

THE TRANSPARENCY PILOT

NOTE FROM THE VICE PRESIDENT OF THE COURT OF PROTECTION

There is no time or in my view need for a training event on the implementation of this pilot. However, I hope that this note will assist.

It is a public document and I will be providing it to representatives of the media.

The aim

As the background note published on 19 November 2015 makes clear the aim of the pilot is to effectively reverse the existing default position of private hearings.

This means that there will have to be a good reason for not making an order that an attended hearing is to be in public including an anonymity order in terms of or based on the standard order (the Pilot Order).

If an applicant or anyone else wishes to make an application that a Pilot Order should not be made that application must be accompanied by a statement of the reasons for and the evidence in support of it.

Different considerations could apply to decisions relating to the attendance by the public at large or by duly accredited representatives news gathering and reporting organisations (see paragraph 2.5(1)(f) of the Practice Direction). The reasons and evidence relied on must address this.

If the court decides not to make a Pilot Order it is important that the reasons for this are set out and recorded. Accordingly, I invite every judge who decides on an application or on his or her own motion not to make a Pilot Order to give a judgment (generally on the basis that it is a public document) setting out:

- the reasons why he or she did so (including if it be the case that he or she did not make a Pilot Order permitting duly accredited representatives news gathering and reporting organisations to attend the attended hearing), and
- who took part in any application that, or the consideration of whether, a Pilot Order should not be made.

The judges will be invited to send a copy of that judgment or details of when it was given so that it can be transcribed or an explanation why one has not been given to the Vice President of the Court of Protection.

MoJ Policy will be accepting comments throughout the duration of the pilot, which will, in turn, be considered by the Rule Committee, as part of its consideration of the implementation of the pilot and so of what recommendations it should make for changes to the pilot and the Rules. An address will be provided.

More generally judges will be invited to provide feedback on the pilot at a workshop to be supported by MoJ Analytical Services. This will take place a few months after the start of the pilot.

The description of what the case is about

It is hoped that this will be incorporated into the short title of any judgment.

The reference to the application in the definition of “attended hearing” in paragraph 2.2 of the Practice Direction is to the application to be addressed at the relevant hearing. This reflects the intention that the pilot is to cover directions hearings as well as final hearings and the description should indicate which type of hearing it is.

It is intended that a general description list (and any updates) will be published.

Notification of the media and others

The practice direction takes precedence over Practice Direction 13A (see paragraph 1.2).

The media and others will not normally be notified on a case by case basis that the court will be considering whether or not to make a Pilot Order under Rule 92. Such a process is unnecessary because any such order will be based on the standard form and will generally be made pursuant to the Practice Direction.

Also, such a process would not be practicable and would cause unnecessary delays and expense.

However if the court is of the view that it may make significant alterations to the standard Pilot Order it should consider directing that notice be given to the media and others before it makes any such order.

Additionally, the time span between the making of the Pilot Order and the hearing date is likely to be such that notification of the hearing date and of the Pilot Order made can be given a sufficient time before the hearing to provide reasonable notice (i) of the date of the attended public hearing, and (ii) for the making of any applications under paragraph (10) of the standard Pilot Order to vary or discharge or in respect of the publication of matters already in the public domain.

However if that is not the case the court should consider directing that notice be given to the media and others before an attended hearing takes place in public.

Notification of when attended hearings are to take place (i) in public and (ii) in private if a Pilot Order is not made is of central importance to enable attendance, to provide evidence of the split between public and private hearings and to enable applications and enquiries to be made by non-parties in respect of both.

It is intended that the COP (at First Avenue House, the RCJ and each court hub) and the national and local media will provide each other with contact and service details.

It is also intended that the COP (at First Avenue House, the RCJ and each court hub) will publish on a regular basis a list of all hearings fixed in the courts for which it is responsible which will show with an appropriate description of its subject matter all attended hearings that are to be held in public on the basis that a Pilot Order has been made and all attended hearings that are to be heard in private because no Pilot Order has been made.

If the Court is minded on an application or of its own motion not to make a Pilot Order it may, but generally will not, give notice to parties, the media and others before it makes that decision. Clearly the parties will know of that decision and it is intended that the media will be informed of it through the judgments and lists that are published. In some cases the court may direct that the media are notified by other means that an attended hearing will be in private.

It is intended that as soon as is practicable after the date for a further attended hearing has been fixed in any case in respect of which a Pilot Order has been made the media will be notified of that hearing date.

Service / notification of the Pilot Order

It will be served on the parties in the normal way.

Any party and the court may serve a Pilot Order on other persons.

It is intended that discussion will take place between representatives of the court and the media to establish points and methods of contact in London and the regions through which information concerning Pilot Orders can be provided effectively and conveniently.

It is intended that arrangements will be put in place to provide notices outside each court or hearing room that explain the existence and effect of a Pilot Order and that a copy of the actual order will be displayed or be readily available.

It is intended that arrangements are put in place to ensure that the names and addresses of anyone who attends the hearing will be recorded and that they will be provided with a copy of and acknowledge receipt of the Pilot Order.

The Pilot Order

It is hoped that this is self explanatory.

The attended hearing

A number of issues may arise on which the court may need to hear from or address unrepresented members of the public and media representatives who are present.

The judges will be invited to keep a record of any points that arise during or in respect of all attended public hearings that they think will assist in the assessment of the pilot.

It is intended that arrangements will be made for the recordings of all attended public hearings held during the pilot to be identified and retained.

Assessment of the pilot

The Ministry of Justice will provide information on how this will be carried out in due course.