

**'Media Access to Family Courts'**  
**Pilot Scheme**

**Consultation by the shadow Family Justice Board  
Sub-Committee on Media Access to Family Courts**

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**16<sup>th</sup> August 2019**

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# 1. INTRODUCTION

## Purpose

- 1.1 The Senior Family Judge, with the support of the shadow Family Justice Board (sFJB), has approved a pilot to run initially in the Family Division of the High Court which will allow pre-approved media representatives to attend and report on cases listed for hearing and judgment in the family courts.
- 1.2 The purpose of this consultation paper is to seek views on the proposed arrangements for the pilot which have been developed by the sFJB Sub-Committee on Media Access to Family Courts ('the Sub-Committee').
- 1.3 While the Pilot will be limited to the High Court Family Division under the Judge's 'inherent jurisdiction' it aims to establish criteria for accreditation of media wishing to access family courts, and develop and test guidelines for reporting which can be used to inform any changes to legislative and operational procedures which may be considered further by the Department of Justice.

## Background

- 1.4 The current legal position in Northern Ireland is that unless the court otherwise directs, proceedings involving children in the family court shall be heard by a judge in chambers. No member of the public at large can attend as of right.
- 1.5 Under **Article 89 of The Magistrates' Courts (Northern Ireland) Order 1981**, media representatives can be present during the hearings of domestic proceedings at the magistrates court tier, save in those circumstances where the court exercises its powers under articles 89(3) and 89(4) to exclude them. However, the position in the Family Care Centres (in the County Court) and the High Court is that the press (or members of the public) require the permission of the judge to be present. **Rule 4.2 of the Family Proceedings Rules (NI)** provides that the case be heard in chambers unless the judge exercises his or her discretion on whether to allow access to Children Order cases.
- 1.6 Access to hearings does not automatically mean that these can be reported on. There are also certain statutory restrictions which govern the reporting of cases involving children.
- 1.7 Under **Article 170(2) of The Children (Northern Ireland) Order 1995** ("the 1995 Order") no person may publish to the public at large or any section of the public any material that is intended or likely to identify any child involved in any

proceedings under the 1995 Order or any address or school as being that of a child involved in any proceedings. Any contravention is a criminal offence.

1.8 **Section 12 of The Administration of Justice Act 1960 ("the 1960 Act")** prohibits accounts being given or published of what has gone on at the hearing before the judge, contents of documents drawn up for and arising out of the hearing and transcripts or notes of the evidence or judgment. This does not apply to the publication of the text or summary of the whole or part of a court order, unless expressly prohibited by the court.

1.9 The inherent jurisdiction of the High Court may be used to relax or to reinforce the statutory restriction on publication contained in the 1995 Order or 1960 Act.

### **Other Jurisdictions**

1.10 In England & Wales accredited representatives of news-gathering and reporting organisations can attend fact-finding hearings, subject to the court's power to exclude attendance. Attendance is subject to the restriction on publication contained in the **1960 Act (section.12)** and the restriction on identifying the child and/or the child's school established by the **Children Act 1989, section 97(2)**. The family court and High Court have the power to relax the prohibition on reporting on a case-by-case basis.

1.11 In the Republic of Ireland the **Courts and Civil Law (Miscellaneous Provisions) Act 2013** removed the ban on media representatives attending family law, child care and adoption cases. The court retains the power to exclude representatives of the media, restrict their attendance as appropriate, and restrict or prohibit the publication or broadcasting of evidence given or referred to during the proceedings. The **Civil Liability and Courts Act 2004** prohibits the publication or broadcasting of any information likely to identify the parties to family law proceedings or any children to whom the proceedings relate.

### **The Review of Civil and Family Justice in Northern Ireland**

1.12 On 5 September 2017 the Lord Chief Justice of Northern Ireland and Lord Justice Gillen launched two reports produced by a Review Group established to undertake a fundamental review of the civil and family justice systems in this jurisdiction.

1.13 Chapter 18 of the Review Group's Report on Family Justice<sup>1</sup> ('the Report') addresses the principle of open justice and the growing consensus that the law

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<sup>1</sup> [Review Group's Report on Family Justice](#)

should be reformed to ensure greater transparency in proceedings concerning the welfare of children.

1.14 The report acknowledged *“This issue of open justice proved to be the most controversial of all the chapters in this Review. Our respondents held strongly opposed views on either side of the argument about open justice and there is clearly no consensus of opinion on the way forward. It is plainly a complicated issue upon which polarised and strongly held views are held by people whose views command the highest respect”*<sup>2</sup>.

1.15 One of the principal concerns raised by respondents is the significant risk, particularly in a small jurisdiction such as Northern Ireland, of jigsaw identification of the child or family involved. Any failure of anonymisation to operate effectively could potentially cause indelible harm to the child. It was also suggested that press reports might be sensationalised.

1.16 The Report made ten recommendations [FJ138 – FJ147 at Annex B], to provide greater transparency of justice in the family courts, the first of which was to afford the media access to fact finding hearings and other family courts in line with the position in the rest of the UK and Ireland. While this recommendation will require legislative change which is not currently possible, the other recommendations relate to largely practical issues which flow from this premise.

1.17 The sFJB was established by the Lord Chief Justice to maintain the momentum on the more operationally-focussed recommendations that are not subject to ministerial agreement. At their first meeting in December 2017<sup>3</sup>, the sFJB agreed to take forward the Open Justice recommendations as one of its six priority areas.

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<sup>2</sup> Family Justice Report (FJR) Para 18.41

<sup>3</sup> [Minutes of sFJB Meeting 13 December 2017](#)

## 2. THE PILOT

### Proof of Concept phase

- 2.1 In order to establish media interest and identify any initial issues arising, the sFJB approved a '**Proof of Concept**' phase. This phase, which commenced on 26 November 2018, has allowed a small subset of pre-approved reporters (agreed with the NI Editors Liaison Group) access to any case listed for hearing before the Senior Family Judge. While this phase has facilitated media access to hearings, reporting of proceedings is still prohibited. The Senior Family Judge has granted continuing permission for access under these terms until further notice.
- 2.2 Key stakeholders were notified in advance of the phase commencing and notices have been duly placed outside of the courtroom, and in appropriate public areas of the building, to alert users to the potential presence of media representatives in the family court.
- 2.3 The 'Proof of Concept' phase has primarily given the media a general insight into the type of cases that are heard within the Family Division of the High Court. It has however also served to identify several areas which will require further exploration and testing during the course of the pilot. For instance, it has highlighted the difficulties experienced by the media in identifying which cases to allocate resources to based solely on the ICOS case numbers published on the Daily List. The type of detail which can be released to the media for planning purposes without placing undue pressure on staff, or compromising any statutory restrictions on publication, has been discussed at length by the Sub-Committee and will need to be tested during the pilot.
- 2.4 The complex issue of journalist accreditation has also arisen during the Proof of Concept phase, specifically how to restrict participation in the pilot to accredited journalists with a legitimate interest in reporting while ensuring the required safeguards. It has been established that in Northern Ireland there is no agreed method of journalist accreditation and that media organisations may opt to be externally regulated or may apply their own internal governance procedures. It is not feasible to apply either the UK or ROI schemes. The broad accreditation criteria currently employed by the NICTS to restrict access to the Media Court Lists Online portal is not considered to be stringent enough to apply in the context of the pilot due to the sensitive nature of the family cases involved.
- 2.5 A further concern raised by the Sub-Committee was the potential for participants in cases to be inadvertently identified in media reports through jigsaw identification. It was suggested that this is a particular risk in a small jurisdiction

such as Northern Ireland and that producing sufficiently anonymised reports might be challenging.

## Proposals

- 2.6 As noted at 1.16, legislative change is required to provide for the rights of the media to attend fact-finding hearings and other family courts in Northern Ireland and be brought into line with the position in the rest of the UK and Ireland. However, the Senior Family Judge, with the support of the sFJB, has suggested that several of the remaining recommendations made in Chapter 18, which deal with practical issues concerning media access to family courts, can be progressed by way of a pilot which will permit the media to attend certain hearings in the Family Division of the High Court where the volume of cases is small, but the issues are most complex. For instance, experience and knowledge acquired during the course of the pilot will assist with developing guidance on the publication of judgments and on reporting cases in the Family Division. The pilot will also assist with producing guidelines on how discretionary reporting restrictions orders should be (i) approached by the judiciary and (ii) drawn to the attention of media representatives. Decisions arrived at during the course of the pilot on how the media will be notified of relevant reporting restrictions, and what case details they will be supplied with for planning purposes, will also inform any future changes to the Northern Ireland Courts & Tribunals Service's (NICTS) ICOS system or any future technological solution developed for this purpose.
- 2.7 Opening up the family courts to media scrutiny will help to dispel concerns about the secrecy of hearings and promote a greater understanding amongst the public of the work of the family justice system. Through facilitating media access to the family arena this pilot will further the aim of delivering transparent, accountable justice.
- 2.8 The proposed Pilot will allow a wider pool of accredited journalists to attend cases listed for hearing and judgment in the Family Division of the High Court. Hearings not open to the media include placement and adoption order hearings; Financial Dispute Resolution (FDR) hearings; some first hearings in children private law proceedings; Judicially assisted conciliation meetings, and any hearings where the judge has previously decided that the media should be excluded from the entire proceedings or for that particular hearing.
- 2.9 To gain access to the aforementioned hearings, it is proposed that journalists must pre-register for the Pilot and make certain undertakings. In order to register journalists must be an 'accredited' person and must provide sufficient

evidence meeting the criteria as outlined in the draft 'Protocol for Media Accreditation and Registration' at Annex C. Accreditation of a journalist in accordance with this Protocol implies an undertaking from that bona fide journalist to abide by the applicable legal and regulatory frameworks.<sup>4</sup> The credentials which must be produced include:

- a letter from an editor of an independently regulated media organisation verifying that the individual is a bona fide member of the media;
- a duly signed copy of the Memorandum of Understanding which details the parameters of the pilot and affirms that it is the responsibility of the journalist to ensure that all automatic and discretionary restrictions as to the publication of any information disclosed orally or contained in any court documentation are adhered to, and
- photographic identification.

The restriction of participation in the scheme to duly accredited journalists is a safeguard to protect individuals by controlling access to hearings and ensuring that the resultant reporting will be responsible and sufficiently anonymised. It is also intended to address concerns regarding the publication of sensationalist articles. Judicial discretion may be exercised to grant accreditation to any interested journalist who does not fulfil the first criteria (letter from an editor of an independently regulated organisation) but who can demonstrate a track record of responsible reporting evidenced by articles published in mainstream media organisations. The criteria used for accreditation at this stage, which will restrict access as appropriate, will be evaluated during the course of the pilot and may be used to inform any future restrictions or relaxations which may be considered by the Department when forming policy and legislation beyond the scope of the High Court.

2.10 It is proposed that the default position will be that those journalists who have duly registered with the Pilot will be permitted access to the relevant hearings, subject to the court's power to exclude attendance. If a legal representative or Litigant in Person has reason to object to the attendance of the media in any particular proceedings, or part thereof, they should raise an objection with the Judge at the earliest opportunity, and preferably before the proceedings commence. The media and profession will comply with the Judge's Ruling, subject to the usual rights of appeal.

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<sup>4</sup> Regulatory framework includes: IPSO Code of Practice; PC Code of Practice; BAI and Ofcom Codes.



- 2.11 It is anticipated that applications to exclude will only be considered if exceptional grounds exist as to why the media should not be permitted to attend. It is imperative that such applications are raised and dealt with promptly to avoid any undue delay to the hearing and, as stated at para 18.5 of the Report, “to ensure that the best interests of the children and the paramountcy of their welfare is protected”.
- 2.12 It is proposed that the media will have access to the public Court of Judicature list which is published daily from around 5pm on the NICTS website. For planning purposes it is also proposed that the media will be supplied with an advance list of hearings scheduled in the Family Division for the coming term. In addition to the hearing date, ICOS number and estimated duration, the list will indicate the application type (eg Public or Private Law), order sought (eg Care or Supervision Order), and a very brief synopsis of the issues as determined by the Judge. This list will not contain any names or details that might identify any of the parties involved.
- 2.13 It is proposed that reporting will only be permitted at the conclusion of a case, as is the current position and in line with the FJR recommendations. Once judgment has been delivered the media will be permitted to report on both the judgment and the evidence heard, subject to the statutory restrictions outlined at 1.7 - 1.9 together with any further discretionary reporting restrictions imposed by the judge or directions concerning what can or cannot be published. Permitting the media to attend throughout the hearing of a case will simply allow them to report more fully and accurately once the case has concluded. By permitting reporting by default, as opposed to granting permission on a case by a case basis, the pilot will go beyond the recommendations of the FJR. In so doing it will provide an opportunity to fully test the issues at play and should allow the Department of Justice to proceed from a fully informed position when it comes to consider the relevant policy and legislative changes at a later stage.
- 2.14 No material may be published, without leave of the court, which will identify any child involved in proceedings under The Children (Northern Ireland) Order 1995, their address or the school which they attend. Any contravention of this is considered to be a criminal offence.
- 2.15 The media will not have access to court documents without specific leave of the court.
- 2.16 The media will not be permitted to approach parties (as opposed to legal representatives) for further information or comment over and above what they are permitted to observe in Court.

- 2.17 The media will be clearly identifiable to all court users by using any designated Press seating, wearing visible press passes, or otherwise making themselves known as members of the Press.
- 2.18 This pilot has been commissioned by the sFJB and participating journalists will not be entitled to seek any further information or case details from either the NICTS Press Team or the Lord Chief Justice's Press Office in the usual manner.
- 2.19 Relevant impact assessments will form part of any future consultation process that may be carried out by the Department of Justice on any proposed reforms.

### 3. RESPONDING TO THIS CONSULTATION

3.1 The Senior Family Judge, with the support of the sFJB, has directed that it is appropriate to invoke the inherent jurisdiction of the High Court to facilitate a Pilot Scheme. These proposals have been developed in cognizance of the responses to the Family Justice Review as detailed in the Report, and it is hoped that further lessons learned from this Pilot will be used to develop any future policy and enabling legislation. However, given the sensitive nature of the hearings involved, and the strength of opinion on the subject demonstrated in the responses received to the Report on Family Justice, a consultation is desirable to engage with the professions and other interested parties concerning the proposals for how the Pilot should now proceed. The targeted consultees therefore comprise mainly those who responded to the Family Justice Review and are as follows:

- Northern Ireland Commissioner for Children and Young People (NICCY)
- Voice of Young People in Care (VOYPIC)
- Family Mediation Northern Ireland
- Northern Ireland Guardian Ad Litem Association (NIGALA)
- The Women's Aid Federation
- The Children's Law Centre
- Northern Ireland Social Care Council
- Family Law Committee / Law Society
- Family Bar Association / Bar Council
- Attorney General for Northern Ireland
- Northern Ireland Lay Magistrates Association (NILMA)
- National Society for Prevention of Cruelty to Children (NSPCC)
- Health & Social Care Board (HSCB)
- Health & Social Care Trusts (HSCNI)

- Department of Health (DoH)
- Department of Justice (DoJ)
- Shadow Family Justice Board Advisory Committee
- NI Editors Liaison Group
- The Detail
- Chair of the Litigants In Person Reference Group
- Men's Advisory Project
- Information Commissioner

3.2 You are invited to consider the proposals outlined in this paper, in cognizance that views previously published in the Report on Family Justice have been taken into consideration and need not be repeated unless you feel it is necessary to reinforce points already made. The consultation includes a number of questions on which we would particularly welcome your views. There will be an opportunity to meet with members of the sub-committee to discuss the proposals and raise any concerns at a meeting which will be arranged prior to the closing date to allow fuller consideration before written responses are made. You are also welcome to submit any other comments you might have on the content of this consultation.

3.3 The sFJB encourages you to avail of the invitation to meet with the sub-committee and respond using the Consultation Response Template at Annex A and send it by email to [JudicialConsultations@judiciaryni.uk](mailto:JudicialConsultations@judiciaryni.uk) or by post for the attention of The Judicial Consultation Co-ordinator, Office of the Lord Chief Justice, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF. Please clearly indicate whether you are responding as an individual or on behalf of an organisation.

3.4 The consultation will be open for 9 weeks. Invitations to attend a meeting with the sub-committee on a date between **22<sup>nd</sup> - 26<sup>th</sup> July** will issue no later than 28th June. The **closing date** for receipt of responses is 5pm on Friday 16<sup>th</sup> August.

**Respondent Information Form**

Please note that this form must be completed and returned with your response. Responses will be analysed and taken into consideration in finalising the proposed way forward for the Pilot. Responses, from individuals or organisations, may be published, shared with the Department of Justice, or referred to in any further documentation issued in developing proposals for Open Justice. The names of individuals will only be published if they provide their express consent by ticking the box below. All information will be handled in accordance with the Data Protection Act 2018 and General Data Protection Regulation.

Are you responding as an individual or an organisation?

Individual

Organisation

Full Name or Name of Organisation	
Address	
Postcode	
Telephone Number	
Email address	

If you are responding as an individual, please tick here  if you consent to your name appearing in documents relating to this consultation which may later be published, including on the JudiciaryNI or DOJ website. If you wish to withdraw your consent, please contact The Judicial Consultation Co-ordinator, by email at [JudicialConsultations@judiciaryni.uk](mailto:JudicialConsultations@judiciaryni.uk) or by post c/o Office of the Lord Chief Justice, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF.

Please provide details of who your organisation represents and, where applicable, how the views of members were assembled.

**The key questions for consideration during the consultation process are -**

Q1 Do you agree that, due to the sensitive nature of the cases involved, access to cases which fall under the pilot should be restricted to an agreed subset of journalists? Please give reasons for your answer.

Q2 Do you agree that the accreditation protocol at **Annex C** provides sufficient reassurance that participation in the pilot will be restricted to journalists with legitimate reporting interests in family cases? Please give reasons for your answer.

Q3 Do you agree that the default position should be that the press are permitted to attend hearings in the Family Division, and that if exceptional circumstances exist to exclude attendance then objections may be raised? Please give reasons for your answer.

Q4 Do you agree that reporting (subject to any applicable statutory or discretionary restrictions) should only be permitted at the conclusion of a case? What, if any, circumstances do you feel it may be appropriate for the Judge to order otherwise?

Q5 Do you agree that the Court of Judicature Daily List, which identifies family cases by their ICOS number only, does not provide sufficient information for the media to plan their court attendances? Please give reasons for your answer.

Q6 Do you agree that providing the media with a schedule of hearings for the coming term indicating a) the type of application and order sought and b) a synopsis of key issues as determined by the Judge, is sufficient information for their planning purposes? Please give reasons for your answer.

Q7 If you have experience of the 'Proof of Concept' phase are there any comments you wish to make about how the presence of the media in court has been received?

Q8 Are there any other issues you would wish to raise concerning the proposed Pilot?

Thank you for your response. Please ensure your response is returned to **JudicialConsultations@judiciaryni.uk** or by post for the attention of The Judicial Consultation Co-ordinator, Office of the Lord Chief Justice, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF by 5pm on **Friday 16<sup>th</sup> August**.



## REVIEW GROUP'S REPORT ON FAMILY JUSTICE

### CHAPTER 18 - 'Open Justice'

#### Recommendations

1. Relevant legislative changes to be made to provide for the rights of the media to attend fact-finding hearings and other family courts in Northern Ireland and be brought into line with the position in the rest of the UK and Ireland. We recommend the introduction of rules similar to rule 27.10(2) and rule 27.11(2) of the Family Procedure Rules (FPR) in England and Wales. **[FJ138]**
2. The law to remain that the media are unable to report what they saw, heard or read within the proceedings without permission of the court but the family court and the High Court at any stage of the proceedings should have the power to relax the prohibition on reporting on a case-by-case basis by means of a rule similar to FPR 2010, rule 12.73, save that the criteria for relaxation should be based on the court concluding that it is in the public interest to do so or for some other compelling reason why it should be published. **[FJ139]**
3. Every court to have a proper procedure for ensuring that adequate steps are taken to draw any discretionary restriction order to the attention of media representatives who may not have been in court when the order was made. A judge should ensure the procedure has been followed. **[FJ140]**
4. However, the obligation to remain on the media to ensure that they take the appropriate steps to make themselves aware of any discretionary reporting restrictions and to comply fully with them. <sup>5</sup>**[FJ141]**
5. The Senior Family Judge to secure the drafting of a practice note or guidance on the publication of judgments similar to that drawn up in England in January 2014<sup>6</sup> and exhibited at appendix 6 to this Report. **[FJ142]**
6. In order to secure consistency of approach across all family courts in the making of reporting restriction orders, a practice note similar to that drawn up in England in August 2014, containing links to model forms for both draft orders and explanatory notes, to be created. **[FJ143]**

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<sup>5</sup> In the matter of an application by the Attorney General [2008] NIQB 41.

<sup>6</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2014/01/transparency-in-the-family-courts-jan-2014-1.pdf>

7. In the event that daily reporting is likely to be permitted, detailed arrangements to be put in place to maintain control on the material that can be reported by press representatives who are attending court. [FJ144]

8. A joint protocol between the judiciary, the profession and the representative body for the press in Northern Ireland, outlining guidelines for reporting cases in the Family Division, to be created. [FJ145]

9. Consideration to be given to the means of securing the service of applications for reporting restriction orders on the national and local media through a Press Association copy direct service. [FJ146]

10. Northern Ireland Courts and Tribunals Service's ICOS now to record all non-automatic reporting restrictions against the name of the case to which it applies. [FJ147]

## **PROTOCOL FOR MEDIA ACCREDITATION AND REGISTRATION**

Media participation in the pilot is subject to registration with the Office of the Lord Chief Justice (OLCJ), administering the pilot on behalf of the Senior Family Judge. Accreditation and registration is required in order to gain access to permitted courts in advance of the commencement of the pilot and will be granted upon presentation of the following valid press credentials:

- 1. A letter signed by the Editor of an independently regulated<sup>i</sup> media organisation, which has signed up to the Memorandum of Understanding at Annex A, on official letterhead, specifying the name of the journalist and verifying that he/she is a bona fide member of the media<sup>ii</sup>.**
- 2. A copy of the Memorandum of Understanding signed by the journalist.**
- 3. A photocopy of one of the following forms of photographic identification: valid media organisation identification, driving licence or passport.**
- 4. Accreditation of a journalist in accordance with this Protocol implies an undertaking from that bona fide journalist to abide by the applicable legal and regulatory frameworks.<sup>iii</sup>**

The OLCJ will supply successful applicants with a letter confirming that registration for the purposes of the pilot has been granted and that the recipient should be permitted access to all hearings included in the scope of the pilot.<sup>iv</sup> This letter must be retained and should be presented along with photographic identification, at each attendance, to the G4S officials who will be stationed at the entrance to the courtroom. Access will only be permitted to those persons who have been duly registered for the pilot with the Office of the Lord Chief Justice.

Applications for registration should be submitted by any published closing date for the pilot. Any application for registration after the pilot has commenced may be considered if submitted at least 2 weeks in advance of the first anticipated court attendance.

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<sup>i</sup> Independent Press Standards Organisation (IPSO), Press Council (PC), Office of Communications (Ofcom), Broadcasting Authority Ireland (BAI), [state internal regulatory governance procedure if not signatories].

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<sup>ii</sup> Judicial discretion may be exercised to grant registration to any journalist who does not fulfil the criteria at 1 above, but who can demonstrate, to the judge's satisfaction, a track record of responsible reporting evidenced by articles published in mainstream media organisations.

<sup>iii</sup> Regulatory framework includes: IPSO Code of Practice; PC Code of Practice; BAI and Ofcom Codes.

<sup>iv</sup> The pilot includes those cases listed for hearing and judgment in the Family Division of the High Court subject to the following exceptions: placement and adoption hearings; Financial Dispute Hearings; some first hearings in children private law proceedings; Judicially assisted conciliation meetings, and any hearings where the judge has previously decided that the media should be excluded from the entire proceedings or for that particular hearing.