

## NOTE ON RIGHTS OF AUDIENCE IN FAMILY PROCEEDINGS

This note is intended to be used as a tool to identify the relevant legislation and as guidance as to how that legislation might be interpreted. Where I have expressed a view, it should not be considered as binding, but rather as a view aimed at assisting any individual in tackling the thorny issue of rights of audience.

### **1. Rights of Audience**

i) A “right of audience” means the right to appear before and address a court, including the right to call and examine witnesses – Sch 2, para 3(1) Legal Services Act 2007 (LSA 2007)).

ii) The exercise of a right of audience is a “reserved legal activity” (s12 LSA 2007).

iii) By s13 LSA 2007:

*“Entitlement to carry on a reserved legal activity*

*(1) The question whether a person is entitled to carry on an activity which is a reserved legal activity is to be determined solely in accordance with the provisions of this Act.*

*(2) A person is entitled to carry on an activity (“the relevant activity”) which is a reserved legal activity where—*

*(a) the person is an authorised person in relation to the relevant activity, or*

*(b) the person is an exempt person in relation to that activity.”*

iv) It is an offence for a person to carry on a relevant activity which is a reserved legal activity unless that person is entitled to carry on the relevant activity – s 14 LSA 2007.

### **2. Authorised and Exempt Persons**

i) By s18 LSA 2007, an “authorised person” is (a) a person authorised to carry on the relevant legal activity by a relevant approved regulator or (b) a licensable body which by virtue of such a licence is authorised to carry on the relevant activity by a licensing authority. Approved regulators are set out at Sch 4 LSA 2007 and include the Law Society, The General Council of the Bar, the Institute of Legal Executives, and the Association of Law Costs Draftsmen. Regulators may also be licensing authorities. [This oversight map](#) may help to identify the regulator for a particular person who has authorisation, or the licensing authority for a particular licensable body (an Alternative Business Structure (ABS)) which may be licensed to exercise rights of audience.

- ii) An exempt person in relation to a relevant activity which is a reserved legal activity means a person who is exempt by virtue of Schedule 3 (s19 LSA 2007).

### **3. Authorised Persons who are Regulated**

- i) Barristers: registered barristers are authorised to exercise rights of audience in all courts. Unregistered barristers are not authorised.
- ii) Solicitors: the Solicitors Regulation Authority states that “Solicitors and registered European lawyers (REs) are granted rights of audience in all courts when they are admitted or registered. However, they cannot exercise those rights in the higher courts until they have complied with additional assessment requirements.” There are separate assessments for criminal and civil courts. To exercise rights of audience in family proceedings in the High Court a solicitor must have been granted Higher Rights of Audience. However, a High Court Judge or s9 Judge sitting at High Court level in the Family Court, is still sitting in the Family Court and so a solicitor without authorisation to exercise rights of audience in the High Court would have rights of audience.
- iii) Legal Executives: do not have rights of audience unless they qualify as a Chartered Legal Executive Advocate in which case they have the same rights of audience as a solicitor (but not a solicitor with a Higher Rights of Audience). The Chartered Institute of Legal Executives (CILEX) grants advocacy certificates for crime, family, and civil proceedings, so a person may have a certificate for crime but not thereby have rights of audience in the family court.
- iv) A “paralegal” who is not a barrister, solicitor, or Legal Executive, and is not a licensable body, may well not be an authorised person to exercise rights of audience and so must rely on an exemption.

### **4. Licensable Bodies**

- i) Licensable bodies are defined by s72 LSA 2007 – they are alternative business structures (ABS).
- ii) A licensing authority is defined by s73 LSA 2007.

### **5. Exempt Persons – Sch 3 LSA 2007**

- i) Exempt under any enactment – By paragraph 1(3) Sch 3 LSA 2007, a person is exempt if they have a right of audience before that Court in relation to those proceedings granted by or under any enactment.

Both here and in other Courts within the region, Local Authorities have submitted that they have those rights of audience before Magistrates sitting in the family Court under ss. 222 and 223 of the Local Government Act 1972:

*“222 Power of local authorities to prosecute or defend legal proceedings.*

*(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—*

*(a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and*

*(b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment*

*223 Appearance of local authorities in legal proceedings.*

*(1) Any member or officer of a local authority who is authorised by that authority to prosecute or defend on their behalf, or to appear on their behalf in proceedings before a magistrates’ court shall be entitled to prosecute or defend or to appear in any such proceedings, and, to conduct any such proceedings”.*

In my view, when magistrates sit in family proceedings they are not sitting in the Magistrates’ Court. Instead, they are magistrates sitting within the Family Court. The Magistrates Court is a criminal court, albeit some civil matters are conducted within it. My interpretation of the combination of sections 222 and 223 is that there will be a category of case, for example in respect licencing matters or prosecution of non-observance of byelaws, where a duly authorised member or officer of a local authority will be entitled to appear. Indeed, within sections 235-238 of the 1972 Act, contravention of a byelaw is specifically created as a summary only offence.

I have been unable to locate anything, either within the Act, the explanatory note or within Hansard, that suggests that it was Parliament’s intention, or even contemplation, to allow such officers or members of a local authority to appear within family cases under the 1972 Act. I am reinforced in that view by the fact that the Family Proceedings Court, now abolished, was only set up as a result of the Magistrates Courts Act 1980, clearly post-dating the 1972 Act.

- ii) Discretionary exemption - By paragraph 1(2) Sch 3 LSA 2007, a person is exempt if they are not authorised to exercise rights of audience in the particular court but “has a right of audience granted by that court in relation to those proceedings.”

When considering the exercise of the court’s discretion to grant rights of audience under earlier legislation, Lord Woolf MR in [D v S \(Rights of Audience\) \[1996\] EWCA Civ 1341, \[1997\] 1 FLR 724](#) said that the discretion was to be exercised “only in exceptional circumstances.” See also, [Graham v Eltham Conservative and Unionist Club \[2013\] EWHC 979 \(QB\)](#).

As indicated at a recent LFJB meeting, work is being undertaken by the Legal Team managers in collaboration with our local Chairs, to look at streamlining the process of obtaining a “pre-authorised” discretionary exemption.

iii) Automatic exemption. By paragraph 1(7) Sch 3 LSA 2007,

*“The person is exempt if—*

*(a) the person is an individual whose work **includes assisting in the conduct of litigation,***

*(b) the person is assisting in the conduct of litigation—*

*(i) **under instructions** given (either generally or in relation to the proceedings) by an individual to whom sub-paragraph (8) applies, and*

*(ii) under the **supervision** of that individual, and*

*(c) the proceedings are **not reserved family proceedings** and are being heard **in chambers**—*

*(i) in the High Court or county court, or*

*(ii) **in the family court by a judge who is not, or by two or more judges at least one of whom is not, within section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984 (lay justices).**”*

iv) Sub-paragraph 1(8) (referred to at 1(7)(b)(i) above) applies to any authorised person in relation to an activity which constitutes the conduct of litigation or a person who is a solicitor to certain public departments (see s.193 LSA 2007).

v) The reference at 1(7)(c) above is particularly unhelpful when there is no definition as what “in chambers” means. In short, even if the other conditions for automatic exemption apply, there is no definitive authority as to when family proceedings are “being heard in chambers”.<sup>1</sup> My view is that hearings in “private” are not

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<sup>1</sup> Although I consider that some guidance is found in [Hodgson v Imperial Tobacco Limited \[1998\] 1 WLR 1056](#), where a summary of the position of hearings in chambers included:

synonymous with being heard “in chambers”. Nor do I consider that a district Judge sitting in their chambers on a case, means that the Judge is sitting “in chambers”. Rather, they are using their chambers to hear a case in Court. The following suggestions might be adopted in the family court:

- (a) If the hearing is before at least one lay magistrate, the automatic exemption cannot apply. The advocate will only be exempt if the discretionary grant of exemption is exercised. In February 2015 the Justices Clerks Society produced guidance on [Rights of Audience before Justices sitting in the Family Court](#) to this effect.
- (b) In all other cases in the family court, a tribunal should treat itself as sitting in court, even when sitting in private. I find it difficult to accept that parliament intended an automatic exemption to apply so widely when the case law indicates that the discretionary exemption should only be applied in “exceptional circumstances”. It may be that a specific type of hearing is yet to be legislated for (or was contemplated), which would fall under the definition of “in chambers”.

## 6. McKenzie Friends

- i) Practice Guidance on [McKenzie Friends in the Civil and Family Courts](#) was given by the then Master of the Rolls and President of the Family Division in 2010.

**HHJ Murray**

**Designated Family Judge for Cleveland and South Durham**

**29<sup>th</sup> April 2025**

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*“2. What happens during the proceedings in chambers is not confidential or secret and information about what occurs in chambers and the judgment or order pronounced can, and in the case of any judgment or order should, be made available to the public when requested...”*

*4. To disclose what occurs in chambers does not constitute a breach of confidence or amount to contempt as long as any comment which is made does not substantially prejudice the administration of justice”.*