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Response to	Family Procedure Rules Committee consultation on suspending the requirement to announce certain matters in open court (PD12K and PD10A)
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About the Magistrates Association

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Question 1

What do you see as the primary aims of these requirements for open court announcements?

- Making the conditions of an order clear to all parties within the formal setting of the court, so that the bench can ensure these are understood by the parties.
- Upholding the principle of transparency.

Question 2

What benefits, if any, are associated with abolishing the requirements contained in PD12K paragraph (1) and PD10A paragraph 3.1?

- We agree with the Committee's comments that 'it would be more likely the respondent would become aware of the terms of an order from service in any event, particularly as simply announcing someone's name in open court does not guarantee their awareness of announcement or of the specific terms of an order.'
- We would also note that due to the limitations of open court announcements, there may be a risk at times that announcing in open court could give a false sense of security to the applicant, particularly if it is not communicated clearly. This applies especially for litigants in person, for whom court processes can be more difficult to navigate and understand.

Question 3

What potential risks or unintended impacts, if any, might be associated with abolishing these requirements?

- There is a risk that parties may not fully understand the court's decision and conditions attached to an order, particularly if they are not represented by a lawyer but a litigant in person. If there is disruption to a party's legal aid, or the personal service of an order, then the absence of any mechanism to communicate its conditions through open court announcements could create further difficulties. Open court announcements allow for the conditions to be explained in full to the recipient, and to ensure they are clear in their understanding of what they must abide by.
- We would also point to ongoing criticism of the Family Court with regard to transparency, which is already under scrutiny – particularly with the number of remote hearings currently having to take place due to the pandemic. Abolishing these requirements could potentially be viewed as decreasing transparency, so we would be cautious about this step being taken.

Question 4

Are there any other potential safeguarding steps, beyond an announcement in open court and existing requirements as to service of orders that the courts could take to ensure that these orders are brought to the attention of respondents?

- We believe, if the requirement to make the announcement in open court is abolished, a comparable requirement relating to the personal service of the order on the recipient must be introduced, and an agreed process set out in the Rules. The provisions should include notification on the court file, once the service has been made.
- We believe that personal service on the respondent is the best option, but that whether or not this is done, it should be clearly stated within court documents. If service of an order is not possible through process servers and there are safeguarding concerns, then it may be appropriate in some cases for the police to serve an order (e.g. if a non-molestation order has been granted ex parte and there are known risks to the applicant's safety). However, we acknowledge that the involvement of the police in this area can carry a risk in terms of public perception around the independence of the courts, as well as being difficult to resource in a manner which ensures that service of the order is done in a timely way.
- The court must be satisfied that the respondent has personally been served the order; this applies particularly to return hearings where non-molestation orders have been granted ex parte.
- Depending on the outcome of a hearing, open announcements can be useful on return hearings; where a non-molestation order is granted ex-parte and a respondent attends the return hearing and accepts the conditions of the order, this can be an effective way of ensuring the conditions are understood. If the respondent challenges the order and a fact finding hearing is scheduled, then making an open announcement is imperative.

Question 5

Do you think the FPRC should abolish the requirements contained in PD12K paragraph (1) and PD10A paragraphs 3.1 and 3.2?

- We recognise that there may be more practical means of ensuring a respondent is personally aware of an order – for instance, where a non-molestation order has been granted ex-parte and the respondent is unaware of the order, only personal service can ensure the order and warning of the power of arrest for breaching it is made explicitly known to them. However, the Family Court is a court of record, and we consider that in the interests of transparency, as well as for the benefit of parties, open announcements should remain.
- We would suggest that, rather than abolishing open court announcements altogether, there should be a requirement for the court to make clear in each case how an order should be served, and in what way. If an order is served by the police, it should be made clear to the recipient that it is a court order rather than a police directive, and there should be a clear process set out by which parties can ask questions about the order and its conditions.
- We would also suggest a requirement for the court to be notified of the service of an order, so that court records can be updated accordingly. If it is not possible for the court to specify how an order should be served, then it should remain a requirement that an open court announcement be made.