judgments on Bailii: Children, privacy and 'jigsaw' identification; Brophy J (2016) Anonymisation and avoidance of the identification of children: Judicial guidance <https://www.alc.org.uk/publications/>

restrictions, whether or not notice has been given and/or can apply by email to the court or judge's clerk, with copies going to the parties. It is the ALC view that any application must ensure that sufficient notice is given to all the parties, in particular to allow the child's legal representative and guardian to consider the request and/or seek instructions from the child. This seems to be addressed in paragraph 9.

While we acknowledge the point made in paragraph 8.1 that no formal application is required for a Court to consider whether to publish its judgment (2014 Practice Guidance on Transparency) we are clear that it will be important for all the parties have adequate time to consider any application to lift restrictions which is made orally or by email and in particular this includes time, where necessary and appropriate, to seek the views of the child.

We are pleased to see that paragraph 9 recognises that 'it will often be helpful for the court to adjourn for a short period to allow the parties to discuss the terms of the proposed order' but we would prefer to see this phrased more as an approach that **should** be taken in **all** cases. We agree with the guidance in paragraph 10 that oral submissions should be made where agreement cannot be reached.

We also agree that requiring the Judge to consider whether the judgment should be published in cases where reporting restrictions are lifted (para 11) is sensible and we are pleased to note the reminder of the importance of Judges taking account of the guide to anonymisation.

We welcome the suggestion in paragraph 12 that court 'may need' to consider whether additional reporting restrictions need to be imposed, for example to prevent identification of children and parents once the proceedings are over, but we would prefer a requirement that this is considered.

The suggestion in paragraph 13 of consideration of an adjournment to allow for further evidence or submissions is sensible but it might be helpful if the guidance provided examples of what may qualify as a 'sufficiently important case'.

We welcome the reminder in paragraph 14 of the importance of the balancing exercise that must be conducted between privacy and transparency (Articles 6, 8 and 10

ECHR) when the court is deciding whether or not to lift reporting restrictions. The ALC considers it to be of some importance that the best interests the child is weighed in the balance as part of the 'interests of others' under Article 8(2) ECHR. The guidance should also reflect the importance of the obligation under Article 3 of the UNCRC to ensure that the best interests of the child is a primary consideration in any decision concerning the individual child.

We welcome the guidance in paragraph 16 on the importance of a judgment which meets the requirements of natural justice in being clear about the reasoning behind the findings and conclusions.

We are particularly pleased to note from the *View from the President's Chambers* (May 2019) paragraphs 29-33 that the President intends to set up a 'Transparency Review' to be conducted over a period of time to allow for consideration of all available evidence, including from other countries, and all points of views. In all previous ALC responses on the issue of transparency we have called for such a proper consideration of all the issues which has to date been lacking. We look forward to further detail about timing and arrangements for this Review and the ALC welcomes the opportunity to participate in such Review.

The ALC has previously outlined the issues which are of concern to it in respect of publication of judgments and in summary those matters are as follows;

- There continues to be varying practices around the country in relation to publication and anonymisation of judgments
- There are ongoing issues about identifying factors in judgments
- Whether press access to family courts continues to be the best and most effective means of ensuring transparency
- The necessity of exploring and promoting alternative means of informing the public about the processes within family courts and family proceedings
- How best to hear and give due regard to the voices of children and young people

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