

Media access to family hearings

On 27 April 2009 representatives of the media were allowed for the first time to attend many private family hearings. This briefing note provides guidance concerning the hearings that the media may attend, what the media may report, the circumstances in which the media may be excluded and how the present position might be improved.

Mills & Reeve's Manchester team dealt with the first case in the High Court before Mr Justice Charles to address the issue, which was heard on the actual day the new rules were introduced and is reported as *X v X*.

Which media are entitled to attend

- The right to be present at hearings applies to “duly accredited representatives of news gathering and reporting organisations”.
- For these purposes UK Press Card authorisation will act as accreditation.
- The court can still allow attendance if no Press Card is shown.
- Solicitors acting for clients attending court are advised to check authorisation and to keep records of attendance.

The hearings the media may attend

- All directions hearings (this means preliminary and interim hearings); final hearings in the High Court and County Court that are currently held in private; and all private law and public law (care proceedings) held in the Family Proceedings Court (Magistrates Court).
- The press are not entitled to be present at any hearing which involves judicially assisted negotiation/conciliation. In practice, this means a Financial Dispute Resolution (FDR) hearing in financial proceedings on divorce, which is intended to encourage settlement of the dispute, with input from the judge.

What can the media report?

- The press will be able to report the processes involved and the principles by which decisions are made.
- The press will not have an automatic right to see documents that would otherwise be private.
- The existing rules on protecting the identity of children involved in proceedings still apply.
- In practice, there is no automatic right to report on the specifics of what takes place in court rather than the general processes and principles.
- Whilst there is no automatic right to see documents or to report on specifics, the court still has a discretion to allow such further reporting. In practice, however, the courts are generally taking the approach that further guidance is required, preferably in the form of further rules or at least through a decision of the Court of Appeal or House of Lords.

In what circumstances can the media be excluded?

- When it is necessary to do so to protect the interests of a child.
- For the safety of a party to the proceedings or witness or other person connected with them.
- For the orderly conduct of proceedings or if justice would be impeded or prejudiced by the press being there (for example if a witness is likely to give less than frank evidence or where price sensitive material is being considered).
- The court can make its own decision to exclude the media or can do so following an application made by, for example, any of the parties or a witness.
- If consideration is being given to excluding the media the court has to identify whether the risk of attendance comes from the mere fact of the presence at a particular hearing, the subject of the application or whether exclusion from part of the hearing only would address the problem.
- If the court is physically unable to accommodate press attendance and there is nowhere else suitable in the court building then this can be a reason for excluding. The court will not adjourn a hearing simply because the media cannot be accommodated.
- If there is to be an objection from a party or solicitors then notice should be given to the media and the court and the other party.

Summary/how things might be improved

- The overriding principle is that the press should be entitled to attend what were previously closed proceedings.
- However, what can be reported is still restricted. The current position is confusing and therefore unsatisfactory. The purpose of opening up the courts was to increase public confidence in the system and although these proposals are progress in this respect they do not go far enough.
- It would be better if journalists could report on specific cases, but with appropriate safeguards of anonymisation.
- There should be a family courts inspectorate set up to report on consistency within the courts.

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