

**HIS HONOUR JUDGE CLIFFORD BELLAMY**

DESIGNATED FAMILY JUDGE FOR LEICESTER

**PROTOCOL: Rights of audience for trainee solicitors and legal executives**

1. This Protocol sets out the criteria and procedure for determining whether a trainee solicitor or legal executive is suitable to be granted ‘exempt person’ status enabling them to exercise a right of audience in the Family Court in Leicester and Loughborough in private law proceedings brought under either the Children Act 1989 or Part IV of the Family Law Act 1996.
2. A ‘right of audience’ is defined by Sch 2 para 3(1) of the Legal Services Act 2007 (‘the Act’) as meaning ‘the right to appear before and address a court, including the right to call and examine witnesses’ A right of audience is a ‘reserved legal activity’ – (section 12(1)(a)). A person is only entitled to carry on a reserved legal activity if he or she is either an ‘authorised person’ or an ‘exempt person’ in respect of that activity (s.13(2)). Neither a trainee solicitor nor a legal executive is an ‘authorised person’.
3. Section 19 provides that an ‘exempt person’ in relation to an activity which is a ‘reserved legal activity’ means a person who is exempt by virtue of the provisions of Schedule 3. Schedule 3 paragraph 1(2) provides that a person is an exempt person if she *‘(a) is not an authorised person in relation to that activity, but (b) has a right of audience granted by that court in relation to those proceedings*.’

**Principles**

1. A trainee solicitor or legal executive (‘the applicant’) wishing to appear in a private law matter at a hearing before the Family Court sitting at Leicester and Loughborough, requires the grant of a right of audience before the Family Court in order to gain an exemption under Sch.3 para 1(2)
2. The Designated Family Judge (‘DFJ’) will determine in principle whether an applicant appears suitable to be granted a right of audience to appear before the Family Court sitting at Leicester and Loughborough (‘the exemption’) and may grant a certificate to that effect (‘the certificate’).
3. The scope of the certificate shall be to exercise rights of audience in accordance with the type of hearing detailed in the certificate set out at Annex 2.
4. Before determining an applicant’s suitability the DFJ shall consult the Senior District Judge and the Justices Clerk (or their delegate)
5. The granting of a certificate by the DFJ is not binding on any other judge or magistrate sitting in the Family Court at Leicester and Loughborough, however, it is expected that the certificate will be accepted by all judges and magistrates unless there is good reason not to do so.
6. The certificate will be valid for those types of proceedings referred to in the certificate.
7. The DFJ shall have the power to rescind the certificate at any time.
8. The certificate may only be relied upon at private law hearings before the Family Court sitting at Leicester and Loughborough
9. Where an applicant is refused a certificate under this procedure and/or seeks authorisation to exceed the limits imposed by the certificate he or she shall be entitled to seek an exemption from the court for a specific hearing.

**Procedure:**

1. An application for a certificate shall be made to the DFJ not less than 10 working days before the first occasion on which the exemption is required. The DFJ will endeavour to determine the application within 5 working days of receipt.
2. Applications shall be made in the form prescribed in Annex 1 and shall set out details of the qualifications and curriculum vitae of the applicant and the reasons why a certificate is being sought.
3. If successful, the applicant will be granted a certificate in the form which appears in Annex 2.
4. Applications for and the granting of a certificate may be dealt with by e-mail.
5. Where a certificate is granted, the applicant shall produce the certificate to the relevant judge or magistrate at every hearing at which a s.19 exemption is sought.
6. The certification procedure is not intended to confine or override the rights of applicants or the responsibilities of the court set out in s.19 and Schedule 3 paragraph 1(2) of the Act and neither does it preclude an applicant from seeking to exercise a right of audience under any of the other provisions contained in Schedule 3.

**Excluded Proceedings**

1. The principles and procedure set out in this Protocol do not apply to any hearing relating to an application for an emergency protection order, a child assessment order, a care order, a placement order, an adoption order, a parental order or a declaration of parentage. The granting of a right of audience to appear as an advocate at such hearings will continue to be dealt with by the court on a hearing by hearing basis pursuant to s.19 and Schedule 3 of the Legal Services Act 2007. A certificate granted under this Protocol may not be relied upon in support of a request for exempt person status in a hearing in public law proceedings.

3rd February 2016

**ANNEX 1**

# Rights of audience in the Family Court - application for a certificate of suitability

|  |  |
| --- | --- |
| Name |       |
| Employer |       |
| Status | [ ]  a Legal Executive[ ]  a Trainee Solicitor |
| Date of appointment | State when you became a Legal Executive or Trainee Solicitor |
| Membership | I am a member of[ ]  ILEX[ ]  The Law Society |
| Qualifications |       |
| Experience | Detail here evidence of experience that shows you are competent to exercise the rights you seek:      |
| Rights Sought | I seek the following rights of audience:[ ]  S8 directions hearing/FHDRA [ ]  S8 CA 1989 uncontested hearing [ ]  Unopposed application for Parental Responsibility [ ]  Part IV FLA 1996 ex parte / unopposed |
| Indemnity | I certify that my employers indemnify me for actions I take in representing them and their clients |

Applicant’s signature (you may type this if submitting your application by email from your own email account)

Date

# ANNEX 2

# Rights of Audience – Certificate

I certify that in my opinion       is suitable to exercise the rights of audience listed below when appearing in the Family Court in Leicestershire and Rutland. The holder of this certificate must seek rights of audience each time s/ wishes to appear before the family court. The decision whether to grant rights will be made by that court but the court will only refuse the holder rights where there are reasons for doing so, in which case the court will give its reasons and consider an application to adjourn the case so alternative arrangements can be made to represent the party for which the applicant acts.

[ ]  S8 directions hearing/FHDRA

[ ]  S8 CA 1989 uncontested hearing

[ ]  Unopposed application for Parental Responsibility

[ ]  Part IV FLA 1996 ex parte / unopposed

Designated Family Judge

Date