



JUDICIARY OF
ENGLAND AND WALES

MR JUSTICE MOSTYN
HIS HONOUR JUDGE HESS

29 October 2021

**CONSULTATION ON A PROPOSAL FOR A STANDARD REPORTING
PERMISSION ORDER IN FINANCIAL REMEDY PROCEEDINGS**

1. We are pleased to announce a consultation on a proposal to enhance the transparency of, and public confidence in, financial remedy proceedings in the Financial Remedies Court (“FRC”). It is issued with the authority of the President.
2. Attached is a proposed standard reporting permission order (“RPO”) for those financial remedy cases which are not ‘children proceedings’ as defined by FPR 25.2(1)(a)¹. Such cases represent the overwhelming majority of work undertaken in the FRC.
3. The primary purpose of the proposed RPO is to codify and clarify the existing rules concerning the reportability of financial remedy proceedings so as to achieve a better balance between privacy of the parties, on the one hand, and transparency and freedom of expression, on the other.
4. We are seeking views on the proposed RPO.
5. It is proposed that in every such financial remedy case the RPO should be issued by the gatekeeper, with the approval, and in the name, of the applicable FRC zone lead judge, as a standard step immediately following the filing of the Form A. The RPO can be reviewed at the first appointment. We are seeking views on this suggestion also.
6. We emphasise that we are not seeking to change any existing legal standards. Rather, the proposal does no more than to continue to preserve the essential privacy rights of the litigants while at the same time giving meaningful expression to the right of the press and legal bloggers not merely to attend hearings but to comment on and debate the process. We judge that public confidence in the work of the FRC would be greatly enhanced if the public knew what was being done in the public’s name.
7. It is not proposed that the default position under FPR 27.10 of the hearing being held in private, but with journalists/legal bloggers being entitled to attend under FPR 27.11, should be altered. To change this default position would require an amendment to the FPR. It is considered that to provide in a standard order for every case to be heard in open court would be of questionable lawfulness given the terms of the FPR.

¹ That definition states: “Children proceedings means proceedings ... which relate wholly or mainly to the maintenance or upbringing of a minor.” Such proceedings are governed by s.12 Administration of Justice Act 1960 where different considerations may apply.

8. The existing rules are arguably contradictory. Superficially, a journalist/legal blogger entitled to attend the hearing under FPR 27.11 can publish a fairly full report of the case. The journalist/legal blogger can name the parties; publish photographs of them; in very general terms outline the nature of the dispute; and report anything about the parties and the case that is already in the public domain: see *Appleton & Anor v News Group Newspapers Ltd & Anor* [2015] EWHC 2689 (Fam). In theory, the journalist/legal blogger can report anything heard during the proceedings. Also, there is no legal requirement that a journalist/legal blogger must have been present at the hearing in order to be allowed to publish a report about it.
9. It is important to recognise that, in contrast to cases about the welfare of children, there is no ban, in the absence of an order of the court to the contrary, imposed on a journalist/legal blogger attending the hearing (or indeed a journalist/legal blogger who has not attended the hearing but who is entitled to do so) on naming the parties to a financial remedy proceeding.
10. However, this entitlement to report is subject to three important restrictions, the latter two of which effectively emasculate it and ensure that no meaningful report of a case can ever be made.
11. First, the parties' children are generally not named and their schools not identified (see *K v L (Non-matrimonial Property: Special Contribution)* [2011] EWCA Civ 550). Of itself, this is a reasonable restriction having regard to the children's Article 8 right to a private life.
12. Second, case law establishes that financial information obtained from the parties under compulsion is protected and may not be referred to in a published report without the leave of the court (*Clibbery v Allen (No 2)* [2002] EWCA Civ 45, *Lykiardopulo v Lykiardopulo* [2010] EWCA Civ 1315, *Cooper-Hohn v Hohn* [2014] EWHC 2314 (Fam)).
13. Third, the journalist/legal blogger is not allowed to see any documents without the leave of the court. All financial remedy cases are heavily document-based. All the key evidence is in writing and the main submissions on the law and the facts are in written skeleton arguments. Without sight of these documents a journalist/legal blogger cannot begin to understand what the case is about, and the right to attend and report the hearing is largely rendered meaningless.
14. This does not represent a fair balance of, on the one hand, the right to privacy in relation to financial information extracted under compulsion, and, on the other hand, the merit of transparency of the court process and the right to freedom of expression by the press.
15. The proposed RPO therefore contains terms which relax the existing prohibitions. These terms are made pursuant to the common law and to s.1(4) of the Judicial Proceedings (Regulation of Reports) Act 1926². The terms do not alter the default

² See *Clibbery v Allen (No 2)* [2002] EWCA Civ 45 at [72] as to the common law. There is some controversy as to whether the 1926 Act applies to financial remedy proceedings. If it does then the permission should be granted under s.1(4) which provides so far as is relevant "Nothing in this section shall apply tothe publishing of any notice or report in pursuance of the directions of the court..." See *Rapisarda v Colladon* [2014] EWFC 1406 at [31] – [35].

position of the hearing being in private but with authorised commentators allowed to attend, set out above.

16. The proposed RPO provides straight-forward and self-explanatory machinery in para 4 for a journalist/legal blogger to have sight of the documents containing the key protected financial information, subject to strict conditions. The protected financial information is listed in para 5 of the RPO. Sight of those documents will allow the journalist/legal blogger to understand what the case is about. The conditions will ensure that the journalist/legal blogger is supplied with only those documents containing protected financial information which are necessary to understand what the case is about; that the documents are not bandied about; and that they are destroyed at the latest six months after the case is over.
17. Then there is the issue of whether, and if so to what extent, the journalist/blogger should be allowed to refer to the protected information in the published report.
18. Inevitably, most of the key evidence in the case will derive from the protected information. If there is an absolute bar on a journalist/legal blogger referring to any of it then, again, the ability to write a meaningful report is eradicated. Therefore, the draft RPO provides at para 5 that the embargo on use of protected information is subject to a proviso which allows the journalist/blogger to publish a broad description of (i) the types and amounts of the assets, liabilities, income, and other financial resources of the parties, without identifying the actual items, or where they are sited, or by whom they are held, and (ii) inasmuch as the open proposals of the parties are based on protected information a broad description of them giving only the monetary value of the proposals and without identifying actual items.
19. Armed with this basic information, the journalist/legal blogger can say how much the case is worth and what the parties are arguing about. Without this information the journalist/legal blogger could not hope to write a newsworthy, or even intelligible, report.
20. It is considered that the proposed RPO fairly balances the right of the press and legal bloggers to report meaningfully with the essential privacy rights of the parties and the children.
21. Importantly, it should be noted that para 3(d) of the proposed RPO leaves the reportability of a judgment governed by its rubric (if any) or by any order made on the judgment being issued. Commonly, the judgment will be anonymised and the rubric may stipulate preservation of the anonymity. Nothing here seeks to alter that regime although anonymisation may be futile if there has been contemporaneous reporting of the proceedings pursuant to the terms of the proposed RPO.
22. Comments are invited on this proposal by 26 November 2021. Comments should be sent to HMCTSFinancialRemedy@justice.gov.uk



In the Family Court
sitting at [Court name]

No: [Case number]

[The Judicial Proceedings (Regulation of Reports) Act 1926]

[The Matrimonial Causes Act 1973]

[The Civil Partnership Act 2005]

(ADAPT AS NECESSARY)

The [Marriage] / [Partnership] of [applicant name] and [respondent name]

(ADAPT AS NECESSARY)

After consideration of the documents lodged by the applicant

**ORDER MADE BY [NAME OF JUDGE] ON [DATE] WITHOUT A HEARING
PURSUANT TO THE COMMON LAW AND/OR SECTION 1(4) OF THE JUDICIAL
PROCEEDINGS (REGULATION OF REPORTS) ACT 1926**

The Parties

1. The applicant is [applicant name]
The respondent is [respondent name]
(SPECIFY IF ANY PARTY ACTS BY A LITIGATION FRIEND)

**TAKE NOTICE THAT ANY PERSON OR BODY AFFECTED BY THIS ORDER
WHO BREACHES PARAGRAPHS 3 or 4(f)-(h) WILL BE LIABLE TO BE HELD IN
CONTEMPT OF COURT AND MAY FACE IMPRISONMENT FOR UP TO TWO
YEARS, AN UNLIMITED FINE AND/OR SEQUESTRATION OF ALL OF THEIR
ASSETS.**

IT IS ORDERED THAT:

2. Subject to paras 3, 4 and 5 below, it is lawful for a duly accredited journalist or a duly authorised lawyer attending for journalistic, research or public legal educational purposes (“a legal blogger”) present, or who is or was entitled to be present, in court pursuant to FPR 27.11 during the proceedings to publish to any section of the public, or to the public generally, anything heard or read by the journalist/legal blogger concerning the proceedings including, but not limited to, any of the following:
 - a. the names of the parties;
 - b. photographs of the parties;
 - c. a description of the factual, evidential or legal issues in the proceedings including the open proposals made by the parties;
 - d. quotations from, or information derived from, any documents filed in the proceedings (“the filed documents”), including, but not limited to, witness statements, replies to questionnaire, voluntary disclosure and position statements;
 - e. quotations from, or summaries of, the oral evidence of witnesses, or of the submissions of the advocates, or the comments of the court;
 - f. quotations from, or summaries of, the judgment and order disposing of the proceedings.

3. The publication permitted by para 2 above:
 - a. may not name the minor children of the parties or their schools (but may state the county in which the children live);
 - b. does not permit a photograph of those children to be published;
 - c. may not refer to any of a party’s financial information given under compulsion (as defined in para 5 below) save to the extent that any such information is already in the public domain (“the protected financial information”);
 - d. may only refer to, quote from, or summarise the judgment and order disposing of the proceedings, to the extent permitted by the rubric (if any) to the judgment or any order made on the judgment being issued.

4. For the purpose of making the publication in para 2 above:
 - a. the journalist/legal blogger shall be given copies of such of those filed documents as shall be sought by the journalist/legal blogger in an email addressed to the party who owns or controls those documents (“the requested documents”) and sent no earlier than 28 days before the hearing which is intended to be reported, and no later than 28 days after that hearing;
 - b. the requested documents shall be strictly confined to those which are necessary to enable the journalist/legal blogger to comprehend the factual, evidential or legal issues in the proceedings;
 - c. the copies of the requested documents shall be promptly emailed to the journalist/legal blogger in PDF format by the party who owns or controls the requested documents (“the provision email”);
 - d. the provision email shall specify which of the requested documents are claimed to be protected;
 - e. the provision email may reject a request for documents which is considered to be exorbitant, unfocused or otherwise disproportionate;
 - f. the copies of the requested documents provided under (c) above:
 - i. may only be used by the journalist/legal blogger for the purposes of the publication, and not for any other purpose, and

- ii. may not be shown by the journalist/legal blogger to any person other than editors or other staff in the publishing organisation, or for the purpose of obtaining advice;
 - g. the copies of the requested documents shall be destroyed by the journalist/legal blogger no later than six months after the date of the order disposing of the proceedings unless in the meantime a different order has been made by the court; and
 - h. upon destruction of the copies of the requested documents pursuant to (g) above the journalist/legal blogger shall serve by email a confirmatory certificate on the parties and shall send the same to the court.
5. Subject to the proviso below, financial information is to be regarded as given under compulsion, and therefore protected, where:
- a. it derives from pre-action disclosure given pursuant to FPR PD 9A para 2.1;
 - b. it derives from a party's Form E, Form E1 or Form E2 filed pursuant to FPR 9.14(1) or 9.19(1);
 - c. it derives from answers to questionnaire or disclosure of documents given pursuant to an order of the court under FPR 9.15(2), 9.16(1)(b), 9.17(9)(a), 9.20(3) or otherwise;
 - d. it derives from the filing of written evidence, chronologies or schedules pursuant to an order of the court under FPR 9.15(3), 9.20(3) or otherwise;
 - e. it derives from a report of an expert witness pursuant to an order of the court under FPR 9.15(3)(b), FPR Part 25, or otherwise, or from any information given to an expert for the purpose of the making of their report; or
 - f. it derives from oral evidence or submissions, written or oral, based on the material in (a) – (e) above.

Proviso:

In order to enable a journalist/legal blogger to publish a meaningful and intelligible report of the proceedings, the following shall not be regarded as protected financial information:

- (i) a broad description of the types and amounts of the assets, liabilities, income, and other financial resources of the parties, without identifying the actual items, or where they are sited, or by whom they are held; and
 - (ii) inasmuch as they are based on the material in (a) – (e) above, a broad description of the open proposals of the parties giving only the monetary value of the proposals and without identifying actual items.
6. This order shall be reviewed, if necessary, at the first appointment. In addition, there shall be liberty to any party, or any journalist/ legal blogger affected by this order (“the affected persons”), to apply to vary its terms on giving no less than 24 hours’ written notice to all the other affected persons. Such an application may be made among other reasons (i) to clarify whether an item of financial information is, or is not, protected; (ii) to determine whether a request for documents by a journalist/legal blogger has been reasonably rejected under para 4(e); or (iii) to restrict or relax the terms of para 3 above.
7. No order as to costs.