



Citation of Authorities: Judgments of Circuit Judges and District Judges

Background

1. The work undertaken by the Judgment Publication Subgroup of the Transparency Implementation Group has led to a welcome increase in the publication of judgments by Family Court judges below High Court level.
2. Current guidance issued by the President of the Family Division in June 2024 suggests that District Judges should aim to publish a minimum of five judgments per year; Circuit Judges, between five and 10.
3. In the Financial Remedies Court, publication of judgments below High Court level has been explicitly encouraged for some time, because decisions at High Court Judge level and above are not representative of the vast majority of cases; publication of FRC judgments by Circuit and District Judges therefore promotes not only greater transparency but a consistency of approach.
4. It has been noted that the Practice Direction on the Citation of Authorities [2001] WLR 1001 has not always been followed. It provides that a judgment below High Court level may not be cited (clause 6.2) "in order to demonstrate current authority at that level on an issue in respect of which no decision at a higher level of authority is available" unless (clause 6.1) "it clearly indicates that it purports to establish a new principle or to extend the present law... that indication must take the form of an express statement to that effect."

New principles

5. It follows that judgments at Circuit and District Judge level should not be cited unless they contain an express statement that the judge intends that the judgment should be citable (i.e. relied upon in the future in respect of that legal issue). Judgments that do not contain such an express statement will not be citable. These judgments can and should be published in the usual way to promote transparency but will not be capable of being referred to as primary authority.

6. It is not expected that the practice of including a statement as described above will become common. It will not apply to judgments where the judge has applied existing law and/or which provide examples of how the law operates in practice. An express statement that a judgment is intended to be citable should be reserved only for (probably very rare) cases where new ground is being broken. A judge who is considering including such a statement within a published judgment should only do so with the approval of the appropriate leadership judge (identified below).
7. A question arises in respect of past judgments which contain no such statement but were intended to address novel points of law. There are some decisions in the Financial Remedies Court in particular, and several in the Court of Protection, which fall into this category, dealing for the most part with points that tend not to arise in cases heard at High Court Judge level.
8. In such a case, the judge should seek approval from their Leadership Judge to publish a statement which retrospectively approves citation of the judgment.

Route for approval

Financial Remedy Court cases	National Lead Judge of the FRC
All other cases in the Family Court	Family Presider
Court of Protection cases	Vice-President of the Court of Protection

9. A judge who publishes a judgment with such an express statement should confirm in the judgment that the statement has been approved by the relevant leadership judge.

Sir Andrew McFarlane

President of the Family Division

24 February 2025