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Response to	Consultation on Practice Direction 36J Pilot Scheme: Transparency (Attendance at Hearings in Private)
Issued by	Family Procedure Rules Committee
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About the Magistrates Association

The Magistrates Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

Consultation questions

Question 1

Do you think accredited legal bloggers should be permitted in to attend hearings in family proceedings?

We support the need for greater transparency to improve overall understanding of, and confidence in, the family court in the interests of open justice. Efforts to achieve greater transparency must be done with the rights of the child as the paramount consideration; decisions about what is in the child's best interests should come first, and decisions about transparency should then be made from the perspective of how transparent it is possible to be without infringing on the child's rights.

Transparency is important for the family justice system for a number of reasons: it improves wider public understanding of the system, which is crucial as the hearings themselves are closed. Allowing observers to attend hearings provides a level of scrutiny which can impact on public confidence about the fairness of family court processes. The more that is known about how the family court actually operates, the better the public will understand the complex issues which come before the court; this is particularly important for those who may need to engage with the family court at some point in their lives, and for children about whose future the court has had to make decisions.

We believe that, with the necessary safeguards in place, accredited legal bloggers should be permitted to attend family court hearings. Moreover, those who do attend hearings are likely to have the necessary knowledge to understand the processes involved, which should ensure greater accuracy of reporting than that which is sometimes seen in the mainstream media.

Question 2

Are there any restrictions that should be put on them alongside any existing restrictions?

We consider the restrictions set out in the modification of Rule 27.11 of the FPR 2010 and Practice Direction 27C at the outset of the pilot to be robust. However, we would draw particular attention to the need for the court to consider the views of all parties, with a focus on any vulnerable people who may be involved in, or subject to, proceedings.

Rule 27.11 provides for the court to direct that anyone present in court as set out in FPR 27.11 (2) (f) shall not attend the proceedings or any part of them, where this is necessary, in the interest of any child connected with the proceedings, for the safety or protection of any person involved with proceedings, for orderly conduct, or where justice would otherwise be impeded or prejudiced. We believe these safeguards are important, and should remain in place.

Rule 27.11 (5) also states that parties involved in proceedings can make representations to the court regarding the restriction of attendance of certain persons, including legal bloggers attending as part of the pilot scheme. We support this, and would highlight here the importance of making this clear to all relevant parties at the outset of proceedings, and revisiting this regularly throughout proceedings where necessary.

We would suggest that particular consideration is given to any such parties who have requested special measures, and those for whom the presence of individuals such as journalists or legal bloggers could be detrimental. Attending family court as a party can be a difficult and intimidating prospect, and those involved who do not possess an in-depth knowledge of the Family Procedure Rules should have their rights under those Rules made clear to them throughout proceedings. This applies particularly to litigants in person, who cannot be reasonably expected to know these rules, and may need advice on how they can make representations under this provision.

Question 3

Under the pilot scheme, the blogger must show evidence that they belong to a professional legal group and sign a declaration that attendance is for “journalistic, research or public legal educational purposes”. Do you think that this provides the necessary safeguards to protect the needs of children and families who are parties to, or subject of, family proceedings?

We consider the measures listed in FPR 27.11, and those mentioned in the President’s Guidance as to Reporting in the Family Courts (referring to Section 12 of the Administration of Justice Act 1960 and Section 97 of the Children Act 1989), to be adequate. Confirmation of photo identification of any legal bloggers in attendance, alongside certifying documents and the signed written statement described in Practice Direction 27C (as modified), should remain standard, to ensure this safeguard is maintained.

Question 4

The need to protect the individual who is the party to, or subject of, proceedings, even from inadvertent reporting on social media is paramount. Do you think that the proposals in place under the pilot go far enough in doing so and have you any concerns or suggestions for improving this area?

We believe that the President’s guidance as to reporting in the family courts, in conjunction with his guidance on anonymisation for judgments which are intended for publication, make clear what sanctions may be imposed on any persons who publish information contrary to the court’s direction

relating to such proceedings, in any form. Any contempt of court committed by an accredited person as described in Practice Direction 36J should be treated with the utmost seriousness, particularly considering their likely level of understanding of such matters. We recognise that it is ultimately impossible to prevent information reaching social media in this way in all circumstances (hence the need for sanctions to be applied subsequently), but we support the proposals under the pilot scheme.

As we noted in response to the consultation on the President's Draft Guidance in the summer of 2019, at the moment magistrates rarely deal with requests to lift reporting restrictions but as transparency increases, especially with legal bloggers being able to observe and report on cases, it may become more common for these cases to be seen in the lower tier of family court. If this happens, legal advisers will obviously be key in providing advice on all legal considerations, but it may be useful for magistrates to receive training on the implementation of this guidance. This would ensure they understand the risks entailed with greater transparency, the potential benefits to oversight and public confidence, and how the different rights engaged should be balanced.

We would also suggest that training should be available to all members of the judiciary and other relevant court staff to ensure they are familiar with the anonymisation process to avoid the potential for jigsaw identification arising from published judgments as far as is possible.