



PRACTICE DIRECTION 8 OF 2020

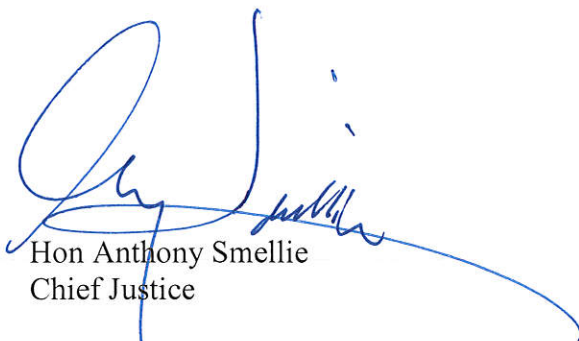
PUBLIC ACCESS TO COURT PROCEEDINGS BY AUDIO OR VIDEO LINKS DURING THE COVID-19 PANDEMIC

Open justice is a fundamental principle in our court systems, and will continue to be so as we increase the use of audio and video technology in response to the COVID-19 pandemic. In considering the use of telephone and video technology, the judiciary will have regard to the principles of open justice, as they do now. As they do now, judges (including the magistrates), may determine that a hearing should be held in private if this is necessary to secure the proper administration of justice. In particular, recognizing the sensitivities of such cases, the usual practice in family and Children Law proceedings will be to not broadcast those proceedings and in Criminal proceedings the broadcast may be suspended to prevent transmission to subsequent witnesses. However, a range of measures will continue to support the principle of open justice:

- Access to open hearings by way of live-streaming if and where a public gallery is available at which the integrity of the proceedings can be safeguarded, or a third party such as a member of the press may join the hearing remotely by password access. For the time being live-streaming of proceedings, will be done to the Town Hall, “Constitution Hall”, George Town, where members of the public may have access for observation only, subject to social distancing protocols.
- Transcripts of hearings in those courts where they are available, now. Any party or interested person is able to request a transcript. Judges may direct that the transcript be made available at public expense where appropriate and public access to transcripts, notes or other information relating to court proceedings will, of course, be in keeping with applicable law and court rules.

- With the permission of the judge, an audio recording of a hearing can be made available to be listened to in a court building.
- With the permission of the judge, in courts where this is already done, the notes of the hearing can be made available on request.
- Publication of the outcome of Grand Court and Court of Appeal hearings, or orders or results will continue to be available, in most instances online.
- Access to hearings and information will be available to accredited media, such as the provision of listings and results information in Magistrates' Courts on the website at www.Judicial.ky or via email if requested.
- Where parties or the press are allowed to observe a hearing remotely they are reminded that it will be a contempt of court to make unauthorized recordings of the proceedings or to use or to allow the use of such recordings to interfere with the administration of justice. Where proceedings are being broadcasted, a note will be included in the course of the streaming at the bottom of the screen to this affect: "This is a formal court proceeding in respect of which the usual rules as set out in Practice Direction 1 of 2014 (attached) will apply. No photographs, filming or recordings may be made except with the approval of the Court.

Requests from the media and others to observe a hearing remotely should be made to the court in advance to allow for inclusion during the hearing set-up.

A handwritten signature in blue ink, appearing to read 'Anthony Smellie', with a long horizontal flourish extending to the right.

Hon Anthony Smellie
Chief Justice

5 May 2020

(Enclosure: Practice Direction 1 of 2014)



PRACTICE CIRCULAR No. 1/2014

REQUIREMENT FOR STRICT COMPLIANCE WITH COURT ORDERS MADE IN THE FAMILY DIVISION OF THE GRAND COURT

1. Orders made by the Family Division of the Grand Court are not preferences, requests or mere indications; they are orders. Practitioners and those who appear before the Grand Court are reminded that orders, including interlocutory orders, must be complied with to the letter and on time.
2. In *Re W (A Child); Re H (Children)* [2013] EWCA Civ 1177 at paras. 52 & 53, Sir James Munby, President of the Family Division in England and Wales, stated:

"The court is entitled to expect - and from now on family courts will demand - strict compliance with all such orders. Non-compliance with orders should be expected to have and will usually have a consequence .

Let me spell it out. An order that something is to be done by 4pm on Friday, is an order to do that thing by 4pm on Friday, not by 4.21 pm on Friday let alone by 3.01pm the following Monday or some time later the following week. A person who finds himself unable to comply timeously with his obligations under an order should apply for an extension of time before the time for compliance has expired. It is simply not acceptable to put forward as an explanation for non-compliance with an order the burden of other work. If the time allowed for compliance with an order turns out to be inadequate the remedy is either to apply to the court for an extension of time or to pass the task to someone else who has available the time in which to do it."¹

3. Sir James Munby reiterated his views at page 6 of his *7th View from the President's Chambers, January 2014:*

"What is for me a real concern is something symptomatic of a deeply rooted culture in the family courts which, however long established, will no longer be tolerated. I refer to the slapdash, lackadaisical and on occasions almost

¹ Underlining made for the purposes of the Practice Circular

contumelious attitude which still far too frequently characterises the response to orders made by family courts. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with to the letter and on time. Too often they are not. They are not preferences, requests or mere indications; they are orders. This principle applies as much to orders by way of interlocutory case management directions as to any other species of order. The court is entitled to expect – and from now on family courts will demand – strict compliance with all such orders. Both parties and non-parties to whom orders are addressed must take heed. Non-compliance with an order by anyone is bad enough. It is a particularly serious matter if the defaulter is a public body. Non-compliance with orders should be expected to have and will usually have a consequence: see Re W (A Child), Re H (Children) [2013] EWCA Civ 1177."

4. Regrettably the concerns expressed by the President of the Family Division in England and Wales are equally applicable to the response to orders from a number of attorneys and parties involved in proceedings before the Family Division of the Grand Court.
5. This Circular reaffirms the intention of the Judges that due regard be paid to the guidance given in the case law as summarised above by Sir James Munby.
6. Accordingly, persons who appear before the Grand Court are expected to comply with their plain and unqualified obligation to comply with the terms of a Court order made against or in respect of them, unless or until it is discharged. This obligation applies to all forms of orders including interlocutory case management directions.
7. If parties are unable to comply with the terms of an order, they are not entitled to agree a variation of the order without obtaining the Court's approval, and therefore must make the appropriate application to the Grand Court before the time for compliance has expired.

Issued by the Chief Justice following discussion with the Judges of the Family Division.



Hon. Anthony Smellie
Chief Justice

29 January 2014