

# ROYAL COURT OF JERSEY

RC19/02

## Prevention of Identification of Children in Public Law Cases

### 1. Principles

- 1.1 This practice direction is provided in order to ensure that risks of identification of children arising from the publication of judgments of the Royal Court in public law cases involving, inter alia, care proceedings, are minimised. It is also designed to ensure that explicit descriptions of sexual abuse and other matters of personal nature to a child (for example medical treatment) are, where appropriate, redacted from any public judgments.
- 1.2 The starting point is that justice needs to be open and transparent. It is frequently necessary for particular cases, including those involving children, to be heard in private but nonetheless even in those circumstances it is often important for a judgment to be published. Article 6 of the European Convention on Human Rights provides that even in circumstances where the press and public are excluded from all or part of a hearing in the interests of justice, it is necessary for judgment to *“be pronounced publically”*.
- 1.3 It is recognised that this need for public justice may yield to other factors, including where the welfare of children is the principal focus of the Court’s attention.
- 1.4 The Court’s practice of producing anonymised judgments has developed in order to protect the identity of children and, hitherto, judgments have frequently contained the full reasoning but omitted names and other details which would permit identification.
- 1.5 Publication of an anonymised judgment enables the public to understand why the Court makes the decisions that it does. It also enables legal professionals to keep abreast of developments in the Law and the Court’s current practice. Further, it is often helpful for the profession to understand how the Law applies to particular facts.
- 1.6 However it has been appreciated that, particularly in a small jurisdiction, the risk of inadvertent and jigsaw identification of children is a real one and accordingly all judgments in public law cases concerning children will need to be considered with this Direction in mind. This may, in particular cases, result in additional redaction and abridgment of judgments than has been the practice hitherto.
- 1.7 Anonymisation is not confined to concealing names but extends to the avoidance of any material liable to lead to the identification of a child.

1.8 Accordingly, the following should be regarded as good practice.

## **2. Redaction of personal and geographical indicators**

2.1 When anonymising the names of children's parents and other family members the best course is to use initials which are not the real initials of the child/parents/others. Initials should be fictitious. For parents, the terms "mother" and "father" should be used instead of initials as this assists the reader in following the judgment. Pseudonyms should be avoided as, although they on one view make the case "*come alive*", they may be inappropriate for particular culture / religious groups. Inappropriate pseudonyms can cause offence. In the case of a large family / sibling group which might involve identification (which includes sibling group with more than four members) the number of other siblings should not be identified unless essential.

2.2 The date of birth of any child should not be set out. It gives rise to risk of identification and is rarely necessary. The year of birth should be sufficient.

2.3 Other specific dates in the judgment should be avoided unless essential. For example, the date of a criminal conviction could identify a parent and thereafter the child. The year of any conviction or any other key event would normally suffice. If the conviction is for an unusual offence then it may be sufficient for it to be referred to generally, e.g. as "*an offence of violence*" or "*a sexual offence*".

## **3. Ethnicity**

Generally a person's ethnicity need not be referred to. Judgments are not a source of data for ethnic monitoring purposes. Reference to families having links to the communities outside of Jersey are generally unnecessary and can be redacted from the public judgment. If it is necessary to specify ethnic group status, consider using a generic term e.g. "*of Eastern European origin*".

## **4. Religion**

Any reference to religion should be redacted unless it is relevant. Reference to the religious belief of the child/parent may assist in jigsaw identification of the child/family.

## **5. School, education issues, professional witnesses**

5.1 Any detailed description of a problem a child or young person has experienced at school should be redacted. These problems will be familiar to other pupils, teachers and possibly other parents and when combined with year of birth and gender may be high risk indicators for identification. Any description can be redacted or abridged and

replaced with words such as “*child D experienced various problems at school over an extended period*”. By the same token it should generally be unnecessary to identify in a published judgment the name of a specialist or residential school attended by a child as such schools are easily identified in Jersey.

- 5.2 As to naming the social workers and other support workers, these should not routinely be named without consideration of whether or not this may contribute to the identification of the child/young person. It should be sufficient to refer to the findings of the “*key social worker*” or “*family support worker*”.
- 5.3 If there are particular concerns about one or more social workers, it may be appropriate for there to be a direction that the unredacted or partly redacted judgment be released to a relevant regulatory body or Ofsted.
- 5.4 Care should be taken regarding the identification of a community resource such as a contact centre or Parish or other centre providing child services as this may also assist in jigsaw identification of the child. Consideration should be given to using a generic term to avoid identifying the location.
- 5.5 The same principles apply to naming a clinician. Young local people including children are likely to know the name of the local doctors / community paediatricians. As to any criticisms of clinical evidence, particularly in relation to specific incidents where the child may have suffered harm, it should be remembered that any details may be shared on media / social media and be available on the internet for the remainder of the child’s life. Redaction / abridgment of such evidence should be considered.
- 5.6 Identification of the name of an expert witness is generally unlikely to identify the child. However, again, if the evidence given by that witness contains detail as to the child’s medical or other treatment or other conditions or circumstances which might lead to the identification of the child (bearing in mind that the details of his / her evidence may be shared on social media and other media) then consideration should be given to abridging / redacting that part of the evidence. If it is necessary to criticise the evidence of the witness in question then consideration should be given to doing so in such a way as it does not set out in detail matters connected to their evidence which might identify the child.

## **6. Abridgment / redaction of explicit descriptions of sexual abuse or medical treatment**

- 6.1 In accordance with the principles referred to above, consideration should be given to abridgment / redaction of explicit descriptions of sexual abuse and / or medical treatment of the child. An alternative to abridgment is to put such material in an annexe or appendix to the judgment which is only available to the Court of Appeal and the parties.

- 6.2 Care needs to be taken in referring to previous proceedings regarding sexual abuse of the child or their siblings, either when repeating the detail of that abuse or providing a link to such a judgment, if the latter is not abridged.
- 6.3 Consideration should be given to redaction of details of any medical treatment given to the child which also can give rise to risks of jigsaw identification.

## **7. Judgments and publication**

- 7.1 The Court will continue its current practice of providing to the parties a draft judgment for the parties' advocates for their comment, the judgment to stand embargoed until it is handed down.
- 7.2 As a matter of good practice, at the end of the every hearing it is appropriate to inform the parents and any other interested parties that a judgment that is anonymised in accordance with the principles set out in this Direction will be published in due course, and that compliance with the guidance contained in this Direction is designed to protect children from identification; and that any material which is likely to lead to identification or which might be embarrassing to them in the future will be abridged to safeguard their welfare.
- 7.3 Parties should be given the opportunity to make representations as to any further redaction / abridgment that is necessary in order to ensure compliance with this Practice Direction in so far as the Court is not already given an indication as to the areas for abridgment / redaction it has provisionally identified. Further, parties should always be given an opportunity to make submissions orally or in writing after the draft judgment is handed down on the merits of publication.
- 7.4 It may be appropriate for any published judgment to be accompanied with the following wording:

*"This version of the judgment may be published only on condition that the anonymity of the children and their family is preserved and that there is omitted any detail or information that may lead to their identification, whether on its own or in conjunction with other material in the judgment. This includes, but not exclusively, information of location, details of family members, organisations such as school or hospital, and unusual factual detail. All persons, including representatives of the media, must ensure that this condition is complied with. Failure to comply will be a contempt of court."*

- 7.5 As to the unredacted judgment, it should, when finalised, be accompanied by wording along the following lines:

*"This judgment is private to the parties and their lawyers. They may not show or otherwise communicate this judgment or its contents to any other person. Any party or their lawyers wishing to show or inform any other person about the judgment or any other person wishing to see the judgment must first of all come back to court and ask the permission of [insert name of judge]. The judge does not give leave for the judgment to be reported. It is contempt of court for any person to publish the contents of this judgment without first obtaining a direction."*

This practice direction will come into force on 2<sup>nd</sup> December, 2019.