

COURT OF SESSION

PRACTICE NOTE

No. 1 of 2015

REPORTING RESTRICTIONS ETC.

1. The purpose of this practice note is to inform practitioners of the court's approach to reporting restrictions and anonymising opinions. It comes into force on 1 April 2015 and it replaces Practice Note No. 2 of 2007.

General

2. The general principle (that is to say the general constitutional principle of open justice) is that judicial proceedings are heard and determined in public. There should accordingly be public access to judicial determinations including the reasons given for them and the identity of parties.
3. This general principle is only to be departed from where an order restricting the reporting of proceedings ("a reporting restriction") is made. Reporting restrictions can arise:
 - (a) where the court makes an order under statute;
 - (b) where the court makes an order at common law;
 - (c) where the court makes an order to ensure that the court does not act in a way which is incompatible with the European Convention on Human Rights ("the Convention").

Procedure for the making of reporting restrictions

4. The Act of Sederunt (Rules of the Court of Session and Sheriff Court Rules Amendment No. X) (Reporting Restrictions) 2015 substitutes a new Chapter 102 of the Rules of the Court of Session on reporting restrictions. The new rules enable the Court to make an interim order when it is considering making an order restricting the reporting of proceedings.
5. Where an interim order is made, notification will be given to any interested person. An interested person is a person who has asked to see any order made by the Court restricting the reporting of proceedings and whose name appears on the list kept by the Lord President for the purposes of Chapter 102.
6. Interested persons have two days to make representations on the interim order, if so advised. Where representations are lodged a hearing will be fixed. If no representations are lodged, the clerk will put the interim order before the Court in chambers so that it may resume consideration of whether to make an order. If no order is made, the Court must recall the interim order.
7. Where an order has been made, interested persons will again be notified via email and the making of the order will appear on the Scottish Court Service webpage. Any person aggrieved by the making of the order may at any time thereafter apply for the revocation or variation of the order.

Anonymisation generally and the Data Protection Act 1998

8. There exists, prior to the publication of an opinion, the opportunity for a judicial office holder to “anonymise” an opinion (for example, using initials instead of a person’s name). The effect of such a step is not the same as an

order restricting reporting: the media will still be able to report the proceedings (including a person's name) but it does allow for other personal information to be excluded from the opinion where it is not, in the eyes of the judicial office holder, relevant to the decision or necessary for the purposes of pronouncing judgment.

9. At this stage judicial office holders will have regard to the principles of the Data Protection Act 1998. In particular, they should ask themselves whether the inclusion of personal information (such as addresses, bank accounts and telephone numbers etc.) is relevant to the decision or necessary for the purposes of pronouncing judgment.

Asylum cases

10. The practice of automatically "anonymising" opinions in cases involving asylum seekers introduced by Practice Note No. 2 of 2007 (i.e. using initials instead of a person's name) will cease. The making of an order restricting reporting is the only way to ensure the anonymity of a party.

BRIAN GILL

Lord President

Edinburgh

26th February 2015