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Association of **Lawyers for Children**

Promoting justice for children and young people

**SAFEGUARDING, PRIVACY AND RESPECT FOR CHILDREN AND  
YOUNG PEOPLE  
&  
THE NEXT STEPS IN MEDIA ACCESS TO FAMILY COURTS**

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**With**

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**July 2014**

# **SAFEGUARDING, PRIVACY AND RESPECT FOR CHILDREN AND YOUNG PEOPLE NEXT STEPS IN MEDIA ACCESS TO FAMILY COURTS**

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## Foreword

As Children's Commissioners for England and Wales, we are delighted to write the foreword for this important study on a contentious and perennial issue: the degree to which children and young people have a right to have their private lives kept private. One of us has published before on this issue: the other was a panel member of the Family Justice Review.

We regularly meet children and young people affected by the court process in both private and public law proceedings. These processes change thousands of lives every year. They determine, and therefore have power over, children's present as well as their futures. What they eloquently and consistently say to us, is that just as an adult going through sensitive, deeply private troubles would not want them broadcast or published, children and young people also have a right to both privacy and dignity. The courts need to listen to their concerns, and act on what they say.

As Commissioners, the United Nations Convention on the Rights of the Child (UNCRC) (signed and ratified by the UK in 1991) underpins all our work. Article 12 of the UNCRC states all children have the right to a voice, which is both heard and taken seriously, in all decisions about them and their lives. Article 16 is crystal clear: all children have an inalienable, undeniable right to have their privacy protected, unless there are things happening in their lives that place them in danger. If we take this international treaty seriously, and if children tell us they do not want their private lives made public, we have a clear mandate: to ensure their dignity is guaranteed by not exposing their private troubles to the public gaze.

The family court has a duty to protect children: section 1 of the Children Act 1989 states that when the court determines any question with respect to the upbringing of a child, that child's welfare is the court's paramount consideration. This is not a choice but a statutory requirement.

Children are not involved in family proceedings by choice. They cannot protect themselves and are doubly vulnerable as a result of the difficulties that brought their families to court. Society rightly looks to the family court, presided over by its judges, to protect these children and to safeguard their welfare. Research over many years tells us a great deal about the potential for long term ill effects on the health, wellbeing and development of many children who have had troubled childhoods. This study indicates, and we agree, that ensuring their safety and wellbeing during court processes matters. This may well mean ensuring that the courts actively protect them from unwanted press intrusion, and the publication of the intimate, painful details about their life. We agree with this study, that such protection should be provided not only whilst a case is in progress but also in the longer term.

As these young people so powerfully identify, it matters that we help children to level the playing field so that they are not doubly disadvantaged by what has happened in their lives. These young people are equally clear that, in order to prepare them to be citizens who will meet successfully the many challenges presented to them in the 21st century, courts should be further assisted by placing on them a duty to consider, and actively to protect, children's reputation, dignity, safety and wellbeing both during and after proceedings.

It follows, surely, that among other considerations, the proposals set out under the 'next steps' for media access to family courts should be set against both the commercial imperatives of the 21st

century media, and the realities of what can be achieved. How can the media gain ever freer access, and at the same time how can children's identities and private lives be protected? Simply calling them "child x" in a story, and presuming this will keep them safe will not achieve vital safeguards. This is especially so if the media concerned is prominent in a small local community and the families involved are well known but anonymity in urban areas is also impossible. In such circumstances, it is simply disingenuous to argue that a child's supposedly protected anonymity will be maintained. The issue for the children concerned is that once your story is out there, your privacy is breached – and forever.

Children and young people in this and other studies identify severely detrimental, far reaching consequences for children whose private and intimate lives are made public and in which they had no choice. These young people raise credible doubts about the ability of the media to respect their privacy or to meet the public education agenda it claims to defend when it pleads for increased access. As research identifies issues of public confidence in family courts can and should be addressed in ways that do not put already vulnerable children at risk. It is sad that we are having this discussion yet again, despite awareness over many years that there are other ways to let the public know how family courts work.

We agree with what this study therefore suggests. Firstly, the Parliament should have the opportunity to scrutinise proposals to increase media access and reporting of family cases and especially as the safeguards Parliament originally inserted have now been removed. Secondly, in the context of the views of young people, the proposals should also be subject to a proper public consultation exercise, accompanied by widespread publicity making it clear what is proposed, what children think to date, and helping all people to respond. The consultation should be undertaken in a timescale that reflects the gravity of the issues for children, and it should actively seek ways to reach many audiences so that the views of other children are captured. As this study identifies, many members of the public are children and young people – the 2011 census says they make up a quarter of the population. The heart of the matter, as this study explores, is the child and the paramountcy of that child's welfare. Child friendly justice matters deeply to the UK and should have real meaning in the domestic jurisdiction. As the authors of this vital study identify, and as young people abundantly reflect in the following pages, substantial changes are necessary in professional and court practices and procedures. We need to look again at the wisdom and justice in a real sense, of opening up the family courts to the media.



Maggie Atkinson  
Children's Commissioner for England



Keith Towler  
Children's Commissioner for Wales

## **The Commissioners**

### **The National Youth Advocacy Service (NYAS)**

**The NYAS** is a charity providing socio-legal services through teams of advocates and lawyers. It offers information, advice, advocacy and legal representation to children, young people and vulnerable adults in England and Wales. NYAS Cymru is supported by The National Assembly of Wales.

NYAS offers services direct to children and young people; it also provides advocates and lawyers to help young clients to speak for themselves and participate in decision making and planning that affects their lives. It works for the implementation of the United Nations Convention of the Rights of the Child and to influence local and national policy makers and practitioners to acknowledge the views and rights of children and young people.

NYAS also provides advocates for visits to children's homes and inpatient settings and offers assistance to patients detained in hospital. It also provides Independent Visitors for children in care across England and Wales and Independent Persons for the purposes of secure reviews and local authority complaints, and Investigating Officers for complaints and Regulation 33 Visitors for children's homes.

In family proceedings NYAS provides separate representation for children and young people where the court considers such representation is necessary under the Family Procedure Rules 2010. NYAS is also commissioned to offer specialist help where there is a refusal by a local authority to undertake an assessment of community care needs or a failure to provide the necessary services under health legislation. NYAS offers help to children/young people wishing to challenge a decision of a public authority, provides services under the CAFCASS Separated Parents Information Programme and is an accredited training centre.

### **The Association of Lawyers for Children (ALC)**

**The ALC** is a national association of lawyers and others working in the field of children law. It has over 1400 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities but includes other legal practitioners and academics. The Executive Committee is drawn from a wide range of experienced practitioners practicing across England and Wales. Several leading members are specialists with over 20 years experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children's law, chair key socio-legal groups such as the Interdisciplinary Alliance for Children and children forums concerned with law, practice and legal aid; several hold judicial office.

The ALC works for the implementation of the United Nations Convention of the Rights of the Child and to promote access to justice and child friendly justice for children and young people in England and Wales. It also works to ensure separate and independent legal and welfare representation of children and to maintain properly funded legal mechanisms to enable all children and young people to have access to justice. It provides high quality legal training for lawyers and non-lawyers concerned with the rights, welfare, health and development of children. It also provides a forum for the exchange of information and views

involving the development of the law relating to children and young people and is a key reference point for members of the profession, Governmental organisations, charities and academics.

The ALC is a stakeholder in all government consultations pertaining to law, practice and legal aid in children law. It provides socio-legal evidence-based responses to Government consultations on public and private law children issues and oral and written evidence to Select Committees, Government Bill Committees and All Party Parliamentary Groups concerned with children and families and the family justice system. From time to time, it funds or co-funds research where key evidence is lacking or incomplete and in the face of proposed changes to child law and practice. It produces a Newsletter and runs national conferences and seminars on all aspects of child law and practice and related research.

## The Team

[Dr Julia Brophy](#) is a principal researcher in Family Justice; she was senior research fellow at the Oxford Centre for Family Law and Policy, University of Oxford for many years and previously a principal investigator at the Thomas Coram Research Unit. She sits on several advisory committees on family justice and has undertaken a range of studies about public law proceedings commissioned by the MoJ, the DoH, the Nuffield Foundation, Office of the Children's Commissioner (OCC) and other charities and NHS Trusts. Previous work includes the OCC 2010 study of young people and media access to courts and a review of law on media access to family courts in other similar jurisdictions, for the Nuffield Foundation.

[Kate Perry](#) is Operations Manager at NYAS. She managed the Participation Officer for NYAS and co-facilitated when NYAS convened a group of young people (CAFCASS/FJC Young People's Panel, Sept 2006) to look at the DCA 2006 proposals (*Confidence and Confidentiality: Improving transparency and privacy in family Courts*). Kate continues to manage the Participation Officer within NYAS with a current remit of developing the social media platform within NYAS. It is intended that this will increase the dynamic and creative involvement of young people within the organisation.

[Alison Prescott](#) is Participation Officer at NYAS. She is based at NYAS Head Office near Liverpool, but travels across England and Wales to meet with children and young people. Her role is to ensure children and young people are listened to, given opportunities to get involved and have their voice heard through projects, events and consultations.

[Christine Renouf](#) joined NYAS as Chief Executive Officer in October 2010, prior to that she worked for 13 years with the NSPCC and 22 years with the Probation Service. In the NSPCC she was a member of the Executive Board and was responsible for ChildLine, services in schools and participation. Prior to this she was the Director of Helpline Services and the Director of Inspection and Internal Audit Services. In the probation service her last post was a secondment to Her Majesties Inspectorate of Probation as an inspector and prior to that she was an Assistant Chief Probation Officer working in South Yorkshire. Christine has extensive child protection experience and throughout her 22 years in the probation service managed family court welfare services.

## **Acknowledgments**

First and foremost our thanks go to the young people who participated in this work: for their time and for sharing views and experiences about the care system in general, and family courts in particular. Their willingness to share views and experiences was impressive, as was their hope that policy makers will move beyond platitudes and engage directly and honestly with them, reflecting their needs and rights, and that courts will actively seek and listen to young people before making decisions about media access in this complex field.

Our thanks also go to delegates at the ALC National Conference 2013, Marks & Spencer, NAGALRO, and 7 Bedford Row, who provided additional funds for the consultation.

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## **Disclaimer**

The views expressed are those of the author and are not necessarily shared by NYAS or the ALC

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## Executive Summary and recommendations

### The Media

- Young people are well informed about the media and options for reporting, from print (local and national newspapers, magazines and free newspapers etc.) to television and radio (national and local news, current affairs programmes etc.) to on-line sites.
- They are also familiar with the roles of those working in and managing the media (e.g. journalists/reporters, editors/sub-editors, newspaper/media corporations).

### How do young people think journalists report information generally?

- Young people do not trust the media – in all its forms. This view results from their experiences as consumers of print, televised and social media but also personal experiences with reporters and photographers from print and televised media.
- Young people see the media as a highly competitive, commercially driven industry motivated by the need to increase sales figures through populist readership. That core objective has often resulted in a portrayal of young people in a negative light.
- For these young people this results in an industry – whether newsprint, TV, radio or other social media, which does not prioritise the truth. Fairness and balance are not features they identify with any part of the media: indeed they see commercial priorities as overriding – and in some cases precluding, truth telling.

### Pictures of babies, children and young

- The views of young people in this field need to be placed in the context of their views about information and images of children in the media generally, and a need for greater respect for the reputation and dignity of children and young people.
- Young people pointed out the dangers of pictures of children being published (e.g. on 'reality' television and social media): pictures 'go viral' very quickly, cannot be retrieved and can have lifelong implications for the child concerned.
- Young people said parents under stress or in conflict are not well placed to decide the use of pictures of their children in the media: use often indicates a failure of parents to consider a child's right to privacy and the need for *informed* consent from or on behalf of a child.
- Informed consent as to the use of a picture applies regardless of the child's age. Where a child is unable to give consent, young people said a picture should not be published unless the implications for the child are assessed by an independent person with safeguarding experience and knowledge of the possible long term implications for a child.

- With regard to pictures of children involved in family proceedings, apart from exceptional circumstances (e.g. locating a lost/abducted child), young people said it was unacceptable and indeed unethical to publish pictures of babies and children.
- Like all pictures of children in the media, those published alongside a parent's story about a court decision remain in the public arena indefinitely.
- Young people said this is an unacceptable burden for society to place on children who have to negotiate their lives against a background of ill-treatment and enormous change and where they struggle with issues of self esteem, dignity and respect in relationships at school, friendship groups and wider communities.

### **Media access to family court hearings**

- Following changes in Family Proceedings Rules (2009) accredited media representatives are permitted to attend hearings (unless the court directs otherwise). While a case is ongoing however the media is currently not permitted to publish information intended or likely to lead to the identification of a child(ren) in the case.
- This group of young people, like others, was unanimous in opposition to media attendance at hearings. They said the family court is not a public arena and this move represents a failure of Parliament to consider and take seriously the views, needs and long term welfare of the children concerned.
- They argued that increased, meaningful public knowledge about the work of family courts could not be achieved via the media: there are other ways to achieve this.
- Notwithstanding that position, young people were unanimous in arguing that when a court is considering media access it should *first* ascertain the views, interests and long term welfare implications for any child. This raises serious challenges for courts and welfare, clinical and legal professionals in their early discussions with children.
- In the context of early discussions young people said they are not always informed about what is happening in their case - before or during proceedings. They said out dated paternalistic approaches by professionals are not in children's interests: they need honesty and accurate information about processes and decisions about their care and at a time when they can make informed choices.
- The person best placed to discuss this issue with a child is the person he/she most trusts. That person must be independent, with safeguarding knowledge and an understanding of the potential long term implications for the child of giving consent.
- The key issue in ascertaining a child's consent is level of maturity, not age. Children in care proceedings are often more mature than other children of a similar age: they may well have had responsibilities and made decisions anticipated of much older children. It is therefore level of maturity that should determine capacity to consent.

- Young people said courts must be aware that parents have their own agenda and may thus be less concerned or unaware of the long term implications for children of talking to the media. Children therefore look to judges to protect them.

### **Relaxing reporting restrictions during cases: the ‘next stage’**

- In addressing whether it might be possible to relax the rules on information that could be published *during* proceedings, young people demonstrated how easy it is to identify a family – even if coverage did not include names.
- ‘Jigsaw identification’ - from the area where a family live, school attended, ethnicity or religious details, details of harm a child is alleged to have suffered, information about a parent’s mental or physical health and lifestyle, enable children to be identified.
- ‘Jigsaw identification’ is not simply a problem for children in small communities. The nature of communities in urban areas mean families can be identified making them equally vulnerable to harassment, bullying and further violence.
- Young people do not ‘buy’ the argument of policy makers that permitting the press to report detailed information from live cases will reduce criticisms of family courts. They said there are better ways to improve public knowledge and other avenues to explore allegations of unfair treatment.
- Under existing powers when a court is considering reporting restrictions, it is required to undertake a ‘balancing’ exercise, usually considering the rights of children and parents to respect for a private and family life and to a fair trial (Articles 8 and 6, ECHR) against the rights of the press to freedom of expression (Article 10).
- Notwithstanding objections to media access to hearings per se, young people said a key issue for courts when deciding any relaxation of reporting restrictions during proceedings is safeguarding the immediate but also the future safety and wellbeing of children - and in the context of their ascertainable views about media reporting.
- This suggests that to protect children, the decision as to whether to relax reporting restrictions during a ‘live’ case should remain a matter of judicial discretion.

### **The impact on children: rights to dignity, respect, self esteem and wellbeing**

- Young people were unanimous about how a young person might feel, reading about their case in a newspaper – even if not named. They described feelings of anger, sadness and depression, embarrassment, shame, guilt, and humiliation.
- Where children suffer emotional problems these could spiral in the face of potential media coverage leading to serious depression, self harm and suicide.
- Young people described the ongoing stress and anxiety for those in care: they highlighted the stigma involved and the constant fear that people will discover the reasons they are in care. Media access and reporting will exacerbate that stress.

- They also said children are often resistant or unable to share feelings; the seriousness of emotional health problems is thus not fully recognised. The risks posed by media reporting may increase the number of children in this group and thus those not recognised as at serious risk of self harm and suicide.
- Young people said once information is published, public humiliation will follow. Moreover, children then live with the fear of further exposure of highly intimate details of their care for the rest of their life: web sites are not 'next week's chip paper'.

### **Reporting cases once they are completed**

- Automatic restrictions on media reporting where this permits identification of a child and family cease once a case is completed (unless the court directs otherwise).
- Not only did young people not know this, but they had serious concerns about a loss of protection for children at this point. Save in exceptional circumstances therefore, they said reporting restrictions should be maintained.
- When considering an application to extend reporting restrictions beyond the life of a case, young people said the court should ascertain the views of the child concerned - if necessary, with the assistance of an assessment as to capacity and by a trusted person who is aware of the safeguarding implications.

### **The needs of some parents to be able to speak to the press**

- Young people raised serious doubts about allowing parents to talk to the press once a case is completed and to identify themselves and any child/young person. The reasons parents may want to do this (e.g. where they feel a decision was unfair) did not hold weight with young people.
- Given the seriousness of ill treatment and the work of courts in coming to a decision, young people said aggrieved parents did not need to take issues to the press. There are other avenues to address grievances and if necessary, these could be improved.
- In response to the suggestion that parents should be free to vent anger and raise concerns about professionals and courts, young people were clear: using the media was not an acceptable route, '*parents need to act like parents*' and put children's interests first: children do not want the press involved in family proceedings.
- Like other samples, this group said parents must seek permission from a child before talking to the press but this does not dispense with the requirement that courts must ensure the child is able to give *informed consent*.

### **Arguments in favour of naming professionals: the response of young people**

- With regard to whether the press has a useful role in reporting cases where a judge identified health, social work, guardian or court failures, young people understood the argument about exposing failures but said there are better ways to do this (e.g.

through Key Performance Indicators and inspections in some instances and an independent review agency for others).

- They were unconvinced about arguments as to the benefits of ‘public exposure’ through the press: it represented a ‘poverty’ of thought in the development of public services to respond properly to complaints. ‘Oversight’ by the press will not resolve complaints about lack of fairness.

### **Benefits to children and young people of media reporting**

- As to whether children might be pleased or benefit from media reporting about why they were removed from parents, young people said that would not be the case; the reality of what would be reported and the long term risks to them are too great.

### **Media access to court documents: the ‘next steps’?**

- Like previous samples, young people were also unanimous in their rejection of the proposal that reporters should have access to court documents.
- As to whether there are any benefits to media access to documents, young people said there were not. Information from a single case was not effective in educating the public nor could it address public confidence in a meaningful way.

### **When should children/young people be told about media access to court documents?**

- Care proceedings are usually at the end of a long process; young people said honest and accurate information about media access to hearings, documents and reporting should start when a child/young person becomes the subject of state concern such that a local authority takes or becomes involved in decisions about their care.
- This would enable young people to make informed choices in the context of rights to information under Article 12 (UNCRC). They said information about media access withheld, or given at the ‘door of the court’ is unethical; it also breaches their right to information in a format and at a time to enable them to make informed choices.

### **The impact on engagement with professionals by children and young people**

- Once told the truth about developments in media access to hearings and to certain records young people said children will be unable or unwilling to talk further to professionals about ill-treatment and are likely to withhold information.
- Those views, coupled with those of young people in earlier samples, indicate this issue has not been aired sufficiently in Parliament, with young people themselves, or with the professionals involved in assessments and advocacy on behalf of children.

### **Implications for children and young people’s health and well being**

- Concerns about the implications for children’s health and emotional wellbeing and self esteem dominated discussions about the release of court documents to the press.

- The prospect of media access to documents and thus more reporting of cases adds to the anxiety and risks posed for the long term health of children subject to ill-treatment. Young people said this is an unacceptable additional pressure on them.
- Young people were also concerned about effects of these changes on other children: once they hear about media access to hearings and records that will deter abused children from coming forward; they will be unwilling to discuss ill-treatment because the consequences for them are perceived as potentially worse.
- Rights to confidentiality in other contexts such as medical records were raised. These rights underscored young people's trust and willingness to talk to their GP and other health care professionals.
- In essence these young people talked about a right for children subject to abuse and court proceedings '*not merely to survive, but to thrive...*' and the responsibility of Parliament and family courts to ensure an environment that supports that endeavour.

### **Telling children about media access: difficulties for professionals**

- In addressing difficulties this area poses for social workers, guardians and advocates (caught between a desire to protect children and an obligation under Article 12 (UNCRC) to give them information to enable them to make informed choices) young people said professionals who did not tell them about media access were not honest with them and were simply 'opting out' of difficult conversations.
- They said there should be an end to hypocrisy and outdated paternalism in this field: professionals should be subject to a formal regulation such that they are required to inform children/young people about media access to hearings, to records and reporting of cases as soon as their care becomes an issue for the state.
- They said this should not be a matter of personal choice: it is an ethical obligation in terms of truthfulness and an obligation under Article 12 of the UNCRC but in neither context do young people currently have any power or redress.

### **Family court judgments on line: the response of young people**

- More judgments are published on a public website (BAILLI); before a judgment is published however, the names of parents and children should be removed. The names of lawyers, social workers, the local authority, the guardian and any doctors involved are to remain, as is the name of the judge.
- Young people understood judgments provide accurate information of events and the reasons for a court decision but were concerned about 'jigsaw identification'. They said the capacity of reporters and others to trace children has not been addressed.
- They also said that this level of publicly available information may make abused children more vulnerable to inappropriate attention from predatory adults.

### **Public confidence in family courts: views of young people**

- Young people said accusations that family courts are ‘secret courts’ are disingenuous: they are private, and for good reason. They said such accusations are a justification for press access to information it would otherwise not achieve.
- Young people did not think newspapers could or would achieve change in family proceedings. They said all cases are serious for the child or they would not be in court: to make them ‘newsworthy’ the media will select the most intimate, ‘juicy’ details. Where change was necessary there are other avenues to achieve that.

### **Alternative ways of addressing issues of public confidence**

- Young people said posing the media as the solution to a perceived lack of public confidence in family courts represented unimaginative and clichéd thinking: they said there were better ways to address issues of public confidence.
- They said that where the court is asked to address the wish of parents to talk to the press, the ascertained wishes and welfare of the child should take priority; Parliament should ensure the law reflected that priority.
- They said judges are there to protect children: the terms of their work and training provide public assurance there is nothing ‘secret’ going on and that the process is fair.
- While accepting judges are not infallible, they said reporters will not stop mistakes; checks operate and other measures should be explored.
- They further argued that the President should perhaps establish a small department - independent of government to inspect and assess some cases from the perspective of justice and fairness to parents/others, and the welfare and rights of children.

### **Good enough for your children? Messages for Parliament, the President, frontline professionals and the public**

- Young people said it does not appear that children’s rights, views and interests are clearly on the agenda of Parliament or the President of the Family Division.
- They said the President should stop trying to please the media, not least because it will not fulfil his agenda; he should explore other mechanisms for monitoring and, if necessary, improving services and information about services.
- Sanctions as an ‘answer’ to the concerns of young people about identification of children miss the point: they are also consumers of family court services and members of ‘the public’ but for them, the damage is done and likely to be long term.

- Sanctions also fail to address the difficulties where children effectively disengage from the process when told about media access. Young people also said editors may risk sanctions where the financial rewards from publishing are likely to be high.
- Anecdotal evidence supports young people in that they are not told about media access to hearings. The reasons why professionals do not tell them is because they do not want to distress children and they hope the press will not attend. Many indicate it is not their job to persuade children to trust the press nor do they think it is safe to do so.
- Failure to tell young people the truth cannot continue - not simply because it is dishonest but because access to records and relaxation of reporting restrictions make it more likely that the press will attend hearings, and if the rules are sufficiently relaxed to meet commercial imperatives, will report on more cases.
- Developments are unlikely to stop here. It is naive to think that the press will be content with access to some records but not others, or that in the long term they will be content with reporting restrictions. As reporters in England and Australia argue unnamed parties do not sell newspapers.
- As young people identify, this field is a 'Pandora's Box' with potentially severely detrimental and far reaching consequences for children. It may therefore require and indeed benefit from a proper consideration by Parliament (as was originally intended) along with a transparent consultation exercise where the full proposals and the views of young people are presented to the public.
- Two key issues arise for children in private law cases.
  - Without separate representation and where most parents are litigants in person, there is no one independent to ascertain and advance views on a child's behalf. Children are thus at greater risk that warring parents will use the media as a weapon in their own agenda, with children trapped in that battle but without a voice. The court is also without access to independent evidence on a child's behalf when considering a balancing act between a child's Art 8 rights (to privacy) and a parent's/press rights under Art 10 of the ECHR.
  - Solutions posed by young people in public law cases (e.g. seeking a child's view or assessing capacity to agree to media involvement through an independent person) do not exist: access to a guardian, solicitor or family court adviser is absent in most private law cases.
- It is naïve to think that the media can provide a more effective, accountable role in exposing mistakes and preventing future miscarriages of justice than, for example, an independent, accountable agency as suggested by young people.

- It is also naïve to think that miscarriages of justice do not happen in both family and criminal proceedings, but it is useful to bear in mind that the media has had access to the latter courts for many years and the reality does not always support rhetoric: miscarriages of justice are not necessarily prevented.
- While conscious and unconscious ideals drive goals, greater humility and honesty about the limitations of the media is perhaps required and thus a more sophisticated approach where children's views, health and protection are explicitly central. Indeed Parliament may consider their welfare should be paramount. As young people and others identify, the framework for this area of legal policy has to be considered against the commercial imperatives of the contemporary media and not an ideologically driven agenda about, for example, public education, which the press itself does not claim to fulfil.

## **INTRODUCTION**

### **Background and introduction**

- 1.1 Following several public consultation papers and a range of proposals on media access to family court hearings<sup>1</sup>, the previous (Labour) Government changed the Family Court Rules in April 2009 to permit reporters to attend family hearings (see below). This was followed in 2010 by Part 2 of the Children Schools and Families Act 2010 (hereafter 'Part 2', CS&F Act 2010) which proposed further changes covering media access to court documents and relaxation of the rules determining what information may be published from cases. Those proposals were highly complex<sup>2</sup>, produced at the last minute, subject to much criticism and not subject to proper public consultation or detailed scrutiny by Parliament.
- 1.2 Most contributors to the debate saw Part 2 proposals as unworkable. In 2010, The House of Commons Home Affairs Committee stated:

*'We recognise the need for transparency in the administration of family justice, and the equally important need to protect the interests of children and their privacy. However, our witnesses were united in opposing implementation of the scheme to increase media access to the family courts contained in Part 2 of the Children, Schools and Families Act 2010. While their reasons ...differed and were sometimes contradictory, such universal condemnation compels us to recommend that the measures should not be implemented, and*

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<sup>1</sup> Department for Constitutional Affairs (2006) Confidence and Confidentiality: Improving transparency and privacy in the family courts; Department for Constitutional Affairs (2007a) Confidence and Confidentiality: Improving Transparency and Privacy in Family Courts; Department for Constitutional Affairs (2007b) Confidence and Confidentiality: Openness in Family Courts – a new approach ([www.justice.gov.uk/publications](http://www.justice.gov.uk/publications)).

<sup>2</sup> Part 2 of the Bill proposed a two-stage process to further relaxing the rules on media reporting of cases. Stage one proposed to expand the range of cases open to the media (for example, to include first stages of adoption), to permit the media to report the 'substance' of cases provided conditions are met and children and parents are not identified and to enable experts commissioned within proceedings to be named in reports of cases, and further to enable anyone to publish an anonymised version of the text or summary of a court order (except in adoption and parental orders) unless the court restricted publication, but judgments could not be reported unless the court specifically allowed it. The conditions posed for the media in order for courts to be reported were complex: Section 34, clauses 34-37 set out five conditions. In stage one some information would remain confidential (unless specified otherwise by a judge); this list includes 'identification information', 'sensitive personal information' and the names of expert witnesses who are not commissioned within proceedings. However, Stage 2 of the Bill dealt with what was referred to as deferred changes in an 'overall move to a more open phase'. So for example, the list of what is to remain confidential would be amended so that only 'identification information' would be confidential (except the identification of expert witnesses). Some personal information would be able to be reported 'as long as this was not 'identification information'. At the point of the Bill the (then) government suggested that it intended to allow all expert witnesses to be identified in stage 2 – although at that point this would not happen automatically. Stage 2 would have removed the reference to 'sensitive personal information', the court could restrict publication under 'condition 5 of restrictions on media publishing' *if it was necessary to avoid 'an unreasonable infringement on the privacy of any person'*, and the standard of proof required before a court would restrict publication would be lowered from a court being satisfied that there was a real risk to one of the identifying categories to the court 'considering that that there was such a risk'. The effect of stage 2 provisions was that 'sensitive personal information' - protected under stage one - could then be publishable *unless the court specifically imposed restrictions* [emphasis added] but the court would have had additional grounds under which to impose restrictions. (See below para 13.65)

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*the Ministry of Justice begin afresh. We welcome the Government's acknowledgement that the way the legislation was passed was flawed and urge Ministers to learn lessons from this outcome for the future.<sup>3</sup>*

1.3 In its response to the Select Committee's Report, the Government stated:

*'The Government accepts the recommendation that Part 2 of the Children, Schools and Families Act 2010 should not be commenced at this time. Ministers advised Parliament in October 2010 that no decision would be taken on commencement of these provisions before the outcome of the Family Justice Review. However, in the light of the committee's findings, we have decided to bring forward that decision'.*

1.4 The Family Justice Review (FJR) did not however take evidence on issues of 'transparency' in family courts; it delivered some anecdotal comments based on observations in other jurisdictions, acknowledged that it had not had time to consider the issues properly and concluded it was a 'complex area requiring further consideration by Government'. The Justice Select Committee recommended Part 2 should not be implemented<sup>4</sup> and it was subsequently repealed (by the Crime and Courts Bill, 2012).

1.5 The (then) Shadow Minister for Children in criticising the last minute inclusion of Part 2 in the Bill said that should the Conservative party get into power, they would address the issue properly with the time and care it required with a proper public consultation, taking into account research evidence on the views and implications for children and young people<sup>5</sup>.

1.6 While there remain divergent views about how/if issues should be taken forward, in practice, access to court documents and relaxation of the rules on what may be published from cases, has not been returned to the public arena for a proper consultation exercise within the terms of the Cabinet Rules on consultation.<sup>6</sup>

1.7 Having repealed the provisions in Part 2 of the CS&F Act 2010, the current Coalition Government has not in fact 'started again'.<sup>7</sup> The changes proposed by Part 2 regarding media access to certain (as yet unspecified) court documents and relaxation of reporting restrictions are being addressed by the President of Family Division rather than by Parliament and indications are that these changes are likely to

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<sup>3</sup> The Justice Committee's Sixth Report of Session 2010-12: Operation of the Family Courts, Para 281

<sup>4</sup> FJR Final report paragraphs 2.234 and 2.235

<sup>5</sup> Tim Loughton (then) Shadow Minister for Children, DfE.

<sup>6</sup> Consultation Principles: Guidance

[:https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/255180/Consultation-Principles-Oct-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf)

<sup>7</sup> Leaving the position on court attendance by the media as amended by the Rules in 2009 but with reporting regulated by s 97 (2) of the Children Act 1989 and (in the event of contempt of court proceedings), by s.12 of the Administration of Justice Act 1960.

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be addressed by way of pilots and Practice Directions rather than by public consultation.<sup>8</sup>

1.8 It is worth restating the position summarised by The Select Committee:

*'There is a tension between allowing the media to publish even limited material about cases in the interests of increasing public confidence and a child's right to keep personal information about them and their experiences private. There is a danger that justice in secret could allow injustice to children, or a perception of injustice. We believe that the underpinning principle of the family court system, that all decisions must be made in the best interests of the child, must apply equally to formation of government policy on media access to the family courts.'*<sup>9</sup>

1.9 That this issue continues to divide lawyers, judges and politicians is not doubted. Equally, to the extent that people take at face value what some reporters and newspaper headlines say about family courts - aspects of public opinion are at best likely to be confused. The debate is posed as two opposing sides: one taking the view that any publicity involving cases based on allegations of ill-treatment of children is unwarranted, that the media are unashamedly sensationalist and that children and families involved in proceedings are entitled to privacy, the other repeating a view that family courts are 'secret', that professionals (social workers, lawyers, judges and experts) are unaccountable and that a liberal democracy depends on freedom of the press to report what goes on in family courts.

1.10 Some lawyers and judges are especially anxious and said to be without a defence to claims that family courts are 'secret' courts. Some are concerned that the media portray social workers, judges and others as autocratic and riding roughshod over parents' Article 8 rights by removing children from parents for no good reason or denying a child contact with a parent.<sup>10</sup>

1.11 Historically it has been the case that in order to protect the interests and welfare of children, family courts have excluded the public and the press from proceedings and have restricted what may be published from cases.<sup>11</sup> Others have noted that the

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<sup>8</sup> The President's intention is to revisit the rules governing what may be published from family proceedings and to consider, incrementally, media access to certain (as yet unspecified) court documents (see 'View from the President's Chambers', Numbers 1 and 4 published in May [2012] Fam Law 548 and August [2012] Fam Law 974, and *Draft Practice Guidance: Transparency in the Family Courts and the Court of Protection – Publication of Judgments* [2013] Fam Law 981).

<sup>9</sup> The Justice Committee's Sixth Report of Session 2010-12: Operation of the Family Courts, Para 281

<sup>10</sup> For example, see Brooker C - [http://www.telegraph.co.uk/health/children\\_shealth/10205775/New-family-court-guidelines-wont-improve-a-rotten-system-for-children.html](http://www.telegraph.co.uk/health/children_shealth/10205775/New-family-court-guidelines-wont-improve-a-rotten-system-for-children.html)

<sup>11</sup> Section 12 of the Administration of Justice Act 1960; section 97 of the Children Act 1989 and section 39 of the Children and Young Persons Act 1933. Thus the first of these reads:- (1) *The publication of information relating to any court sitting in private shall not of itself be contempt of court save in the following case, that is to say, where the proceedings (i) relate to the inherent jurisdiction of the High Court with respect to minors, (ii) are brought under the Children Act 1989; or (ii) Otherwise relate wholly or mainly to the maintenance or upbringing of a minor.*(2) *Without prejudice to the foregoing subsection, the publication of the text or summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power*

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argument that cases involving children should be heard in public has been taken to Strasbourg and has failed in the ECtHR.<sup>12</sup> It has also been litigated in domestic courts and failed there also.<sup>13</sup> The thinking of the ECtHR follows *Scott v Scott*.<sup>14</sup> Below is an edited extract from the head note to the first of the cases cited as reported in the Family Law Reports and demonstrates the ECtHR's thought processes:

*'Whilst Article 6(1) of the Convention provided that, in the determination of civil rights and obligations 'everyone is entitled to a fair and public hearing', it was apparent from the text of the Article itself that the requirement to hold a public hearing was subject to exceptions. The present proceedings were prime examples of cases where the exclusion of the press and public might be justified in order to protect the privacy of the child and parties and to avoid prejudicing the interests of justice. Moreover, it was not inconsistent with the general rule stated in Art 6(1) for a state to designate an entire class of case as an exception when considered necessary in the interests of morals, public order or national security or where required by the interests of juveniles or the protection of the private life of parties, although the need for such a measure must always be subjected to the court's control. The decision in each applicant's case to hold the hearing of his application for a residence order in chambers did not give rise to a violation of Art 6(1).<sup>15</sup>*

- 1.12 As Wall LJ (as was) pointed out in 2012, the ECtHR did not consider article 10 separately: it did not think it necessary to do so in the light of its findings on article 6 and the limited extent to which the county courts' judgments were made available to

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*to do so) expressly prohibits the publication....' Sections 97(2) and (6) of the Children Act 1989 read as follows: no person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify any child as being involved in any proceedings before the High Court, a county court or a magistrates' court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; an address or school as being that of a child involved in any such proceedings.....' (6) Any person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine...Section 39 of the 1933 Act (where material) reads:- In relation to any proceedings in any court... the court may direct that –no newspaper report of the proceedings shall reveal the name, address, or school, or include any particulars to lead to the identification, of any child or young person concerned in the proceedings, either as being the person by or against, or in respect of whom the proceedings are taken, or as being a witness therein; no picture shall be published in any newspaper as being or including a picture of the child or young person so concerned in the proceedings as aforesaid...'*

<sup>12</sup> *B v United Kingdom: P v United Kingdom* [2001] 2 FLR 261.

<sup>13</sup> See (inter alia) *Pelling v Bruce-Williams (Secretary of State for Constitutional Affairs Intervening)* [2004] 2 FLR 823.

<sup>14</sup> *Scott v Scott* [1913] AC 417.

<sup>15</sup> *B v United Kingdom: P v United Kingdom*, as above note 12; although the terms are well known, it is perhaps worthwhile to record the provisos to ECHR articles 6 and 8. Although Article 6 refer to a "fair and public hearing", it goes on: "Judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial....where the interests of juveniles, or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". ECHR article 8.2 prohibits interference with the right "save in accordance with the law and necessary in a democratic society for (inter alia) "the protection of health or morals, or for the protection of the rights and freedoms of others. ECHR articles 6 and 8 are engaged in every case involving children".

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the general public. As was also pointed out in 2012, there is ample material for the now universally exercised discretion to hear proceedings relating to children in ‘chambers’<sup>16</sup> (i.e. in private) and for the reporting restrictions on such proceedings in the Court of Appeal, which sits in public. It should also be pointed out that in 2012 at least, Wall, LJ stated that ‘the burden of the FJR and the government’s acceptance of its recommendations - was the centrality of the role of the child’.<sup>17</sup>

### **Evidence from Children and Young People to 2010**

- 1.13 There was an abundance of evidence from a range of consultations and research leading up the CS&F Bill that children and young people did not wish the intimate details of their care and maltreatment - and the circumstances and failures of their parents - to be publicised by the media: they did not want the media in court, and they did not want the media to have access to any documentation.<sup>18</sup>
- 1.14 Equally research demonstrated that if children and young people are made aware by clinicians and other professionals undertaking assessments that the media may be in court, it would impact on their willingness to talk to professionals about ill-treatment and abuse in their families.<sup>19</sup> That position was reiterated by several clinical experts, for example, Dr. Danya Glaser, an eminent child and adolescent psychiatrist working in clinical practice with families and an experienced expert witness, made the same point in *Family Law*, when opposing the proposals contained in Part 2 of the CS&F Bill<sup>20</sup>. Dr Glaser argued that important information might be lost to the court where a child refused to co-operate with a clinician because there was a risk that what the clinician wrote would become known to third parties beyond the ‘doors of the court’.<sup>21</sup>
- 1.15 Other clinicians in paediatrics and child health also reported they may advise children and young people that it may not be in their interests to discuss further issues of abuse during assessments – in the face of potential media attendance in court and access to expert reports. Perhaps surprisingly in a system where the interests and welfare of children is said to be key, these issues have been downplayed or largely ignored in legal/policy arenas, while members of the press argue variously that children should simply not be told about media attendance at hearings<sup>22</sup> or that it is the job of clinicians and other professionals to persuade children to trust the media.<sup>23</sup>

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<sup>16</sup> See Family Procedure Rules 2010, rule 27.10.

<sup>17</sup> See list of recommendations prefaced by the words “these recommendations aim to ensure that children’s interests are truly central to the operation of the Family Justice System”.

<sup>18</sup> See for example, Brophy J (2010) *The views of Children and Young People regarding Media Access to Family Courts*. Office of the Children’s Commissioner, England; also Department for Constitutional Affairs (now, Ministry of Justice) (2007) *What children and young people said, in Confidence and confidentiality: Improving transparency and privacy in family courts – Responses to Consultation*, CP (R) 11/06; DCA (2007) *Young People’s Guide to Confidence and Confidentiality*, at <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/consult/courttransparency1106/response-cp1106-young.pdf>.

<sup>19</sup> *Ibid.*

<sup>20</sup> See note 2 above.

<sup>21</sup> [2009] Fam Law 211.

<sup>22</sup> Satchwell B, Society of Editors, Family Justice Council, Third Annual Debate. London, Oct 2010.

<sup>23</sup> Satchwell B, Society of Editors, *Privacy and Transparency: disclosure and publicity in children law proceedings*, Third Annual Jersey Conference: Hanson and Renouf and the Association of Lawyers for Children. Jersey, October 2010.

## **The next steps**

- 1.16 While the last Government argued that the aim of changes to the Rules was so that the press would report on the process not the intimate details of cases<sup>24</sup> changes to the FPR and admittance of the media to family hearings was a first step. Some contributors argue that trusting the press with access to documents and to report proceedings accurately and fairly while protecting the identities of families are the next steps in the ‘transparency’ agenda. This is argued despite the fact that reducing reporting restrictions and access to court documents have not been subject to a public consultation or detailed scrutiny by Parliament.
- 1.17 Surveys of public confidence in a range of public bodies and organisations have demonstrated trust in the media has not been high; the number and extent of revelations of phone hacking by newspaper reporters leading to the enquiry chaired by Leveson LJ<sup>25</sup> suggest public trust in reporters and newspapers is likely to be further reduced. That is confirmed by a survey by the Public Broadcasting Service<sup>26</sup>. While it might at best be argued this may not be a good time for adult parties to provide reporters with confidential information and expect them not to exploit it<sup>27</sup>, it is remiss to think that young people would be less well-informed or that they should necessarily be more trusting of the press than adults.
- 1.18 By contrast, recent survey evidence on public attitudes towards family courts do not demonstrate widespread mistrust and lack of confidence: in a private law scenario, most respondents (71%) felt the court would come to a decision that was in the best interests of the child and would take into account the views of both parents (72%). In a public law scenario slightly less (but over two thirds at: 67%) felt the court would come to a decision in the best interests of the child and would take the views of parents into account (65%). Notwithstanding the limitations of survey evidence, those results do not indicate widespread lack of public confidence family courts<sup>28</sup>.

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<sup>24</sup> Harman, H (then) Minister of State, Department for Constitutional Affairs (now, MoJ) and see Foreword, DCA (2006) Confidence and Confidentiality: Improving transparency and privacy in family courts.

<sup>25</sup> An Inquiry into the Culture, Practice and Ethics of the Press, November 2012, The Rt Hon Lord Justice Leveson. London: TSO, HC 779. Opening, November 2011, (see - <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk> First Report, November 2012, plus amendments (see -

<http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/about/the-report/>

<sup>26</sup> Leaving aside longstanding national survey evidence about trust in public and commercial bodies (e.g. IPSOS MORI – see note 32 below), a recent survey by the Public Broadcasting Service (PBS) UK Trust (Oct 2011) suggested that the phone-hacking scandal has resulted in a ‘deep level of mistrust from the UK public’. Some 58% of respondents said that the recent phone hacking scandal has reduced their level of trust in the newspaper industry, while over half (51%) say it has reduced their trust in the UK media as a whole. The report also indicates the UK public is cynical of its own media industry (and US media outlets), for example, three in four people (74%) in the UK think media outlets sometimes, or frequently, lie to their audiences, over half (55%) agree that the content in the UK media has been ‘dumbed down’ in recent years. (See – [http://cdn.yougov.com/cumulus\\_uploads/document/bw7ty9nl1m/PBS%20Trust%20Report%20UK%20tables%20formatted\\_HT\\_Embargoed%20to%20141111.pdf](http://cdn.yougov.com/cumulus_uploads/document/bw7ty9nl1m/PBS%20Trust%20Report%20UK%20tables%20formatted_HT_Embargoed%20to%20141111.pdf)).

<sup>27</sup> See also Report of the Select Committee of both Houses on Privacy and “Super” injunctions, which recommended that developments in the law should be left to the judiciary on a case by case basis.

<sup>28</sup> Summerfield A and Freeman L (2014) Public experiences of and attitudes towards the family justice system. Analytical Summary. MoJ. June.

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- 1.19 The President of the Family Division, Sir James Munby, argues that the current position of the media is unsatisfactory. He concurs with others in stating that attendance of the press at hearings is of little value if the press does not have access to the materials on which decisions are made, and that more information from cases could be published. It is argued that if a reporter is denied access to documents and only presented with the result (the decision), how can the reporter judge the result to be fair, particularly when the person whose child has been removed argues that the process was injustice and the decision unfair.
- 1.20 Yet the lessons of reporting, for example in *Re L*, demonstrate some naivety as to the objectives of the press in the 21 century: in this case the press did nothing to verify a litigant's claims with the judge before publishing an inaccurate account of proceedings<sup>29</sup>. Moreover, current discussions fail to deal with the sensational reporting and fight shy of addressing real tensions between 'cherry picking' what to report for sensational headline purposes – and fair and accurate reporting. Indeed that is now posed as unacceptable territory for judicial comment.<sup>30</sup>
- 1.21 It is said (e.g. by Wall LJ, 2012) that there is a general acceptance of the proposition that the anonymity of children must be respected and that parents and other adults who bear the same surname may have to be anonymous. In practice, some caution may be necessary: members of the press in both this and other jurisdictions have argued that they will not be happy until 'everything' can be published.
- 1.22 Nevertheless, the argument currently runs: subject to certain 'formal safeguards' the media should have access to proceedings and should be able to fully report cases. In short, and as to principles, ECHR Article 10 should generally prevail over the rights of the parties under ECHR Article 8. Concern is expressed for and by the press about the commercial imperatives of the current industry, resulting in press decisions to restrict the time and resources for this type of reporting - and how the family justice system can assist the industry, given that restriction. However the views of those young people at the centre of cases have largely been ignored – save for references to sanction for breaches of confidentiality.

### **Aims and objectives**

- 1.23 The aim of the consultation was to further ascertain the views of children and young people to the various dimensions of policy in this field - both present (following changes to the FPRs in April 2009 permitting the media to attend family court hearings) and with regard to what information may be published from children's cases and with regard to media access to court documents.

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<sup>29</sup> For example, *Re H (Freeing Orders: Publicity)* [2005] EWCA Civ 1325, [2006] 1 FLR 815 and *Re L (A Child: Media Reporting)* (18 April 2011) (available in anonymised form on the Bailii website) – in the latter case a mother gave her version of events to a journalist and it was published (anonymously). The journalist was not present in court at any time, did not publish the available judgment or indeed seek to verify issues with the judge. Despite this lack of attention to accuracy, the judge was severely criticised by the journalist.

<sup>30</sup> In *Re Roddy (A child) (identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 2FLR 949 at para [89] Sir James Munby argued (para 37) '...judges are not arbiters of taste or decency...It is not the function of the judges to legitimise 'responsible' reporting whilst censoring what some are pleased to call 'irresponsible' reporting...it is not for the court to substitute its own views for those of the press as to what techniques of reporting should be adopted by journalist... '

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- 1.24 The consultation provides further information to assist those with responsibility for developing policy in family justice and Parliament in assessing the impact of changes on vulnerable children and young people in the context of responsibility for their safety, rights to privacy and rights to be consulted on all matters affecting them and further, with regard to the willingness and ability of children and young people to discuss parental ill-treatment in the light of media access and reporting and to work with and trust professionals. It also provides information to assist clinicians and welfare and legal representatives in their discussions with young people, in order for them to put the views of their young clients before courts.

### **Sample and methods**

- 1.25 The eleven respondents are aged between 16 and 25 years and evenly divided between males and females. In terms of ethnicity, the sample was mixed (with representation from white British, white Welsh, Black and Asian British). Almost all respondents have direct experience of proceedings.
- 1.26 The sample was drawn primarily from the NYAS young people's consultation and participation group (a national group covering England and Wales) and from young people who had been provided with a service by NYAS. The process started with an open invitation to participate in the consultation exercise; the invitation was also extended to other young people's forums. The criteria for selection from the former, larger group, was direct experience of private or public law proceedings. Young people were given information about the issues and aims of the day; consent and 'gate keeping' issues were completed prior to the day by the Operations Manager and the Participation Officer at NYAS; they also undertook support and safety procedures before and following the consultation and, along with other NYAS staff accompanied NYAS young people to and from the venue. They also contributed to the interview schedule, developed 'ice breaking' sessions (see below) and were part of the team undertaking interviews. Confidentiality issues, format for the interviews and 'rules' for the day were set out at the start of the day (see Para 1.27 below).
- 1.27 While this is described as a consultation exercise, the methods employed sit more clearly with that of a group interview (rather than a focus group or consultation). This is because young people's views were ascertained according to a semi structured interview schedule in which there were fixed and open-ended questions and in which each participant had an opportunity to address each question – and where the researcher and facilitators and the young people themselves could add follow up questions and put their own questions to participating colleagues.
- 1.28 At the start of the consultation process:
- The researcher, facilitators and note takers introduced themselves and explained their respective roles
  - The background to the issues, the themes to be addressed and the reasons why their views were being sought were set out
  - 'Rules' for the day were explained (see paragraph 1.31 below)
  - The method for obtaining their views and the role of adults was explained

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- The reason for recording the session was explained and young people given the option of not having all or some of their views taped; protocols were explained so that young people could change initial consent at any point during the interview
  - Plans for the analysis and reporting of their views and issues of confidentiality of data explained
  - Proposals to ensure young people had an opportunity to comment on the report were explained.
- 1.29 This was followed by a session of ice breaking games so that young people got to know each other and the adult team by name.
- 1.30 A ‘whole group’ discussion followed focusing on what young people understood by the term ‘media’. This was to ensure a shared understanding of the terms and titles used to describe people working in the media and agree those used in the group interviews.
- 1.31 Young people were then randomly divided into two groups; each group had an interviewer, a note taker and one/more facilitators. The interviewer led on the questions working to a standardised schedule (see Appendix 1). Each respondent was given an opportunity to address each question. Responses were noted by a facilitator but the whole session was also taped to enable the lead researcher to ensure an accurate presentation of the views within and across groups. Researcher and facilitators worked to try and ensure each person addressed each question.
- 1.32 Agreement and differences of view were explored within the terms of the ‘rules’ for the day (i.e. that there are no ‘right’ or ‘wrong’ answers, that each experience or view is valid, that respect for each other means listening to others, not interrupting and allowing people to explain, ‘think aloud’, and perhaps change their view as discussions developed and they listened to others).
- 1.33 The draft report was circulated to the participants and a session organised in London at which the report and key findings were discussed and participants gave their views and comments on the report. NYAS staff helped organise that session and accompanied young people to and from the venue.

**Format and terms**

- 1.34 The layout of the report follows the themes and questions in the schedule along with key findings for each section:
- Part 1** (as above) covers the background to the study
  - Part 2** explores young peoples’ views and experiences of the media in general
  - Part 3** explores views about media use of pictures of children in general, and in proceedings in particular
  - Part 4** examines views about the decision to permit the media into family court hearings
  - Parts 5, 6 and 7** explore information from cases which, if published, would enable children to be identified, and views about relaxing and increasing reporting restrictions
  - Part 8** explores views about the impact on children of media reporting of cases

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**Part 9** examines views about media access to family court document

**Part 10** examines views about written judgments

**Part 11** examines views about issues of public confidence in family courts

**Part 12** explores key messages for Parliament, the Justice Select Committee, the President of the Family Division and key professional groups

**Part 13** summarises key findings, setting out the implications for all professionals in the family justice system.

- 1.34 Throughout the report the terms 'children' and 'young people' are used. To keep repeating 'children and young people' is clumsy and unless otherwise stated, each term implies the other.

## **PART 2 - THE MEDIA**

- 2.1 Young people began discussions with a shared understanding of the term ‘the media’: it is a wide ranging term, covering the print press (local and national newspapers and magazines and also free local newspapers/news sheets), television and radio news programmes and current affairs programmes. The term also includes global web-based networking sites such as Facebook and Twitter and YouTube (a video sharing website).<sup>31</sup>
- 2.2 They are also familiar with the different roles of people working in the media (journalists, reporters, correspondents, editors, and news/media owners/businesses) and the role of editors compared with that of a reporter/journalist.

### **How do young people think journalists report information generally?**

- 2.3 Overall, young people do not trust the media. Their views are drawn from several sources but overall they said reporting was often dishonest and misleading, that stories were selected – and manipulated - to sell newspapers, that reporters put pressure on people to comment in situations where they have already indicated they do not wish to comment on an issue or event. They also said newspapers ‘twist’ details; do not give the full story, or a balanced ‘picture’ of events reported.<sup>32</sup>
- 2.4 These views are based on their experiences as consumers of media output (reading newspapers, watching TV news reports etc.) but also personal experiences with the media. Several young people had direct experience of involvement with reporters. For example:
- One young person had been involved in a fundraising event; she had been interviewed by a reporter but was misquoted in the published material. [Female, 18 years]
  - Another young person with quite a bit of media experience gave examples of reporting (by both print and TV media) which he identified as selective. For example, he said that the reporting on a demonstration he had attended had focused on a small minority of problems despite the fact that the event was overwhelmingly orderly and peaceful with young people wishing to discuss with reporters their concerns and how to take things forward in a constructive manner.
  - He also said newspaper coverage had under reported the number of young people on the demonstration and failed to report the concerns relayed to reporters by young people about educational policy. [Male, 20 years]

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<sup>31</sup> For example, YouTube allows billions of people to place share and watch videos, providing a forum for the exchange information across the globe; it is also a distribution platform for content creators and advertisers and permits users and viewers to add comments and questions on materials shown.

<sup>32</sup> And in this they do not differ substantially from adults: the Ipsos MORI 2013 Monitor identifies that 72% of adults do not trust journalists to tell the truth (and 71% of those in the 18-34 age band) – see Table 37 [http://www.ipsos-mori.com/Assets/Docs/Polls/Feb2013\\_Trust\\_TABLES.PDF](http://www.ipsos-mori.com/Assets/Docs/Polls/Feb2013_Trust_TABLES.PDF)

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- 2.5 In discussing why they felt the media could not be trusted, young people also referred to the behaviour of newspapers (owners, editors and reporters). For example they referred to the criminal proceedings following allegations of phone/voice mail tapping of 'ordinary people' and film stars/celebrities by reporters and others. They were also aware of the Government inquiry (Leveson LJ)<sup>33</sup> and questions about the ethics and accountability of editors and newspaper owners.
- 2.6 They also expressed concerns that where people do complain about inaccurate reporting, an editorial apology may be buried in small print several pages into a newspaper. This compared poorly with the location – perhaps a blazing headline - of the original story. Young people said for the people identified in the story, the damage was done. Any subsequent printed apology was felt to be somewhat hollow, its location in a newspaper not comparable with the prominence of the original story.
- 2.7 Overall, there was little evidence of trust or confidence in the media:
- 'Some journalists put their own opinion into what they write...they twist things to try and make a better story....the reader thinks it's fact when it might be just their own opinion...'* [Female, 16 years]
- 'As a child, as a young person, you're taught to tell the truth, in general you're taught to trust and tell the truth.'* [Female, 24 years]
- 2.8 Young people also said the motivating force for press reporting was commercial – they did not experience it as driven by a public interest or an educational imperative:
- '... because journalism is such a competitive field – they are all fighting to get their name out there...so they put their own influence on things – or make them up – so their story sounds realistic and the best, so it will be picked up by the TV [and] we [the readers] think it is true but in fact 60-70% of it is probably twisted or not real.'* [Male, 16 years]
- 2.9 Views about the centrality of commercial priorities and competition across the media as key driving forces did not change according to which part of the media they considered:
- 'They are all as bad as each other, they make up lies, twist things – they all do it, there's no difference between them'* [Female, 16 years]
- '...they compare what information they have with others – they've got to try and make their story more interesting... more entertaining'* [Female, 24 years]
- 2.10 Young people said commercial priorities and thus a focus on circulation figures and ratings meant that certain comments made to reporters by interviewees might be dropped from eventual coverage of an issue or event because it detracted from the angle or story the reporter wanted. Young people also said technology allows easy manipulation (cutting and pasting) of texts and videos and that public entertainment and sales figures overrode truthful, factual and balanced reporting. For example:

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<sup>33</sup> See note 25 above.

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*'...you might remember a story about a [university student] urinating on a war memorial...that was wrong – he shouldn't have done it but he was in a drunken state...but he was portrayed in the press as a monster. He wasn't....and the press were trying to get young people to do things....they were telling girls to lie down on the floor [saying] "do this, do that" - to take pictures. The whole thing was constructed by reporters and photographers to get the pictures they wanted...to get what they wanted to see published'*  
[Male, 20 years]

- 2.11 While events such as the phone/voice mail hacking trials have brought issues of public trust in the media to the forefront of debate, those events were not the main reason for mistrust of the media by young people. That had developed long before the criminal trial of reporters, editors and others and the work of the Home Affairs Select Committee.<sup>34</sup> Young people argued that commercial demands have been in the driving seat of the media for some time – at least in their lifetime. For example, one young woman speculated that perhaps there might have been a time in the early history of newspapers when people believed what they read, but not now:

*'...perhaps a time long ago but not now...so many media companies competing and battling it out – they can almost write what they want now'*  
[Female, 24 years]

Most agreed with her, for example:

*'Yes it's corrupted out there – so many companies all battling it out for sales...'* [Male, 16years]

*'There's too much media...and the competition between them is so great, it works against telling the true story through facts, it is corrupted now.'*  
[Female, 16 years]

- 2.12 Some young people thought there might be a better chance of more truthful reporting from the 'Nationals' where big, world events such as '9/11'<sup>35</sup> were concerned. This was partly because initially at least, coverage was often 'live' at the scene leaving less chance for the manipulation of reporting for later public consumption.
- 2.13 However young people felt concerns about responsible, truthful reporting did not end there: several talked about the way in which the reporting of events could be whipped into a 'moral panic': '9/11' and '7/7'<sup>36</sup> were discussed as examples. Young people

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<sup>34</sup> House of Commons, Home Affairs Committee, Unauthorised hacking in to or tapping of mobile communications. Thirteenth Report of Session 2010-12 –see [http://www.parliament.uk/documents/commons-committees/home-affairs/unauthorised\\_tapping\\_or\\_hacking\\_mobile\\_communications\\_report.pdf](http://www.parliament.uk/documents/commons-committees/home-affairs/unauthorised_tapping_or_hacking_mobile_communications_report.pdf)

<sup>35</sup> The September 11 2001 attacks (referred to as '9/11' above) were a series of four coordinated terrorist attacks on the Twin Towers in New York City and The Pentagon, Washington DC.

<sup>36</sup> The 7 July 2005 London bombings (referred to as '7/7' in discussions) were a series of coordinated suicide attacks in central London targeting public transport during the morning rush hour.

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said some reporting had stereotyped Muslims setting communities against each other. For example, one young woman reporting such concerns said her religion was about peace but the reporting of these events – in terms of [ascribed] religious details without balance or caveats, created ‘enemies’ in communities.

**2.14 KEY FINDINGS - YOUNG PEOPLE AND THE MEDIA**

- Young people do not trust the media – in all its forms. This view results from their experiences as consumers of print, televised and social media but also from personal experiences with reporters and photographers from print and televised media.
- Young people see the media as a highly competitive, commercially driven industry motivated by the need to increase sales figures through a populist readership. That core objective has often resulted in a portrayal of young people in a wholly negative light.
- For these young people this results in an industry – whether newsprint, TV, radio or other social media – which does not prioritise the truth. Fairness and balance are not features they identify with any part of the media. Indeed they see commercial priorities as overriding – and in some cases precluding - truth telling.
- Young people said technologies in both print and video recording permit (through ‘cut and paste’) easy manipulation of verbal and visual materials enabling a presentation of events and issues which meets commercial criteria.

## PART 3 PUBLISHING PICTURES OF BABIES, CHILDREN AND YOUNG PEOPLE

- 3.1 Overall – and save in exceptional circumstances (see below) young people were opposed to pictures of children appearing in the press without their *informed* consent. They argued that informed consent begins with assessing a child’s capacity to understand and determine the issues; it includes making sure that a child is aware – or is made aware of the long term consequences of information and pictures of them appearing on television. This position was argued on several levels.
- 3.2 In general young people think there are some safeguarding issues at stake: the children could be identified, picked on, and bullied; they could also become vulnerable to predatory adults. Young people said they are increasingly aware of the dangers of sharing pictures – of themselves and friends on the internet and the subsequent loss of control over how such pictures can then be used.
- 3.3 They said once pictures are in the media they take on a life of their own and remain ‘out there, available forever’.
- 3.4 Young people said some parents could not necessarily be trusted to think of the long term consequences for a child when providing or permitting use of pictures of their children on television and in the press. They discussed how some parents place disputes over paternity issues and battles over ‘custody and contact’ (sic) with a child on, for example, tabloid chat shows such as the ‘Jeremy Kyle’ show.<sup>37</sup>
- 3.5 Young people said the children whose circumstances are aired on such shows were unlikely or unable to give their consent – and *informed* consent was the key issue. As with court reports, some of the material raised by parents on chat shows reveal intimate details of their lives and that of their children – details which then become available to everyone. Young people said very intimate details of family problems and pictures of their children can ‘go viral’ within a very short time - available through web search engines, with full episodes of the programme placed on sites such as YouTube etc.

As one young woman commented:

*‘...as babies or very young children they could not give their consent [and] the parents had not thought about the long term implications for their child – who has its whole life ahead – but here are intimate details, available for everybody and forever....And people will be coming up to the child saying “I know your business...” [Female, 24 years]*

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<sup>37</sup> <http://www.itv.com/jeremykyle> - is a daily chat show showcased by the network as ‘Join ITV’s **Jeremy Kyle** for the latest family feuds, confrontations and reconciliations. Plus lie detector tests, DNA results and more from behind the scenes’. The programme for March 2014 is advertised as: **Monday 10th March:** I’ll never let you marry my son! **Tuesday 11th March:** Mum why don’t you believe that I was sexually abused? **Wednesday 12th March:** You’re Britain’s worst mum - your daughter should disown you! **Thursday 13th March:** If you stole from your mother, you’re banned from her grave! **Friday 14th March:** How do I forgive my mum? Her boyfriend killed my daughter. The series advertises for participants according to a range of relationship problems and is held before a studio audience.

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- 3.6 Young people questioned why parents do this to their children when there is no 'going back'. For example:

*'...at the time they may have felt...they may have wanted [media] coverage, but later they may regret it...they may think: "why did I do that!?" But - I'm not sure how to say this but - for the child, that's too late! So it's about **informed consent** – knowing what the consequences will be - for you, but also for your child'* [Female, 16 years]

*'I get really angry about that - you know – the DNA stuff and who's the father? A parent provides [a photo] of the baby...and you think, when that baby is 12 or 13 years and they find out their picture was on TV and they never – they could not have given their consent. And their parents are responsible because they took money to be on that show<sup>38</sup> - but what about the implications for the child?'* [Female, 24 years]

*'...yes for the child, it may scar them for life – they may be 6 or 7 years old but it will stay with them always; they will look back at [the programme] and live in fear of it ...And if they do something wrong or are involved in some trouble, that [material] will be there, available to be circulated and republished in local and national press...it will have a negative effect on them.'* [Male, 16 years]

- 3.7 Young people discussed Facebook and the increasing realisation of how quickly things can 'go viral' – with an example of a picture of a young person which had had some 3 million hits in a very short period: 'once it's out there – its out'. One young man said:

*'Knowing the picture is out there - freely available - will make the child feel ten times worse than what they already feel...'* [Female, 16 years]

- 3.8 For these young people, key issues were safety and privacy, and the moral issues this practice raises. Experiences of pictures of themselves and others being circulated on social media and to third parties without their consent have led some to step back from sending pictures by mobiles, smartphones and tablet devices. Indeed many of these young people have changed the way they use social media, taking a much more cautious approach *per se* and certainly not placing pictures on it.
- 3.9 They are especially concerned about the use of pictures of children in vulnerable families, especially on tabloid television and where the consent of the child – as a separate entity from a parent(s) – does not appear to them to have been addressed and where they felt the content of a programme may have implications for the long term safety and wellbeing of a child.

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<sup>38</sup> In practice, while participants on certain shows (e.g. Jeremy Kyle) are not paid for appearing, their expenses (travel and hotel accommodation) are met; adult and children's concerns about the purpose and morality of the show remain; a judge is described as likening it 'a human form of bear baiting' (Scott, 2007 'Jeremy Kyle laid Bair', The Guardian (Sunday 8 Oct) <http://www.theguardian.com/media/2007/oct/08/mondaymediasection2>).

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- 3.10 They argued for a more serious debate about the use of pictures of children *per se* which recognises longer term dangers for children and thus the importance of informed consent. As indicated above, informed consent begins with assessing a child's capacity to determine the issues and includes making sure that a child is aware – or is made aware of the long term consequences of information and pictures of them appearing on television. This applies between children and parents (educating the latter about some of the dangers of sharing pictures which are likely to comprise a child's future wellbeing, dignity and reputation) and between adults (parents and programme makers).
- 3.11 Where children are too young to engage in consent issues, young people said their photos should not be published on television – save in exceptional circumstances such as where there are safeguarding issues that indicate it is necessary:
- '...there's a tiny percentage of [circumstances] – of where it could be right, for example, if there are bad parents or bad people out there and a picture might help find [a child] but even then, the impact on the child should be very carefully [considered]...'* [Female, 17 years]
- 3.12 That was the framework against which young people then addressed the question of whether and when parents and family courts should permit publication of pictures of children involved in proceedings.

**Publishing pictures of children subject to proceedings**

- 3.13 In a recent case<sup>39</sup> a landmark ruling allowed a father to post a video of police and social workers removing his baby under an emergency protection order. While the case raised a number of issues about identification of social workers, it was also followed by some discussion about whether one could identify the child – and if so, whether that mattered.
- 3.14 Young people were unanimous in arguing that age was irrelevant to a decision about whether to permit publication of pictures of children subject to proceedings. As indicated above, their starting point – save in exceptional safeguarding circumstances such as those outlined in paragraph 3.11 was that of ethics and the need for informed consent from or on behalf of the child and in the context of an awareness of the potential long term implications for the child. For example:

*'it's dead wrong to publish pictures...that baby does not have the opportunity to express a view as to whether they want the whole world to see their picture...fair enough they are young and [so] won't know about it –or remember it but other people do – and they will remember it'* [Female, 17 years]

*'This is more of a moral question..., and to me it's immoral to publish it...the child can't say "yes or no" – they can't give you an opinion – so you are basically acting unethically if you publish the picture'* [Male, 20 years]

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<sup>39</sup> *Re J (A Child)* [2013] EWHC 2694 (Fam).

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*'It's not so much perhaps what happens at the time for this baby but the future use and impact it might have – ten years down the line, it will still be on-line and people will have posted comments on the story – and all that can be very damaging to the child'* [Male, 18 years]

- 3.15 Young people argued that while children may be too young to express a view: they are not a 'thing' – they have a right to privacy and for the long term consequences of pictures to be considered from the child's perspective. This was also said to be an ethical position demonstrating respect for children – from adults and organisations:

*'It's about confidentiality – you are breaking that child's right to confidentiality...and that's going to affect them.'* [Female, 18 years]

*'And that's under the Human Rights Act anyway, a right to privacy'* [Male, 20 years]

*'...it's hard enough telling even your closest friends that you are in care, you don't need everyone knowing your story and knowing you are in care. When I was younger and people found out I was in care I was bullied quite a lot because of it and if people had known what had actually happened – why I was put in care – that would have made it ten times worse. So I don't think it's right - without permission - to put things out there, especially pictures...'*  
[Male, 20 years]

*'The government are so keen on 'consent' – I have to get consent for a tattoo – you need consent for that or you need to be 18 years old. I know it's two completely different things but I feel like it's the same issue – it's about consent – and it's being inconsistently applied for a child or baby...yet the later impact on the child – it could do a lot of harm, emotionally and physically'*  
[Female, 17 years]

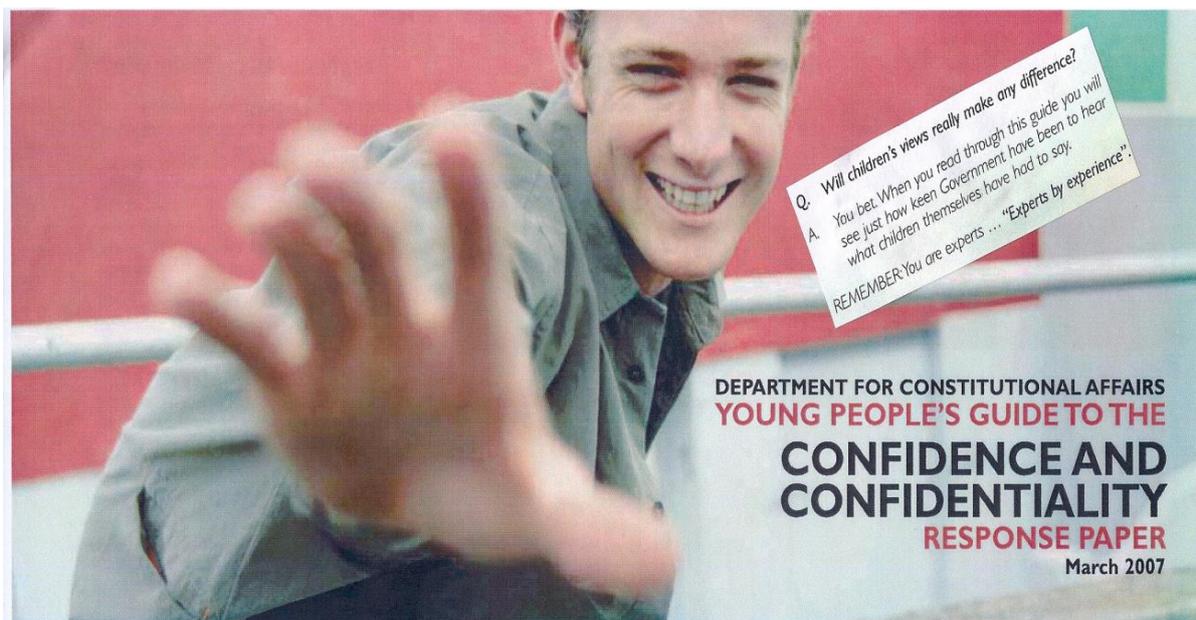
- 3.16 As to a view that since all babies look the same, pictures of them may not matter, young people were shocked that adults might hold such a view, they questioned adults' experiences with babies and their eyesight: *'They're blind!'* [Female, 18 years]
- 3.17 With regard to publishing pictures of older children and young people in the media generally, young people argued that when seeking *informed consent*, the implications for current and future privacy, and the potential longer term consequences had to be part of a discussion in which consent was sought.
- 3.18 They argued that the concept of privacy should protect all children and young people; that it is the ethical duty of professionals to inform and protect them and that age was irrelevant to that duty: babies had the same rights to protection and privacy as young people. In all cases *informed consent* was the key – whether with regard to the use of pictures in the media in general, or with regard to those involved in family courts.
- 3.19 Where children cannot express a view, young people said it was the task of professionals with safeguarding knowledge to come to a view on behalf of the child. They also said the behaviour of some parents on popular chat shows demonstrates that some do not consider the welfare and long term implications for their children.

### 3.20 KEY FINDINGS – PUBLISHING PICTURES OF BABIES, CHILDREN AND YOUNG PEOPLE

- Overall young people said there are dangers in pictures of children being published on television and social media: pictures ‘go viral’ very quickly, cannot be retrieved and can have lifelong implications for the health and wellbeing of the child concerned.
- Young people said parents under stress and in conflict are not necessarily best placed to decide this issue on a child’s behalf. Such pictures indicate a failure by parents to consider the ethical issues, the child’s right to privacy and thus a need for *informed* consent from or on behalf of the child.
- Young people said informed consent from the child as to the use of a picture applies regardless of the child’s age. Where a child is unable to give informed consent, a picture should not be published unless the implications for the child are assessed by an independent person with safeguarding experience, and knowledge of the possible longer term consequences for the child.
- With regard to pictures of children involved in family court proceedings – save in exceptional circumstances where serious safeguarding issues are at stake - young people did not think it was acceptable or indeed ethical, to publish pictures of children – including babies - and young people.
- Young people said pictures of children alongside parents’ stories in the media (where on-line newspaper and TV websites permit comments to be added by anyone wishing to post a view) remain available indefinitely. Young people said this is an unacceptable burden for society to place on children who have to negotiate their life against a background of ill-treatment and enormous change, where trust in adults has been badly damaged and where children and young people will have to rebuild self esteem and personal dignity in their school, friendship groups and wider communities.

## PART 4 MEDIA ACCESS TO FAMILY COURT HEARINGS

- 4.1 Reporters are now permitted to attend family hearings (unless the judge says they cannot). While the case is ongoing however the media is not permitted to publish information intended or likely to lead to the identification of any child in the case<sup>40</sup>.
- 4.2 This development in court rules (April 2009) occurred despite the views of many children and young people who were consulted at the time - and despite Government assurances to young people that their views did matter:



DCA (2007) Young People's Guide

### The response of young people - 2014

- 4.3 As the 'experts by experience' therefore we asked young people what they thought about this development. Most are strongly opposed to it - despite the fact that formal

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<sup>40</sup> The Rules which came into force on 27 April 2009 govern the attendance of media representatives at family proceedings. The Family Proceedings (Amendment) (No.2) Rules (SI 2009 No 857) inserted into the FPR 1991 a new rule 10.28 which permits 'duly accredited' media representatives to be present during family proceedings. Accreditation is carried out under the UK Press Card Scheme. Representatives of the media without a valid Press Card may nonetheless be admitted at the court's discretion. The accompanying practice direction states that media representatives "should" be allowed to attend family proceedings subject to the court's discretion to exclude them. This discretion can be exercised on a wide variety of grounds, including the welfare of a child or vulnerable adult, or for the 'orderly conduct of the proceedings' (i.e. because of the physical limitations of a court room). The media may also be excluded if a witness states for credible reasons that he or she will not give evidence in front of media representatives, or where there appears to the court to be a significant risk that a witness will not give full or frank evidence in the presence of media representatives. Where the court is considering excluding journalists, it should permit "any media representatives who are present" to make representations. There is no requirement upon the court or any party to notify the media of an intention to exclude journalists. The rules are now contained in Family Proceedings Rules 2010, r27.11 and the associated Practice Direction.

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safeguards remain in place to protect the identification of children and families during cases<sup>41</sup>:

*“...these are private issues, if the Government think it is not suitable for the public to go and watch proceedings then why is it suitable for a reporter to go in and watch and tell the public?” [Male, 20 years]*

- 4.4 Arguments about a need to increase information and ‘transparency’ (of the process and decision making) and making the professionals involved more accountable via media reporting - did not hold weight with these young people. Equally, the accusation that family courts are ‘secret’ and unaccountable was rebutted:

*‘Why would you have a journalist in court – if the whole objective is to get them to write a story – and the parents and the child or young person have not been asked? What’s the need for them? - they should not be there. And [if they are] they should always be asked to leave when personal stuff is being discussed...because there’s a potential for them to breach confidentiality – they’re there to get a story – you can’t trust them in today’s climate!’ [Female, 24 years]*

*‘There are more cons than pros for a young person; the family court is a private sphere ...if you sit back and think about it, the media are the most invasive industry to have in a family court – to nose into other people’s private life. Is there a need for it? Personally I don’t think there is. And even at 16 years of age I would not feel comfortable with them sitting at the back of the court.’ [Male, 16 years]*

- 4.5 Young people understood but were not convinced by arguments about the right of a parent to use the media to criticise professionals (social workers, guardians and judges) where the parent thinks mistakes have been made or where they feel unfairly treated by the court.
- 4.6 Equally young people did not differentiate between hearings concerned with case management issues (aiming to ensure the necessary evidence was filed in preparation for the trial) and those concerned with deciding on the facts, orders and placement of children:

*‘No – there’s no difference at all; at the end of the day, no difference. If they do not let the public in, they should not let the press in – it’s a family court not a public court.’ [Female, 17 years]*

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<sup>41</sup> The new rules of 2009 did not change reporting restrictions as such: s.12 of the Administration of Justice Act 1960 remains applicable regarding reporting of proceedings making it contempt to report almost any information from the proceedings if they concern minors. Despite the earlier claims of Ministers that the change would enable the press to attend hearings and report the process of proceedings, thus enabling the public to better understand family court procedures, in effect, journalists are not permitted to report cases which concern children except with the permission of the court. Neither, in the majority of cases, will they be able to identify the parties to such proceedings given the restrictions in s. 97 of the Children Act 1989 on identifying children involved in proceedings under that Act.

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- 4.7 First, they asked about the results of using the media: were there examples of where media coverage had made substantial changes to practices by courts and others: had the media achieved any substantive changes for parents or children involved in proceedings – where was the evidence for a positive impact? For example:

*'They don't go on the facts do they? If they told a story about how it really is, they wouldn't be selling the newspaper'* [Female, 17 years]

*'Anything of interest will be in the law reports anyway – the cases which actually affect change in the law are reported – so is there any need for journalists to report on the process that is already set out in various guides and other publications?'* [Male, 20 years]

**Views about the motives of the media**

- 4.8 Second, young people were unconvinced of the motives and claims put forward by Ministers, for example in 2007, that if the media was routinely permitted to attend family court hearings it would report on the process (not substantive detail) so that the general public would have an opportunity to better understand how family courts work:

*'But that's not what's happening is it – if that was the reason the press should say so - but it's not is it!'* [Female, 17 years]

- 4.9 Third, they posed questions about timing – and the importance of making links between the timing of publication and consent from the child or young person.

*'For example, in a reality television show such as Jeremy Kyle, the Mum and Dad give their consent – to put their views out there – but the young child hasn't...and it's the child on which the media will focus...then that child will go to school and college and that information will be out there...they may hate the fact that it's out there, they couldn't give consent [at the time] and they can't remove it.'* [Male, 16 years]

*'I don't think they should be there at all – if the young person, later, wants to talk to the press, fine - that's their decision when they are old enough to do so – that's fair enough. But at the time the court case is going on - I don't think there is any need for it – unless and until the young person wants it'. [Male, 16 years]*

*'...while the case is going on - everyone, the parents, the child or young person is in a high state of anxiety and not seeing things in quite the same way as they might [without that anxiety]. They are easily manipulated because of their emotional state...they're [vulnerable?], yes - that's the word. [And] it's not fair for the press to exploit that vulnerability just to get a story.'*

This young woman continued with regard to issues of older children/young people:

*'A child or young person might misunderstand the motives of the press and think that they are trying to help them, but reporters are not helping them in*

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*return, they are just doing what is beneficial for the media company – but the child doesn't know that.'* [Female, 24 years]

*'If the child is too young to give consent to information [being disclosed] then the story should not be published until they are old enough to give consent – and if at that stage they do not give consent – then it should not be published'* [Female, 17 years]

- 4.10 On the question of consulting with children and young people, young people were united on two points (a) children and young people are not consulted enough during proceedings (b) they should always be consulted about media attendance in court:

*'...I don't think there is enough opportunity for young people to tell the court what they think – in care proceedings – not enough opportunities for them to tell the judge what they think and feel'* [Female, 17 years]

- 4.11 Young people understood that some parents may want go to the press where they consider they have been badly treated - and that some may have a legitimate point of complaint. However, the privacy of children and their long term health and emotional security should be the first priority – of both professionals and parents.

- 4.12 All young people said judges should seek the view of the child/young person in the case before making a decision about whether to permit the media to observe a hearing:

*'... when I was taken into care I would not have wanted the press there. I mean, once I told people at my school I was in care it was the one thing I got bullied for. If it had also been in the papers that would have made the bullying worse and caused many more problems when I was growing up.'* [Male, 16 years]

*'Even if the press agree – or give an agreement to the judge not to publish until the child is old enough to give consent, what's to say the [paper] will not go behind the back of judges and find a way to write a story based on what they have heard...'* [Male, 16 years]

*'It's like putting a camera in each cubicle in the swimming pool changing room – it's an invasion of the child's privacy, completely...'* [Male, 16 years]

*'It's about privacy and protecting the rights of the young person to grow up without the risk and the fear – the fear that all their problems will be revealed.'* [Male, 16 years]

**Seeking the consent of young people: issues of age**

- 4.13 With regard to the age at which a child/young person should be asked for their view about media attendance in a hearing, while age was clearly an issue, the key for these young people was *informed consent* and thus maturity.

- 4.14 All young people were fully aware of areas of their life where parental consent was necessary. But for this issue they were emphatic: children and young people had to

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fully understand the implications of consent, what issues about their lives and specific problems might be published – and the potential consequences for them both immediate and longer term:

*'It would depend on the maturity of the child or young person – whether they understand exactly the consequences of 'consent' – and that the media can twist things and can lie - then [if they are made aware of that] it's up to that young person ...An assessment would have to be done to see if they really understood the implications; if they were assessed as mature enough to understand the possible consequences...'* [Male, 16 years]

- 4.15 For most of these young people age is a starting point, but speaking from experience they argued that 'maturity and capacity to understand the consequences' was the key. Some young people said that because of their experiences in families, they were mature beyond their years and capable of making an informed decision. But naivety in this context may mean that an assessment would help the court and the child's representative to address maturity for this particular issue:

*'It's hard to put an age on maturity; because of the things I have gone through I was quite mature at seven years of age'* [Female 16 years]

*'Yes, that's why you have to assess the individual child's maturity and understanding: you may be thirteen and ready to give consent but then at sixteen...you might be mature at some level...but you may not be able to handle the fact that that information...is then out there in the public arena...'* [Male, 16 years]

Others supported the need for an assessment, for example:

*'Yes I agree - having gone through a court case you may not be thinking straight and [you would be] vulnerable to pressure'* [Female, 16 years]

*'I think there should be an age restriction – for example, an eight year old can be mature but still naïve in this context because they haven't yet experienced the world as it really is...for example, you could be eighteen years old but without the experience and wisdom to see the real consequences of certain actions. So yes, assessing maturity is important but I still think that there should be an age limit.'* [Female, 24 years<sup>42</sup>]

**Seeking the views of children and young people: need for a trusted adult**

- 4.16 A number of young people raised concerns about limited information given to children and young people about proceedings, whether they were told the truth, and whether they were kept up to date by the social workers about their case:

*'My personal experience is that you are never told anything straight – you never really know what's going on in your life...'*

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<sup>42</sup> Interestingly this young woman (one of two young people without direct experience of care proceedings) put the age at 16 or 18, however those who had been through the system thought it should be much lower - about 13 years; in each case an assessment was thought appropriate.

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This young woman continued:

*'... They try but a lot of the time they are not straight with children – and tell them how it is...'* [Female, 17 years]

Others agreed:

*'They try and wrap them in cotton wool'* [Male, 20 years]

*'Yes and it may hurt when they are told the truth but at the end of the day that is better than being told [later] and hurting even longer – you should be told at the beginning.'* [Female, 18 years]

- 4.17 This group understood but did not accept that perhaps social workers might be trying to protect them. They said honest and frank discussions were necessary for young people involved in care proceedings.
- 4.18 With regard to which adult should ask a child/young person for their views about whether a reporter should be permitted to listen to proceedings, young people reiterated their view that the press should not be there in the first place.
- 4.19 Placing that view temporarily to one side, they were in agreement that the key to this question was threefold: (a) identifying the person the child or young person most trusted (b) ensuring that person was fully informed about the short and long term implications for the child of both mainstream and social media coverage and (c) the need for that person to be sufficiently skilled to assess the child's level of maturity:
- 4.20 While in many instances a child or young person's social worker was thought to be the best or most obvious person to discuss this issue with a child, young people pointed out that that was not always the case<sup>43</sup>. They said it would depend on the organisations with which a child/young person was involved leading up to proceedings and the person the child identified as most trustworthy. In the case of children already looked after by the local authority, it might be their advocate:

*'Depends on the organisations they are involved with – for example, if they have an advocate...'* [Male, 20 years]

*'the young person should be asked directly by whoever the child trusts – social worker, advocate, maybe a child's guardian...'* [Female, 18 years]

*'It could be the social worker but [he/she] would have to understand all the ins and outs of this issue – all the pros and cons of the issue - children can only give consent if they have full information and all the implications – the 'ins and outs' ...'* [Male, 16 years]

*'...the child's case practitioner might be the right person to determine maturity and there might be circumstances where a mother or father could give a view about maturity...'* [Male, 16 years]

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<sup>43</sup> It should also be noted that with regard to the social worker there is a potential conflict of interests if the consent to media involvement is being sought because parents want to use it to criticise the social worker or local authority children's services department more generally.

4.21 Young people also said that once told the press may be in court children will hold back information from professionals.

#### **4.22 KEY FINDINGS - MEDIA ACCESS TO FAMILY COURT HEARINGS**

- Young people are not always kept well informed about what is happening in the care system – and with regard to court proceedings in particular. The reasons for this may be complex but they said paternalistic approaches were not necessarily in their interests: young people wanted more honesty from professionals and more accurate information about processes and decisions regarding their lives.
- Young people were unanimous in their opposition to media attendance at family court hearings: the family court is not a public court and this move represents a failure of Government and courts to consider their views, needs and long term welfare.
- They argued that a public interest through increased knowledge about the work of courts would not be met by the media and that there are other ways of increasing public information about the work of family courts.
- Notwithstanding that position, young people were also unanimous in the view that when considering whether to admit the media to a hearing, the judge should first ascertain the views, interests and long term welfare implications for the child.
- The person best placed to discuss this issue with children/young people was the person most trusted by the child; where possible that information should be ascertained from the child. The person named by the child must have sufficient information about this field and the implications for the child of giving consent.
- For most young people the central issue in gaining consent was a child's level of maturity and not *necessarily* their age. While age was a general indicator of some broad abilities, they said it may not always be a good indicator of 'experience and wisdom' to make decisions which might have long term implications.
- Children subject to care proceedings can be more mature than other children of the same/similar age. The former may well have had responsibilities and made decisions anticipated of older children. It is the level of maturity and capacity to understand the issues and the potential consequences of media access and coverage that should determine approaches to consent from children.
- While mothers and fathers have a view as to a child's interests and level of maturity, young people said courts must be aware that parents may have their own pressures, vulnerabilities and agenda. They may not be best placed to discuss this issue with their child, or to make decisions on a child's behalf. Pressures and personal vulnerabilities can make parents less concerned or unaware of the long term implications for their children of talking to the media.

## PART 5 REPORTING RESTRICTIONS DURING PROCEEDINGS

### The current position

- 5.1 Under the current Rules for family proceedings, while a case is ongoing the media is not permitted to publish material which is intended or is likely to lead to the identification of any child in the case.

### The views of young people

- 5.2 Most young people did not think this restriction was sufficient to protect the identities of children and parents involved in cases in the event of the media wishing to report – or parents talking to the reporters.
- 5.3 Issues such as the area where a family live, the school attended by children (and any problems at school), the location of the court, details of children and parents, for example, their ethnic group and religion, information on the harm the children suffered or were likely to suffer, any health problems – were all areas of information children said would enable them to be identified and put them at further risk.
- 5.4 The dangers for children where the media identified the area where a child or family lived were discussed in detail. This was not simply an issue for rural communities: young people said it was not possible to be completely anonymous in large urban areas. They discussed communities within large urban complexes; they said people know which families are involved with social workers, which children are ‘struggling’ etc. And depending on how an area is defined in the media (e.g. South or North East Leeds), how relatively easy it can be for those in the area to identify the child and family.

*‘The media don’t draw a line - it becomes obvious where the child or the parents live...’* [Male, 16 years]

- 5.5 Young people felt strongly that publishing information on the detail of the harm a child had suffered was problematic:

*‘For example, if a child is abused by her mum or dad that information – leaked out – later in life presents risks. The child is already vulnerable because of the fall out of earlier abuse; any paedophile could target the child because they know that the child has been made vulnerable...’* [Female, 24 years]

*‘In effect, a lot of children will hold back what they want to say for fear of something being published...They – the Government - and [others] are using the excuse that people don’t understand the system – that’s not good enough’.* [Male, 20 years]

*‘They don’t really understand it unless they are going through it...if they are not going through it – they don’t need to be involved’* [Female, 17 years]

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- 5.6 As to the position of parents and their use of the media where a parent thinks they have been treated unfairly by family courts, young people were unconvinced:

*'There are various ways to appeal your case – if you think you have been treated unfairly – they don't need to get the public involved – there are complaints procedures – that's not an excuse...'* [Female, 17 years]

- 5.7 Young people felt there were already risks for them while proceedings were ongoing. For example, cases in a local (Family Proceedings) court raised concerns because these courts hear a range of other types of non-family cases:

*'Only takes one person - your mum - coming out of the court and being recognised, for the rumours to start'* [Female, 17 years]

- 5.8 As to whether it is acceptable to publish the location of a court once a case is completed:

*'No...they're basically being hypocrites – the government – because they are letting [the press] into court to know people's personal information...but this is a family court not a criminal court but in the family court they [the children] have no control – no control over who knows what about children in care. We basically have no control over our lives as it is – and if someone can be put in prison for breaching confidentiality it should not be legal to let the press know everyone's business – even after the case is finished'* [Female, 17 years]

- 5.9 With regard to the argument that there might be circumstances where reporting a case might help a young person get the health services they need, young people simply did not believe this was a potential benefit:

*'If they need the services I'm sure the social worker will be big enough and strong enough to get them the services they need...the social worker has a duty of care for the child – not the media'* [Female, 17 years]

*'And case studies can be used as a way of highlighting a need – or any lack of services – rather than a single case where things will always get blown out of proportion'* [Male, 20 years]

*'Local statistics can give that information - they can say, for example, for a borough of London the level of services available for children.'* [Female, 17 years]

- 5.10 Poor and chaotic conditions in the home from which children are removed often form part of the concerns of social workers. However, including this information in any public reporting of a case was also seen as placing children at unnecessary risk of shaming and bullying: *'No...child could be picked on and called a 'sket'<sup>44</sup> – this kind of information allows the child to be targeted'* [Female, 18 years]

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<sup>44</sup> Urban slang – term of abuse aimed specifically at young girls.

## **5.11 KEY FINDINGS – REPORTING RESTRICTING DURING PROCEEDINGS**

- Young people said the media do not tell the truth or deliver the full facts – facts do not sell newspapers
- They do not ‘buy’ the argument that media access to family courts will improve the reputation of family courts so far as issues of fairness are concerned
- They argue there are better avenues which could be used to improve public knowledge about family courts; there are also other avenues to explore parents’ allegations of unfair decision making by professionals or family courts
- Details of the area where a family live, the location of the court, the school attended, ethnic and religious details, harm children may have suffered in the care of a parent, health problems and problems at school, and conditions in the home from which they were removed were all details which young people said could lead to the public identification of a child.
- Children in urban communities were as vulnerable to public identification as those in rural areas.

## PART 6 RELAXING AND INCREASING REPORTING RESTRICTIONS

### The current position: balancing Articles 6 and 8, and Article 10 rights - ECHR

- 6.1 Under existing powers the family court can relax and increase reporting restrictions. When the court is considering this issue it is required to undertake a 'balancing' exercise, usually considering the rights of children and parents to respect for a private and family life and to a fair trial (Articles 8 and 6, ECHR) and the rights of the press to freedom of expression (Article 10) and thus to report on family cases<sup>45</sup>.
- 6.2 When undertaking the 'balancing' exercise the judge has to consider the nature of the *impact on the child* of what is proposed in the way of reporting following any relaxation of reporting restrictions - against claims about any benefits to be achieved by increasing the details the press may report.

### The long terms needs and interests of children

- 6.3 Notwithstanding objecting to the initial decision to permit the media to attend family hearings, young people said a key issue for courts when considering whether to relax reporting restrictions during proceedings was safeguarding the immediate but also the longer term welfare of the child(ren) and in the context of their ascertainable wishes and feelings about media reporting.
- 6.4 The age of the child was relevant as were any diversity factors in the case; this would include ethnic and religious, and also mental and physical disability issues. For example, young people said children with physical or mental disabilities could easily be identified from any subsequent media story. Young people referred back to their views about the importance of informed consent from a child/young people and the role of an assessment:

*'I would be devastated if I found out my case was in the press'* [Female, 18 years]

*'It goes back to consent doesn't it – but if you have someone with a mental disability...'* [Male, 16 years]

*'Yes, but that would come up in an assessment – that work should tell the court what age the child is operating at – but no matter the age, there needs to be an assessment so that the professional can tell the court the issues for the child'* [Male, 16 years]

*'Think about the ethnic and religious issues – especially in communities where honour killings have arisen; consider the wider impact – the impact on wider families of media coverage of a case - for the honour of the family'* [Male, 20 years]

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<sup>45</sup> Although the court might also be asked to consider the right of a parent/young person under Article 10, to talk to the press.

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*'I want the judge to consider not just how you are – how to protect the child now - but how to protect them in the future...when other children find out there will be bullying, intimidation at school and in local communities. Even if the child is moved, problems will follow. When I was moved to a new community, people asked 'why – why are you here? Why have you been moved?' If judges really want to protect children they will not release this information'* [Female, 17 years]

**Arguments in favour of naming professionals: the response of young people**

- 6.5 With regard to whether the press may have a role in reporting cases where a judge has identified health, education or social work failures, young people understood the motivation to 'expose' failures but felt there were better ways to do this, for example:

*'That can be done separately – as research by local research and statistics about services available to children'* [Female, 17 years]

- 6.6 Just one young person (without experience of proceedings) wondered whether public exposure of failings by professionals might help the feelings of the family involved:

*'... If something [wrong] had happened to you, would you feel slightly better if they were exposed and there was public scrutiny of this?'* [Male, 20 years]

- 6.7 Responses were emphatic: there are real concerns with that approach to policy development, for example:

*'You can't just take or use one case...people can make mistakes...'* [Female, 17 years]

- 6.8 Another young person felt the media could simply focus on one thing in a case, blow it out of proportion and fail to give full or accurate reasons for the removal of a child. Overall, for this group of young people, the alleged link between failures in individual cases and thus a need for media 'exposure' in all proceedings did not hold weight.

**6.9 KEY FINDINGS - RELAXING AND INCREASING REPORTING RESTRICTIONS**

- Safeguarding the current but also the future safety and wellbeing of children should form part of the exercise judges undertake when balancing privacy needs and rights to a fair trial with the right of the media to freedom of information.
- Young people did not support use of the press to expose mistakes indeed they were unconvinced of this as a motivating force. They said there are other ways to identify and address failures in health and social care; they did not support 'public exposure' of individuals such as social workers as a way forward.

## **PART 7 THE IMPACT ON CHILDREN AND YOUNG PEOPLE OF MEDIA REPORTING OF CASES**

### **Young people, self esteem and wellbeing**

- 7.1 Young people were unanimous about how a young person might feel, reading about their case in a newspaper; even if the child or young person's name did not appear in the story, they would be deeply affected. They described feelings of anger, sadness and depression, embarrassment, shame, guilt, and humiliation.

*'When I read things about why I was in care I felt a lot of self blame and guilt...it's hard to describe...I think across the board you may not have known the [full] detail of what your parents did to you, later when you read about it, you think: "it's my fault" – even though it's not.'* [Female, 17 years]

*'Children suffer a lot of 'crap' in their lives – they don't need more; [they] are already [struggling] ...because they have crappy parents...'* [Female, 18 years]

*'I would hide myself in a room'* [Female, 18 years]

*'Some children do feel guilty about what their parents have done [to them] ...they start feeling it's all their fault'* [Female, aged 16]

- 7.2 One young person described the consequences of media coverage of proceedings concerning a sibling:

*'...they just couldn't leave the house'* [Male, 20 years]

- 7.3 They said that where children suffer emotional or mental health problems, these could spiral leading to serious depression, self harm and suicide. They referred to concerns about the emotional wellbeing of children in proceedings and an increased risk posed by reporting.

### **The lived experience of children and young people in care**

- 7.4 Young people described the ongoing stress and anxiety for children and young people in care: they talked about the stigma attached to being in care and the task of trying to hide it. For example:

*'You're always feeling stressed, worried that people might find out about the case – that people will know your business.'* [Female, 16 years]

*'If something has been published on the net, it's horrible – public humiliation of the child...it will just make the child feel worse.'* [Male, 16 years]

- 7.5 Fear of humiliation following the placement of information on social media was a constant presence in the lives of young people:

*'I know of someone who took their own life because of something that was put on Facebook...their whole life, gone...you can't get it off Facebook'* [Male, 16 years]

### **Benefits to children and young people of media reporting**

- 7.6 As to whether some children/young people might be pleased or benefit from some media coverage of their cases and the reasons why they had been placed in care, young people said that would not be the case and the long term risks were too great. However one young person reflected further on this issue and added one caveat:

*'If a child/young person had been consulted and fully understood the implications of talking to the press, and wanted to share certain information and had give their **informed consent**, then they may be pleased to see that reported...but at the time of my case, I would have been mortified to read about it'* [Male 16 years]

### **7.7 KEY FINDINGS - THE IMPACT ON CHILDREN AND YOUNG PEOPLE OF MEDIA REPORTING OF CASES**

- Young people were united about how a young person might feel, reading about their case in a newspaper (even if they were not named): they would be deeply affected, feeling upset, anger, sad, depressed, embarrassed and ashamed: they would be 'devastated'.
- That experience would exacerbate the existing stress and worry which children and young people experience because they are in care: feelings of shame and a fear that people will find out they were removed from parents because of ill treatment.
- They said 'mental' or emotional health issues for such children would spiral, that for some the seriousness of their emotional state may not have been shared with or identified by adults, and that media reporting increased their risk of self harm and suicide.
- Once information is published and placed on the net (a foregone conclusion), public humiliation would follow, and children/young people would live with the fear and the reality of further exposure for the rest of their life: social networking sites are not 'next week's chip paper'.

## **PART 8      MEDIA REPORTING OF CASES ONCE THEY ARE COMPLETED**

### **The current position**

- 8.1      The automatic restriction on media reporting of cases where this would permit identification of the child/young person and families involved ceases once the case is completed (although the court can extend restrictions if it considers that necessary).
- 8.2      Most young people had serious concerns about an automatic lifting of reporting restrictions once a case was completed. They felt information revealed at this point was likely to lead to the identification of children and therefore – save in certain circumstances - reporting restrictions should be maintained:

*‘For all the reasons we have given you about letting the media in!’ [Male, 16 years]*

*‘This should be assessed – depends on whether it is beneficial to the child and family; if [lifting the ban] does not meet that criteria it should not be relaxed and restrictions should remain’ [Male, 16 years]*

*‘No, restrictions should not be lifted because if you identify the parents in a story – you identify the children’ [Male, 16 years]*

- 8.3      As to whether there were any benefits to children and young people of lifting reporting restrictions once cases are complete, young people said not, public exposure of the circumstances of their removal could not be right. One young woman thought long and hard and said:

*‘I think only those children who had a successful outcome would be happy to see something published...that’s the only example I can think of...’ [Female, 24 years]*

### **The needs of some parents to speak to the press and the response of young people**

- 8.4      Most young people raised serious doubts about permitting parents to talk to the press and to identify themselves and children by name once cases are completed. The reasons why parents may want to do this (e.g. where parents feel removal of a child had been unfair) did not hold weight with young people. Given the serious nature of ill treatment and the work of courts in coming to a decision, young people said aggrieved parents did not need to take the issue to the public. They said there were other avenues to address parental grievances.
- 8.5      In response to the suggestion that such parents needed/should be able to vent their anger against professionals and the system, young people were clear: using the media was not an acceptable route:

*‘Well I’m sorry but they need to grow up! They need to think about the child!’ [Female, 16 years]*

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*'No - this relates to our earlier views and discussion of other questions – it's about the consent of the child or young person!' [Male, 16 years]*

- 8.6 Getting the press involved was said to make things worse for the children – and that was the key reason for the focus on obtaining their informed consent:

*'...that's why they need to know beforehand what the media is capable of...'*  
[Male, 16 years]

- 8.7 Young people also raised questions about the right of parents to talk to the press in terms that allow children to be identified once children had been removed on a final order:

*'If the parents are no longer the legal guardian of the child – then how can they consent to a child being named after proceedings?' [Female, 17 years]*

**What issues should the court consider at this point?**

- 8.8 With regard to the issues the court should consider in deciding whether reporting restrictions should extend beyond the end of a case, young people raised two inter-related criteria.

- 8.9 First, the judge should ascertain whether discussion with the media was seen by the child/young person as of potential benefit to the child/young person and to the family. This would depend on the outcome of an assessment as to the capacity of the child to give *informed consent*. If the assessment demonstrated each condition was met (i.e. the child understood the implications and possible consequences of media involvement and saw it as of benefit to her or himself - and to the family) then restrictions on parents talking to the media and in terms that would that permit public identification of any child or young person could be lifted.

- 8.10 Second, young people said parents must also seek the views and permission of children before talking to the media but this does not dispense with the need for informed consent from a child/young person:

*'If the child has been assessed as capable of giving informed consent – and the parents have consulted them and they have said 'yes' - then yes, parents should be able to speak to the press' [Male, 16 years]*

*'But the child should not be forced; it may not be the press but the parents putting pressure on the child to agree to a parent contacting the press...the parents might not consult the child, they may be angry with the decision and thinking about what they want instead of what is good for the child' [Female, 16 years]*

*'It is really important therefore that the child/young person has a discussion with a responsible person who can make them aware of what the consequences are of talking to the press...so it's a long term safeguarding issue' [Female, 24 years]*

## **8.11 KEY FINDINGS - REPORTING CASES ONCE THEY ARE COMPLETED**

- Young people were unaware that the automatic restriction on media reporting of cases where this would permit the identities of family members ceases once a case is completed.
- Young people had serious concerns about that position; information handed to the press by parents was likely to lead to the identification of children. With one caveat (see below) they said reporting restrictions should normally be maintained.
- Notwithstanding their rejection of the existing position, young people said where parents intended to talk to the press, the child/young person should be consulted and their permission obtained – based on the child's assessed capacity to give informed consent and in the context of information about the potential immediate and longer term consequences of media coverage.
- When the court is considering an application to extend reporting restrictions beyond the life of a case, young people said the judge should address two issues (a) whether discussion with the media was seen by the child/young person as of potential benefit to the child/young person - and (b) to the family. This would depend on the outcome of an assessment in the terms described in paragraph 4.19 above regarding informed consent.
- In all circumstances young people said parents must seek the views and permission of their children before talking to the media – and children and young people concerned must be able to give informed consent.

## **PART 9 REPORTERS' ACCESS TO FAMILY COURT DOCUMENTS**

### **Court documents - introduction**

- 9.1 Over the life of a case in care proceedings there is a considerable amount of written material. Papers set out the reason for proceedings, position statements give the views of each key person (party) involved, for example, the social worker's statement sets out concerns about a child, the background to their work with the family and the allegations of ill-treatment. The parents' statements respond to those concerns and allegations. There are also usually reports from specialist doctors who have assessed children and parents, and reports from the child's guardian (or in private law proceedings, a 'Cafcass Worker'). There may also be written information from a health visitor, a teacher or head of school or a nursery worker.
- 9.2 At the start of a case a 'position statement' tells the judge what each party thinks about the reasons for the application and what they think should happen. At the moment the media does not have a right to see documents but can apply to the court to do so, the court should then seek the views of the people involved before deciding.

### **The next steps**

- 9.3 There is discussion led by the President of the Family Division about relaxing the rules so that unless otherwise stated by the court, the media would be permitted to read certain (as yet unspecified) documents.

### **Media access to documents: the views of young people**

- 9.4 With regard to whether young people think reporters should have access to some documents, this group was unanimous in their rejection of this proposal substantiated on the safeguarding implications for children and young people raised earlier:

*'Why should they do that – what you've said and what's happened in your life is confidential to the people you trust. They're debasing that trust if they are going to reveal that written information to reporters.'* [Female, 17 years]

*'What you say to the professionals is confidential – the court is breaching your confidentiality if it releases that information to reporters.'* [Female, 18 years]

*'No – they don't need to know that information it goes back to the issues of the child's right to confidentiality.'* [Male, 16 years]

### **Media access to documents: when should children and young people be told?**

- 9.5 Young people's views about whether and when children should be informed that the media will have access to some documents in their case, demonstrated that this issue may not have been thought through sufficiently in terms of the impact on all professionals and young people themselves.

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- 9.6 First young people demonstrated that telling them at the start of court proceedings was not sufficient – for their purposes that was ‘too late’ to enable them to make informed choices:

*‘Not even at the beginning of proceedings but [at the point at which] social workers get involved. The social worker should talk to you about what could possibly happen – what you have a choice about, what you don’t have a choice about: they need to inform you – you can’t be told just at the beginning of the court case – and then have to make a rushed decision. It shouldn’t be allowed; they shouldn’t let the bloody reporters in...’* [Female, 17 years]

- 9.7 Young people also pointed out that at the start of court proceedings children do not think they will end up in care; others are already ‘in care’.<sup>46</sup>

*‘I think the minute the case becomes a court case...’* [Male, 16 years]

*‘Right at the beginning of issues they should say – I was in care for eight months before I knew I was ‘in care’...I was told’ you are going back home – you are just going away for a week-end..it was eight months! – I never went home [then] I went home for a day and I was taken back that evening – I was never informed – you don’t get told anything.’* [Female, 17 years]

This young woman compared the process that happens when a young person is arrested: they are warned it might go to court – and they may be cautioned. She felt in the light of developments in family courts, professionals should be under a similar *regulation* to tell children and young people - to give them more information about the range of things that could happen, and specifically about the possibility of media access and reporting if their circumstances result in care proceedings.

- 9.8 The magnitude of the issues for young people was re-iterated:

*‘When it’s your whole life that’s going to be decided and controlled.’* [Female, 17 years]

*‘The child should be told, then it’s up to the discretion of the child as to what or how much they tell a professional...’*[Male, 20 years]

- 9.9 Young people reiterated earlier views that it should be up to the child or young person to determine which professional they trust to discuss this issue:

*‘it must be the person who has the best bond with the child – that might not be the child’s mum or dad...they may have a great bond with their social worker [so] whoever they have a bond with and can trust...if they have an advocate working with them – then yes if they’ve got that bond and the child trusts them to have their best interests [central] and to tell them what they need to know’* [Female, 16 years]

*‘Sometimes social workers don’t get out to see children that often so the relationship between them isn’t that good. So perhaps it should be their*

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<sup>46</sup> In voluntary accommodation under s.20 of the Children Act 1989.

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*advocate and then [once cases start] their guardian is the best person to explain it to them.'* [Female, 16 years]

*'I would say that if the child/young person has an advocate, I mean, I don't talk to my social worker unless there is a desperate need so in my case the social worker [option] would not 'work' for me – it would be my advocate who I know and spend time with'.* [Female, 16 years]

*'Can I just add that some mothers and fathers are not honest about issues and the situation with children, so how can children and young people trust parents to be honest about what can happen in court regarding the media? So you can't always say it's down to the parents to explain – parents manipulate children because they can'* [Female, 24 years]

**The impact on engagement by children and young people**

- 9.10 They said that once told about media attendance children and young people may not talk further to professionals – they may withhold information once told the truth about developments in media access to family courts. For example:

*'... it would affect their ability to talk to professionals – they'd be really scared that what they say will be published – they'd hold back, they wouldn't know who to trust'* [Female, 16 years]

*'We said earlier that more mature young people should be consulted about media access to hearings and where they can give their consent. ...If they are told about media access to some records, it becomes even more risky for them because they are aware of the risks for them'* [Male, 16 years]

*'The doctors and the judge need full information from the child; the information given to the doctor needs to go to the judge - but the child won't talk because they are not going to share information in these circumstances'* [Male, 16 years]

**Implications for children and young people's health and well being**

- 9.11 Concerns about both short and longer term implications for children/young people's health and emotional wellbeing dominated discussion around the release of court documents to the press. Anxiety issues and emotional and mental well being were seen to be at risk because of ill-treatment; court proceedings add to that pressure. Young people said that media access to medical reports in proceedings would increase anxiety levels:

*'I think they will have some anxiety problems ...and emotional issues and pressures can affect their physical wellbeing, their eating patterns etc.'* [Male, 16 years]

*'Can I also say that this can lead to other problems...not only their physical and emotional health, it can affect their school work – it can suffer and they are not achieving the right grades because they are worried about what's*

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*going on....it can have wider problems for their education but also their jobs – their whole future – it's just basically corrupted.'* [Female, 24 years]

- 9.12 Young people were also concerned about possible effects on other children:

*'where other young people learn – where they find out what's going on with the media in family courts – it will affect all young people; they will be afraid to tell [adults] what is happening in their families because of the fear that it will get into the media. Children will not reveal [ill-treatment], they will not share issues, cases will not be brought because children are not sharing things and it allows [abuse] to continue behind closed doors.'* [Male, 16 years]

- 9.13 They were aware that a lot of cases concern very young children. However they argued that all children - regardless of age - were entitled to an 'opinion' and thus to have their interests presented to the court by an informed professional speaking on their behalf and with reference to their rights under the UNCRC and with an understanding of the long term safeguarding implications. For example:

*'It doesn't matter if you are one year or older – everyone has a right to express an opinion – or have views presented in their best interests...'* [Female, 17 years]

*'The UNCRC says we have a right to express a view...the child has a right to information about decisions affecting them ...it's Article 12...'* [Male, 20 years]

- 9.14 Rights of access to other records were raised, for example, young people said their medical records were confidential – that underscored their trust and willingness to talk to their GP:

*'...my health records cannot be released to anyone without my consent – if the press cannot get access to my health records ...this should not be any different, the Government is being hypocritical...'* [Female, 17 years]

This young woman continued:

*'...the court has a right to know – to see a doctor's report – because they are the law – they're the top man - but the press and public have no rights. If they can't ring up the hospital and ask for my medical records why are court records different – why should the public get medical details through a newspaper – they shouldn't, it's wrong! The government are just hypocrites...why should the press have access to more [written] information than I can have about my life?' [Female, 17 years]*

*'...what's the need for the media to know the [medical evidence] – they only want to access these documents so they can pick out bits of information to make a story, to sell newspapers – they will make something up' [Female, 24 years]*

*'Why would you want details to be released to a reporter...it's the judge who decides the case...'* [Female, 24 years]

### **The difficulties for professionals**

- 9.15 In response to the difficulties this issue might pose for professionals – caught between a desire to protect vulnerable children but also obliged under the UNCRC to give children information to help them make informed decisions (which may result in their effective disengaging from the process), young people felt that professionals were not honest with them and were simply ‘opting out’:

*‘They don’t though – they don’t give children full information, they just give children what they want them to hear... we are not told exactly what is going on....people are not straight with children in the care system’* [Female, 17 years].

- 9.16 In addition to the need to consult children about media access to court records, young people also said this should not be a ‘once and for all’ decision. It should be revisited each time the court is considering disclosing a document to the media. Parents and children should be given sufficient warning and time to decide their response.

### **9.17 KEY FINDINGS - REPORTERS’ ACCESS TO FAMILY COURT RECORDS**

- Access to court documents must be placed against a background in which some children and young people are not told honestly and directly about decisions taken by local authorities and others which are central to their lives.
- Young people stated their hospital and other medical records are not available to others or the public - without the consent of young people. And they do not accept a public interest argument for access to clinical reports for care proceedings.
- They were also opposed to other court documents being made available to the media.
- They said informed consent should be sought from the child/young person or from a person trusted by the child to inform the court of the child’s views and future welfare implications.
- Young people identified that care proceedings are often at the end of a long process in which a local authority will have worked with parents to try and resolve issues but where many children/young people will have been in voluntary care for some time. The point at which their rights, not least to respect and truthfulness but also to information (Article 12 UNCRC) should be engaged, has not been addressed by Government, and often not by local authorities or family judges.
- Children said informing them was not a matter of professional choice – it was an ethical obligation in terms of truthfulness, it is also a formal obligation under Article 12 of the UNCRC. The age of the child did not obviate the need to address their interests and welfare as to media access to records.

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- Young people said the consequences of being told about media access to court records are that a child/young person may then withhold information – from social workers, doctors, their welfare and legal representatives, and from the judge. Equally, they also then have an opportunity to make an informed decision as to whether/how to proceed with giving their view and account of their situation.
- Some children said there should be a formal regulation telling professionals to inform children/young people about media access to any records and reporting of cases
- Young people said there is evidence of considerable hypocrisy and short sightedness in this proposal.
- Young people reported parents in proceedings were vulnerable, subject to pressures and not best placed to protect the interests and welfare of children in this regard.
- They also raised concerns about the wider impact of media access to records. When children in general become aware of these developments they will be unwilling to disclose ill-treatment by a parent to other adults (e.g. teachers) for fear of subsequent media exposure.

## PART 10 JUDGMENTS

### Introduction

10.1 In some cases the court will give written reasons for a decision (a 'judgment'). This sets out the background to the case, why it came to court, the legal principles involved, the views of key people (the local authority social worker, the parents and others, and the child's guardian) and the reasons for the judge's decision about the future care and placement of a child or young person.

### Increasing the number of judgments available on-line

10.2 Under the 'next steps' it is intended to produce many more judgments and for these to be widely available. Some judgments are already available on a website (BAILII)<sup>47</sup> which holds judgments from a whole range of court decisions. Anyone can access this website and read judgements.<sup>48</sup> Before a judgment is placed there however it should be 'anonymised' so that identifying details of parents and children are removed. The names of the lawyers, social workers, the local authority and the child's guardian and any doctors involved may appear; the name of the judge(s) will always appear.

### The responses of young people

10.3 As to whether this was the right approach, young people had serious concerns about identifying a child/young person from other details in a judgment (i.e. jigsaw identification):

*'It goes back to what we said earlier...from identifying some of the professionals it may be possible to identify a family.'* [Female, 16 years]

*'...for example from an area [detail] someone will find a way of identifying [the family] people find ways ...the media always try and find a way to expose something, if that happens – not just the media but others who pose a risk to children and vulnerable children in particular...they find a way of identifying a child who may be vulnerable to inappropriate attention.'* [Female, 16 years]

Young people returned to the issues of legal sanctions for subsequent breaches of confidentiality regarding the identity of children: it was a 'feeble', 'useless' 'ineffective' response to their concerns:

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<sup>47</sup> British and Irish Legal Information Institute (BAILII) – see [www.bailii.org](http://www.bailii.org)

<sup>48</sup> Subsequent to this fieldwork, the President of the Family Division issued Practice Guidance: *Transparency in the Family Courts – Publication of Judgments* (January 2014). Guidance covers the categories of judgment which *must* be published and those which *may* be published following application (under Schedules 1 and 2). It states that in all cases public authorities and expert witnesses should be named unless there is compelling reason not to; subject children/vulnerable adults and their family should not normally be named unless ordered otherwise; anonymisation (of judgment) to be borne by the solicitor for the applicant – or the applicant for the Reporting Restriction Order (RRO) where such an application is made. Guidance does not however override the court's discretion thus the judge retains the power to regulate publication of a judgment; parties and the press can of course appeal a decision.

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*'If my case went into the newspapers – and I wanted to complain...if I wanted to sue the newspaper company – it's still out there – all the details, I can't change that.'* [Female, 16 years]

*'It's like what we said before about publishing pictures, once they are out there, they are out there!'* [Male, 16 years]

10.4 Young people felt the capacity of reporters and others to put details together from judgments and to trace a child/young person has been underestimated.

**10.5 KEY FINDINGS - INCREASING THE NUMBER OF WRITTEN JUDGMENTS  
IN THE PUBLIC ARENA**

- Although young people understood judgments as providing a more accurate and truthful version of events and reason for a court decision, publication on-line increases the level of real concern among young people that the children could be identified.
- They also felt this level of public information may make certain abused children/young people more vulnerable to inappropriate attention from predatory adults in communities.
- Sanctions for breaching the rules on confidentiality (as these are set out on published judgements) (a) would not address the position of vulnerable children made more vulnerable in communities and (b) it is an adult response which does not address the issues and concerns – and lifelong outcomes for children and young people

## **PART 11 ISSUES OF PUBLIC CONFIDENCE IN FAMILY COURTS – THE VIEWS OF YOUNG PEOPLE**

### **Secret courts: views of young people at the ‘coal face’**

- 11.1 With regard to the accusation that family courts are ‘secret courts’ (because of restrictions on what the media may publish and access to court documents), young people felt the argument was simply disingenuous. They said such accusations are simply a justification for access to information about children which the latter did not want them to have and which they would not otherwise achieve:

*‘This is just a false accusation aimed at getting more stories...’* [Female, 16 years]

- 11.2 Young people did not think newspapers could or would achieve change in family court proceedings, and that there are other avenues for that, for example:

*‘There is an appeals process [otherwise] it will be like being on the Jeremy Kyle show...newspapers cannot make things better’* [Female, 17 years]

*‘This links back to what I said before, it’s not about secrecy but confidentiality and safeguarding that child or young person...media access will have a greater impact on children than on adults in the case...’* [Male 16 years]

- 11.3 With regard to whether there were any benefits to the media having access to documents young people said there were not:

*‘if at some stage a young person - fully informed of the possible consequences and competent to decide - decides on balance to share details with the press then perhaps...but I can’t see any need for it, or any way in which it would help that family’* [Male, 16 years]

### **Alternative ways of addressing issues of public confidence**

- 11.4 Young people felt this approach to the issues of public confidence represented a lack of imagination and a poverty of thinking: they felt there were better ways to address issues of public confidence:

*‘let’s say, if there was one group – say a government group - with responsibility, who have the facts and accurate information from cases ...and if we had trust in that group, it could help professions learn from cases. So, taking the model of Serious Care Reviews, that model gives examples of poor medical practices and across reviews so [a review] could give, say, the percentage of cases where criticisms could be made of medical or social work input...’* [Female, 24 years]

- 11.5 Young people said all cases were serious ‘otherwise they would not be in court’; to make them newsworthy the media will select the most intimate, ‘juicy’ details:

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*'...all these cases are already serious, to make them 'newsworthy' how much 'lower' are you going to make them...? Can they get any more serious for the child involved?' [Female, 24 years]*

- 11.6 Equally, releasing information from one case was not seen as the best way to educate people or validate the process: single case exposure failed on several counts:

*'Why can't the government use other methods? For example, research, rather than pulling out one story – what's the point in that?' [Female, 24 years]*

**The needs of some parents and the welfare of their children**

- 11.7 It was felt that there will always be two groups of parents: those who would not want to discuss their case with the media and those who want to publicise their story. In these circumstances young people said the court should give priority to the welfare and wishes of the child – both immediate and long term.

- 11.8 With regard to a need to protect family courts from accusations of secrecy, to assure the public that there is nothing 'secret' going on and that the process is fair, young people responded that that was why we have independent judges:

*'But that's what we have trained judges for – it's the whole job of judges.'*  
[Female, 24 years]

- 11.9 In response to the argument that judges are not infallible and can make mistakes, young people said reporters in court will not stop that. They said there are other methods to check judicial practices such as strong advocates and mechanism such as Key Performance Indicators (KPIs)<sup>49</sup> for checking the performance of others.

**11.10 KEY FINDINGS – YOUNG PEOPLES' VIEWS ABOUT ISSUES OF PUBLIC CONFIDENCE IN FAMILY COURTS -**

- Young people said the notion that family courts are 'secret courts' is disingenuous. Such accusations are a justification for gaining access to information about children which the media would not otherwise achieve.
- Young people did not think newspapers could or would achieve change in family court proceedings; they said there are other avenues for that.
- With regard to any benefits of media access to documents, young people said there were none. They said information from a single case was not effective in educating the public about the work of family courts, nor would it address public confidence in a meaningful way.

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<sup>49</sup> Key Performance Indicators (KPIs) are a type of performance measurement against which public bodies (e.g. the NHS) are often assessed. An organisation may use KPIs to evaluate its success, or to evaluate the success of a particular activity in which it is engaged. Sometimes success is defined in terms of making progress toward strategic goals.

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- Where courts are asked to address the balance between the wishes of parents to talk to the press and the welfare of children both immediate and long term, the latter should take priority – and the law should reflect that priority.
- Young people said judges are there to protect children and families; the terms of their work and training provide assurances to the public that there is nothing 'secret' going on and that the process is fair.
- In response to the argument that judges are not infallible, young people said reporters in court will not stop mistakes, other checks are in place and other measures should be explored.

## PART 12 MESSAGES FOR PARLIAMENT, THE PRESIDENT, FRONTLINE PROFESSIONALS AND THE PUBLIC

### Good enough for your children?

- 12.1 Young people said the President should stop trying to please the media, explore other mechanisms for monitoring and if necessary, improve the court service. They said the press simply want intimate details from a case that will sell newspapers.
- 12.2 They further argued that the President should perhaps establish a small department, independent of government, to inspect and assess some cases from the perspective of justice and fairness, and the welfare and rights of children.

### Where is the children's champion?

- 12.3 Young people also said it does not appear children's views and their immediate and longer term welfare are clearly on the President's agenda. For example, they said that simply focusing on sanctions as a remedy for breaches of confidential information (see below) demonstrates a failure to understand the views and concerns of children and to take some responsibility for the lifelong consequences for them in this field:

*'Stop these knee jerk reactions to the media. Don't think it will stop mistakes or meet complaints of the media because it won't, and having the media there is only going to make things worse for that child and family'* [Male 16 years]

*'Any business, any charity, there's always mechanisms to investigate if things have gone wrong...[for some] every month there are assessments of whether organisations are meeting their KPI targets<sup>50</sup> – reports every year to see if they are doing their job properly. Family court practitioners get supervision on top of that...there are managers in services...so why does the media need to be involved in the provision of services – there's so much already in place [and] so many ways to tackle improving services'* [Female, 24 years]

*'How can a reporter make things better? They are not trained in the issues [of safeguarding] – they are only trained in getting and writing stories'* [Female, 16 years]

*'I think they should open a small independent department or service that will inspect cases. The media just want stories, I think we want the media out of this...judges are trained and they are very experienced people. However they should get some training from young people with recent experience of cases – they need to keep up to date with how young people are feeling and how they experience the process'* [Female, 24 years]

*'How can the media make things better? No, it will cause so much more physical and mental health problems for children and families...for say the 10% of parents who want to share their views, but for the 90% it's going to cause so many problems and impact'*

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<sup>50</sup> See note 48 above.

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This young person continued:

*'Rather than seeking verification of the work of courts – and that they are doing a good job – from the media, the President needs to seek the views and help of those they are seeking to help: the children and young people.'* [Male, 16 years]

*'Compromising people's mental and emotional health now and in the future to meet accusations which are not right – [simply] to try and enhance other people's views of the court is not an excuse. Use case studies to address a point.'* [Male, 20 years]

**Increased sanctions for media breaches of privacy - a lawyer's response**

12.4 As to whether to increase sanctions on the media where it breaches rules on privacy (publishing something that permits a child or family to be identified during proceedings) young people felt that as a response to their concerns, sanctions simply miss the point. For the children/ young people involved the damage is already done, it could not be 'undone' and had implications for their health and wellbeing for rest of their lives.

12.5 Some young people felt the media may focus on high profile cases: *'they don't care about the future of ordinary children – unless there's a juicy story'*. And if it looks like that is the case, young people said newspapers will take the risk of sanctions - because pay-offs could be huge:

*'Look at the phone hacking scandal...they knew they would get punished if discovered but that didn't stop them.'* [Male, 16 years]

*'I'm sorry but I just don't think that's enough – going to prison or a fine; the business will pay the fine if it comes to that, the newspaper and the media company won't go down the drain – a fine is nothing to them!'* [Female, 24 years]

*'No form of punishment is going to recompense for what a child has to put up with for the rest of its life.'* [Female, 16 years]

*'The press will be very clever with their wording of stories so that they can argue there was no intention to allow the identification of a child.'* [Female, 16 years]

*'All the media have their legal departments to ensure what they publish is arguably on the legal side of things – they have the smartest people - but they also have a way of switching things around so that they won't get into trouble about what they publish...'* [Male, 16 years]

## **12.6 KEY MESSAGES**

- The real concerns and views of children and young people for their immediate and longer term wellbeing and that of other children likely to go through the family justice system, should be more prominent on the President's agenda regarding the practice and reputation of family courts. They are also consumers of the service and members of 'the public'.
- Young people said the President should stop trying to please the media – in part because it will not fulfil his agenda – and explore other mechanisms for monitoring and if necessary, improving the court service.
- Reference was made to other mechanisms for addressing complaints about professional practices including formal complaints procedures and, for some, measures of practice such as Key Performance Indicators (KPIs), and through the assessment of resulting materials, implications for further training and support.
- In addition young people said the President should consider a small unit, independent of government, to assess evidence in some cases: the press cannot and should not do this detailed work; it simply wants stories that will sell newspapers.
- Sanctions imposed on the media for breaches of confidentiality – however large the sanction – are adult focused and a lawyer's response to breaches of privacy. They do not address the issues for children that follow a breach of privacy, nor do they address the dangers of whether young people effectively 'withdraw'/disengage from proceedings because of a fear of press exposure.
- Young people did not see the threat of sanctions as in any way protective of children and young people. Indeed they felt where a story indicated commercial appeal facilitating a good head line, media companies would take the risk, publish information and pay the fine if it came to a test in which they lost. The phone/voicemail hacking cases and subsequent trial confirmed that view among young people but their views and experiences predate those developments.

## **PART 13      SUMMARY AND CONCLUSIONS**

### **The Sample**

- 13.1 The views and experiences of this sample broadly reflect those of children and young people in previous research and consultation exercises regarding media access to family courts but with some important additions and implications for jurisprudence - and perhaps some specific questions about the development of legal policy and practice by way of Practice Direction and Guidance, rather than legislation.
- 13.2 In terms of the sample profile, these young people are slightly older than, for example, the OCC sample of 2010<sup>51</sup> and overall they have more recent and ongoing experience of the care system. Like the young people in 2010, they are articulate and straightforward discussing complex and competing issues and principles both on a personal and public policy level. Like the 2010 sample, they are thoughtful, reflective and challenging about aspects of child protection processes in general and developments in the agenda on media access to family courts in particular.
- 13.3 Their knowledge of the overall system and the voice and rights of children and the pitfalls for children may also be a feature of the fact that they mostly have access to a youth advocacy service and to forums concerned with the position of children in family justice.
- 13.4 That background makes them well placed to comment on welfare issues and the voice and rights of children during their journey through the care system and to offer meaningful advice as to how to progress this field so that children's welfare is demonstrably and transparently at the centre of contemporary law and practice. They are also an invaluable source of information as to what, in the interests of children, to avoid in terms of policy development.

### **Summary**

#### **The media in contemporary culture**

- 13.5 Young people gave a detailed understanding of how the media works in all its forms. Fundamental to their views and experience throughout the consultation themes and questions is that they do not trust the media. This view results from their experiences as consumers of print, televised and social media but also from personal experiences with reporters and photographers from both print and televised media.
- 13.6 Like many adults young people see the media as a highly competitive, commercially driven industry motivated by a need to maintain/increase sales or viewing figures through a largely populist readership. This results in an industry – whether newsprint, TV, radio or other social media – which they argue does not necessarily prioritise the truth. Fairness and balance are not features they identify with any part of the media.

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<sup>51</sup> They ranged from 16 to 25 years; in the earlier study the sample was between 9 and 23 years but the majority were aged between 11 and 17 years; see Brophy (2010) op cit.

### **Publishing pictures: identity and privacy**

- 13.7 The context in which young people discussed the role of the media was almost always linked to the use of social media and the capacity – and invitation to the ‘world at large’ - not simply to read/observe materials but also to add comments on stories in newspapers and on television which are routinely reproduced on the web.
- 13.8 This means, for example, that pictures can go ‘go viral’ very quickly, cannot be retrieved and can have lifelong implications for the child or young person concerned.
- 13.9 Concerns about an independent right to respect and privacy start in general terms, for example, with regard to so-called ‘reality television chat shows’; young people were highly critical of parents who, under stress and in conflict with a family member, do not consider the consequences for children of going public with their problems.
- 13.10 Young people said Guidance and practice should reflect changing times and thus ensure the implications for children of any coverage of a programme and subsequent social media should be clear to parents – and to relevant children/young people. Parents in these circumstances are not necessarily best placed to decide issues on behalf of a child or young person. They argued that children have a right to respect, dignity and privacy and this should not be dependent on the views of distressed, vulnerable or warring parents.
- 13.11 They argued that in a global news economy - save in exceptional safeguarding circumstances - there is a need for *informed* consent from children and young people where it is proposed to include pictures or interview materials which are likely to lead to the identification of children/young people.
- 13.12 Young people’s views about the relevance of age and maturity to a child’s consent reflect those in a key decision on the consent of children (*Gillick v West Norfolk & Wisbech Area Health Authority* [1986] AC 112 House of Lords):
- In that case an application by a parent for a declaration that it would be unlawful for a doctor to prescribe contraceptives to girls under 16 years without knowledge or consent of the parent was refused. The issue before the House of Lords was whether the minor involved could give consent.
  - The House of Lords focused on the issue of consent rather than a notion of ‘parental rights’ or parental powers. Indeed the court held that ‘parental rights’ did not exist, other than to safeguard the best interests of a minor. The majority held that in some circumstances a minor could consent to treatment, and that in these circumstances a parent had no power to veto treatment. Lords Scarman and Fraser proposed slightly different tests; Lord Scarman’s is generally considered to be the test of ‘Gillick competency’. He required that a child could consent if he or she fully understood the medical treatment that is proposed.
- 13.13 The ruling was highly significant for the legal rights of minor children because it is broader in scope than merely medical consent. It lays down that the authority of

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parents to make decisions for their minor children is not absolute, that it diminishes with a child's evolving maturity; except in situations that are regulated otherwise by statute, the right to make a decision on any particular matter concerning the child shifts from the parent to the child when the child reaches sufficient maturity to be capable of making up his or her own mind on the matter requiring decision.

- 13.14 Young people reported that in clinical settings, medical staff would not disclose their medical records unless they gave consent: they understand the concept of evolving maturity and their rights regarding consent to disclose medical and sexual health records.
- 13.15 It was against that framework that they discussed pictures of children in the media and consent from the child. Where a child is unable to give informed consent, they said a picture should not be published unless and until the child is assessed by an independent person with safeguarding experience and knowledge of the possible longer term consequences for the child including use of materials (stories and images) on social media sites. This applied equally to pictures of babies; except where serious safeguarding issues applied, young people did not think it was acceptable or indeed ethical to publish pictures of babies.
- 13.16 Young people said that for all children involved in proceedings this was an unacceptable extra burden for society to place on children who will have to negotiate their lives against a background of ill-treatment and enormous change, where trust in adults has already been damaged and where children have to maintain/build self esteem and personal dignity in their social networks and wider communities. They can best do that where their efforts are not always at the mercy of coverage of earlier failures of parenting in birth families.

**Media access to family court hearings**

- 13.17 Young people placed discussion of media access to family courts in the wider context of what is frequently called their 'journey' through the system. A 'journey' in which they were not always kept informed about decisions taken by local authorities or during court proceedings in particular.
- 13.18 They were aware of the multiple reasons adults suggest as to why children and young people might be denied information but they were emphatic: paternalistic approaches in filtering information are not in their best interests: what they want from professionals is more honesty and accurate information about processes and decisions being made about their lives and care - however hard or uncomfortable that might feel for the adult to say.
- 13.19 Turning to media access to court hearings like other samples, young people were unanimous in their opposition to this move. They argue the family court is not a public court for good reason, that they have rights to privacy and dignity and that this move represents a failure of Parliament and the family justice system to consider their views, needs, experiences and long term welfare.

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- 13.20 Young people understood arguments about a public interest and issues of public knowledge about family courts but they said these issues would not be met by media access to hearings. There are other ways to increase public knowledge of the work of family courts.
- 13.21 Notwithstanding that position, young people were unanimous in a view that when considering whether to admit the media to a hearing, the judge should ascertain the views, interests and long term welfare implications for the child/young person concerned – but also what the research evidence says about the views of children in this sphere.
- 13.22 Young people highlighted key timing issues and very early consultation with children/young people about this development. They said the person best placed to discuss this issue with a child/young people as the person the child named as most trusted – but the named person must have sufficient information about media access and the implications for the child/young person, of giving consent. Neither of these issues is addressed in Guidance or wider literature/debate by professionals such as children’s guardians, IROs or indeed child care lawyers.
- 13.23 While parents have a view as to children’s interests, young people said courts must be aware that parents have views, pressures, vulnerabilities and their own agenda which can make them at best less aware about the long term implications for their children of media coverage of cases.

**Relaxing reporting restrictions in ongoing cases**

- 13.24 With regard to relaxing restrictions on information that might be published during cases, young people were adamant: like other studies, they said details of:

- The area where a family live
- The location of the court
- The school attended or area of the school child attends
- Ethnic and religious details of children and parents/families
- Alleged harm children may have suffered
- Health problems and problems at school
- The home conditions from which children were removed,

- are all details that could lead to the identification of a child.

- 13.25 Examples of how ‘jigsaw identification’ worked applied to inner city areas as well as rural/semi rural locations, and to areas with minority ethnic communities. Young people felt policy makers simply did not understand the ‘culture’ of urban communities and how they ‘work’ or how groups of children and young people form, operate and communicate. That networking, coupled with the prospect of coverage spreading from the print media to the internet and social media demonstrated to these young people that such details should remain ‘prohibited information’.
- 13.26 As with findings from other research with young people (and the view of some key child and family clinicians (psychiatric and paediatric)), these young people said that

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when told the media will be in court, children will hold back information in the assessment.<sup>52</sup>

### The impact on children and young people of media reporting

- 13.27 Young people were united about how a young person might feel, reading about their case in a newspaper (even if not named or identified in other ways): they would be deeply affected. The terms they used were deeply worrying: children and young people would be upset, angry, sad, depressed, and embarrassed and ashamed, in short 'devastated'.
- 13.28 That experience would exacerbate existing stress and worry which children and young people experience because they are 'in care'. Feelings of shame and a fear in case people find out they were removed from parents because of ill treatment can dominate their lives: simply being told by professionals that it was 'not your fault' does not deal with deep-rooted experiences of rejection and the internalisation of blame and shame.
- 13.29 Concerns about the identification and treatment options for children with 'mental' and emotional problems remain on the policy agenda. For children involved in court proceedings however issues are exacerbated – not least because they may be less likely to share their concerns and feelings precisely because of the nature of the problems in their families but also because of the stigma attached to the concept of 'mental illness'. Young people said that where such children are also faced with media reporting of cases, emotional problems may spiral leading to self harm and suicide.
- 13.30 Once information is placed on the net (a foregone conclusion given the nature of the details the press want to publish), young people said public humiliation would follow. Children would then live the rest of their life with the fear and the reality of further exposure. As they pointed out, the web and social networking sites are not 'next week's chip paper'.

### Reporting cases once they are completed

- 13.31 Young people were unaware that, unless directed by the court, automatic restrictions on reporting cases in terms that would allow the identification of children and families ceases once a case is completed. They had serious concerns about that position – especially if more details in general from cases are to be permitted to be published.

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<sup>52</sup> While the FJS and the child protection process as a whole is frequently ambivalent about the use and relevance of the UNCRC, the same is not true of, for example, the work of paediatricians. The Royal College of Paediatrics and Child Health is clear about the role of Article 12 of the UNCRC in clinical work with children (see Wood et al. (2010) *Not just a Phase – Participation Guide to the Participation of children in Health Services*, (<http://www.rcpch.ac.uk/what-we-do/children-and-young-peoples-participation/publications/not-just-phase/not-just-phase>). The obligation to give information to children and young people in health care settings to enable them to participate in decisions that concern them and in a meaningful way and including in clinical assessments for courts is also determined by medical ethics. That obligation is not 'trumped' by the approach of courts or professional views in the child protection and family justice system – or indeed the suggestion from the press that to avoid problems of further disclosure or effective withdrawal of participation, children should simply not be told the press may be in court.

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They said post proceedings identification of children could have safeguarding implications and implications for the privacy of children. With one caveat they said reporting restrictions should normally be maintained.

- 13.32 They said that once a case is completed, where parents intend to talk to the press, they should consult the child/young person in the case and seek permission. Permission should be sought in the context of an assessment of the child/young person's ability to give informed consent (which should have already been addressed during proceedings) and by a trusted adult with an understanding of potential immediate and longer term consequences of media coverage.
- 13.33 When the court is considering an application to extend reporting restrictions beyond the end of a case, young people said the judge should address two issues: whether discussion with the media was seen or likely to be seen by the child/young person involved as of potential benefit to him/her, and second whether it would be of benefit to the family. For some children the first leg of this exercise would require an assessment of the capacity to give informed consent.
- 13.34 In all circumstances young people said parents must seek the views and permission of their children before talking to the media – and children and young people concerned must be able to give informed consent and must have access to information about the immediate and longer term consequences.

**Reporters' access to court documents**

- 13.35 Young people's views about media access to court documents must be placed in the wider context of children and young people's access to information about their cases generally – and the fact that some are not told honestly and directly about decisions taken by social workers and others and that they themselves may not have seen documents to be released to the media.
- 13.36 As detailed above, they identified that their GP, hospital and other medical records are not available to the public or the media without their consent. They do not accept a 'public interest' argument for media access to clinical reports for courts and oppose other documents – such as position statements - being made available to the media.
- 13.37 Young people identified some key problems with this proposal. First as indicated above, court proceedings are often the end result of a long process and where some children will have been in voluntary care prior to the initiation of care proceedings - albeit they may well have been 'on the edge of care' for some time. At what point therefore should these children be told (as indeed they must) of the possibility of proceedings and of media access to hearings and documents? Children are clear that it should be at the start of their care 'journey', not at the door of the court.
- 13.38 Second, the point at which children's rights to privacy and to key information under Article 12 of the UNCRC has not been addressed - by Government, local authorities or the President of the Family Division.

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13.39 Young people are strongly opposed to medical reports being disclosed to the media; they said that if this proposal 'goes through' informed consent should be sought from or on behalf of the child/young person in each case. The terms they set out above (i.e. capacity of the child to give consent, use of a trusted person with knowledge of the implications etc) should apply.

**Increased use and wider access to written judgments**

13.40 Young people understood access to written judgments in cases would provide a more accurate and truthful version of events, the reasons for an application for a care order and the evidence on which the court makes a decision – compared for example to what might be provided by the press - and thus the reasons why the President has moved in favour of substantially more judgments being published on-line. It is an indication of levels of concern and anxiety about identifying children however that they also reject this approach.

13.41 They said failures to completely anonymise judgments and jigsaw identification puts children and young people at risk. There was also concern that very intimate and personal information in judgments may make certain abused children/young people more vulnerable to inappropriate attention from predatory adults in communities.

13.42 Young people said sanctions for breaching confidentiality<sup>53</sup> do not address the position and potentially lifelong problems of children exposed by failures to protect respect their privacy. They are made more vulnerable by a system set up to protect them and penalties are a lawyer's response to the problem. They also said that the media may risk the sanctions where the commercial benefits are deemed high or worth the risk.

**Public confidence in family courts**

13.43 Young people said the media do not tell the truth or deliver the full facts in reporting – indeed 'facts don't sell newspapers'. They also rejected the argument that media access to family courts will improve the reputation of such courts so far as issues of fairness are concerned.

13.44 They argue that there are better avenues to improve public knowledge about the work and decision making in family courts and other avenues to explore parents' allegations of unfair decision making - by professionals and judges.

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<sup>53</sup> Judgments in family cases published on the Bailli website state the following head note: '*This judgment is being handed down in private on [date]. It consists of [number of] pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported. The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.* Following the President's Practice Guidance (16 Jan 2014) this note may be amended stating that local authorities and experts should be named unless there are compelling reasons not to, and that anonymity should not be extended beyond protecting the privacy of the children and family members unless there is compelling reason to do so.

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- 13.45 Young people said the allegation that family courts are ‘secret courts’ is disingenuous. They said such accusations are a justification for gaining access to information which the media would not otherwise be able to achieve. They did not think newspapers could or would achieve change in family court proceedings: they said there were other avenues for that.
- 13.46 With regard to *any* benefits to media access to court documents, young people said there were none. Information from a single case was not effective in educating the public about the work of family courts, nor would it address issues of public confidence in a meaningful way.<sup>54</sup>
- 13.47 Where courts are asked to address the balance between the wishes of parents to talk to the press and the welfare of children (immediate and long term), children were clear, the welfare of children should be paramount and the law should develop to reflect that priority.
- 13.48 Young people said judges are there to protect children and families; the terms of their work and training provide assurances to the public that there is nothing ‘secret’ going on and that the process is fair. In response to the argument that judges are not infallible, young people said reporters in court will not stop mistakes, other checks are in place and other measures should be explored.
- 13.49 Young people said safeguarding both current and future safety and wellbeing of children should form part of the task of judges when balancing the privacy rights and needs of children and the rights of the media to freedom of speech and information.
- 13.50 Young people did not support use of the press to expose mistakes: indeed they were unconvinced of this as a motivating force or justification. They said there are other ways to identify failures in health and social care and they do not support ‘public exposure’ of individuals such as social workers as a way forward.

## **MESSAGES FOR KEY PEOPLE**

### **The President, family court judges and magistrates, children’s welfare and legal advocates, and Parliament**

- 13.51 Young people said the real concerns and views of children and young people for their immediate and longer term wellbeing should be more prominent on the President’s agenda regarding the practices and the reputation of family courts.
- 13.52 They said the President should stop trying to please the media – in part because it will not fulfil his agenda but also to explore other mechanisms for monitoring and if necessary, improving the court service.

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<sup>54</sup> Some reporting of cases support these views: even when access to accurate information has been available, reporters have not take up that option and have reported on cases having not been in court or having sought clarification of issues from the judge concerned.

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- 13.53 One option would be a small unit completely independent of government to assess evidence in some cases. They said the press cannot do this – it simply wants a story that will sell newspapers.
- 13.54 Sanctions however largely miss the point. They do not address the issues for children that follow a breach of privacy, nor do they address the dangers whether young people effectively withdraw from the process because of press involvement.
- 13.55 In 2007 (the then) Ministers in the MoJ said children and young people (as users of the system) are experts by experience.<sup>55</sup> That sentiment was repeated to young people by the current Minister for Children and Families in the Coalition Government.<sup>56</sup>
- 13.56 In practice however, research and consultation exercises with young people pose two questions – if such statements are to be other than hollow sentiment. The first question is the degree to which young people’s views and experiences are of any real influence in the development of policy regarding media access and reporting of children cases; an absence of attention to that focus requires explanation.
- 13.57 As others have argued (e.g. MacDonald 2010; Fortin 2006): ‘*if we are going to ask children and young people to stand before Government Ministers and others in the family justice system to tell us what they want, do we not owe it to them to give serious consideration to what they are asking for? If not, then for what purpose did we ask them?*’ To this perhaps should be added that at the very least they are entitled to a published explanation of why their views and welfare – the latter at least said to be at the heart of the system and the Family Justice Review are effectively ignored in this context.
- 13.58 The second question has two parts: the first is how and when the voice of the individual child on this issue is to be ascertained – as in theory at least it must under both domestic and European legislation. The second is how those views then find expression and real impact when courts are required to balance children’s Article 6 and 8 rights with those of the media under Article 10.
- 13.59 Notwithstanding each case has to be decided on its merits and that judges retain discretion in this field, in a climate where the ‘direction of travel’ (at a policy level at least) indicates a strong preference in favour of the Article 10 rights of the press<sup>57</sup>, the question in care cases may become similar to that in criminal proceedings<sup>58</sup>: what will constitute an ‘*unusual and exceptional set of circumstances*’ such as to displace the Article 10 rights of the press?<sup>59</sup> Young people pointed out that for the **child** in

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<sup>55</sup> Falconer C and Harman H (then Ministers, DCA) (2007) Young People’s Guide (and see paragraphs 4.2 and 4.3 above).

<sup>56</sup> The Hon. Edward Timpson MP, Parliamentary Under Secretary of State for Children and Families, DfE: NCB launch - Evaluation of the IRO Service. Comm. Room 4, House of Lords, 31 March 2014.

<sup>57</sup> See for example, Speech of Sir James Munby, President of the Family Division, Society of Editor’s Annual Conference, Nov 2013 - [www.familylaw.co.uk/articles/transparency-family-courts-more-speech-enforced](http://www.familylaw.co.uk/articles/transparency-family-courts-more-speech-enforced)

<sup>58</sup> See, Lazarus M (2014) Reporting Restrictions and the New Transparency – Part 1; <http://www.familylawweek.co.uk/site.aspx?i=ed127922>

<sup>59</sup> Bearing in mind that at the moment at least, the interests of the child is a primary but not the paramount consideration.

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care proceedings they are already 'exceptional': *'How much worse can it get for the child? And how much lower [exceptional or worse] will the press make it to sell newspapers'* (young woman, 24 years).

- 13.60 For child care advocates putting a case for the Article 8 rights of a child, what exceptional and unusual circumstances are going to be necessary? Research evidence and the views of children and young people on a need for/importance of protection of their current and *future* privacy may be viewed as speculative rather than factual. This is not to say that such evidence has not been accepted, rather it is likely to require much earlier thought and considerably more preparation than has been the case.
- 13.61 Reporting Restrictions Orders (RROs) – for which the press requires prior notification - are likely to be brought at short notice and with little time for detailed preparation. This problem is likely to be exacerbated where little or no attention has been given to media attendance and reporting of the case during the early 'journey' of a child/young person through the care system. Ascertaining her/his view or that of the guardian at the 'door of the court' is simply too late – and a breach of the child's Article 12 rights.
- 13.62 Two specific issues arise for children and young people in private law cases:
- (a) Without separate representation and where most parents are now litigants in person, there is no one independent to advance views and arguments on children's behalf. Children are thus at greater risk that unrepresented, warring parents will seek to use the media as a weapon in their own agenda - with children trapped in that battle, but without a voice. Judges will be without access to an independent view on behalf of the child when balancing a child's Art 8 rights to privacy against a parent's/press rights to freedom of information under Art 10 of the ECHR.
  - (b) Many solutions posed by young people for those in care proceedings, such as consulting the child or assessing the capacity of a child to give a informed consent to media involvement (by way of an independent trusted, safeguarding literate person) do not exist in private law cases. Access to such a person (by way of a guardian under rule 16.4, or a family court adviser ordered to file a s.7 report) is absent in most private law proceedings.
- 13.63 There is a further point made by young people (and effectively sidestepped by policy makers): to what extent do the Article 10 rights of the media to impart information to the public, absolve it of responsibility not to mislead or misrepresent issues and proceedings?
- 13.64 In earlier days of this debate (2007 – 2010) Ministers argued that the media would report honestly on the *process* and thus educate the public. The former part of that argument has largely been dropped; indeed it is now argued that it is not the job of judges (or politicians) to tell the press how to report cases: the press should be free to tell a story as it thinks best in the light of editorial and commercial imperatives<sup>60</sup>.

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<sup>60</sup> See note 29 above.

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That view is rooted in another (constitutional) debate but it leaves the issue of an 'educational' remit for the press at best somewhat 'out on a limb'.

- 13.65 It is naïve to think that partial and tendentious reporting of cases will cease but the concerns and risks to vulnerable of children remain, as will the moral if not legal duty of courts and family justice professionals as a whole, at least to do children no further harm. That duty should perhaps be reassessed by Parliament in a transparent assessment of the proposed 'next steps' in media access and reporting of family cases.
- 13.66 It is perhaps worth noting that the safeguards agreed by Parliament under the CS&F Act 2010 have not been instigated. In the face of widespread concern about Part 2 of the Act, Parliament set out (in sections 19 and 20) what must happen before *any* changes were made in the treatment of sensitive personal information in cases, and with regarding to media access to court documents. Those sections remained prospective and were subsequently repealed - without debate about the implications or loss of protection for vulnerable children and families.
- 13.67 Section 19 of the 2010 Act dealt with *power to alter treatment of sensitive personal information* and set out safeguards agreed by Parliament before that move could happen:
- (1) *Schedule 1 (which contains amendments which alter the treatment under this Part of sensitive personal information) has effect.*
  - (2) *In this section "the Part 2 amending provisions" means the provisions of that Schedule and any related repeal in Schedule 4.*
  - (3) *The Lord Chancellor may not make an order under section 29(4) bringing into force any of the Part 2 amending provisions unless—*
    - (a) *an independent person appointed by the Lord Chancellor has carried out a review of the operation of this Part,*
    - (b) *in carrying out the review the independent person consulted the public about the operation of this Part, and*
    - (c) *the conclusions of the review have been set out in a report which has been laid before Parliament.*
  - (4) *No review for the purposes of subsection (3)(a) may be commenced before the end of the period of 18 months beginning with the time section 11 comes into force.*
  - (5) *Where section 11 is initially brought into force for one or more specified purposes only, the reference in subsection (4) to the time that section comes into force is to the earliest time it comes into force for any purpose.*
  - (6) *A statutory instrument containing an order under section 29(4) bringing into force any of the Part 2 amending provisions may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.*

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13.68 Section 20 of the Act set out the role and timing of an independent review:

*(1) The Lord Chancellor may not bring into effect the provisions set out in Schedule 1 to this Act, unless—*

*(a) the Lord Chancellor has commissioned a full independent review and evaluation of:*

*(i) the operation of Part 2 of this Act, and*

*(ii) the impact of the new guidelines on reporting restrictions introduced on 27 April 2009,*

*(b) the conclusions of the independent review have been set out in a report which has been laid before Parliament.*

*(2) No review for the purposes of subsection (1) may be commenced before the end of the period of 18 months beginning with the time section 11 comes into force and a full review has been completed of the findings from the pilot allowing for the publication of anonymised judgments alone.*

13.69 Thus, perhaps some clarity and wider discussion beyond the legal arena would be helpful as to why substantive changes are likely to take place without recourse to Parliament, without first placing before it independent evidence on how the change of Rules is working and in the absence of the safeguards which Parliament considered necessary for vulnerable children and families in 2010.

13.70 As young people effectively argue, contemporary family law policy must allow children '*not just to survive but also to thrive*' and in that context perhaps there is a need for Parliament to consider whether the proposed changes to the publication of sensitive information about children and access to court records is a good enough response for children – including perhaps, their own.

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Administration of Justice Act 1960

The Children Act 1989

Children and Young Persons Act 1933

Children Schools and Families Act 2010 - Part 2 (repealed)

European Convention on Human Rights (ECHR)

UN Convention on the Rights of the Child (UNCRC)

Family Procedure Rules 2010

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## APPENDIX 1

### SCHEDULE SUMMARY - THEMES AND QUESTIONS FOR YOUNG PEOPLE

#### A The Media

- Q1 What do you understand by the term: 'the media'?
- Q2 What are your views about how journalists report information generally?
- Q3 Do your views change depending on which bit of the 'media' we talk about (for example, TV versus newspaper)?
- Q4 Have your views about any part of the media changed recently – and if so, what are your reasons?
- Q5 We usually take about 'reporting' to mean stories in newspapers and magazines; do you think the media should be permitted to publish **pictures of children and young people**?
- (a) What about pictures of babies – **less than one year old**?
- (b) What about pictures of babies **under two years old**?
- (c) What about pictures of **older children and young people**?

#### B MEDIA ACCESS TO FAMILY COURTS

**At the moment in ongoing cases, reporters are allowed to attend family courts and listen to what is said in cases (unless the judge says they cannot). They are not permitted to publish information which is intended or likely to lead to the identification of any child in the case. This restriction ends once the case is completed - but the court can decide reporting restrictions should continue if that is thought necessary.**

- 6.1 What do you think, in general, about this development?
- 6.2 Do you think children and young people should always be **consulted** before a judge makes a decision about whether to allow a reporter to sit in and listen to a case?
- 6.3 At what age should a child/young person be asked for their view about whether a reporter should be permitted to be in court to listen to their case?
- 6.4 **Which adult should ask** a child/young person for their view about whether a reporter should be permitted be in court to listen to proceedings?

**While a case is ongoing, the media is not permitted to publish material which is intended - or is likely to lead - to the identification of any child in the case:**

- 6.5 Do you think this approach is sufficient to protect the identities of children and parents involved in cases?
- 6.6 What information from a case do you think would permit people (at your school, in your neighbourhood/local communities and friendship groups) to identify a children/young people?

## C RELAXING AND INCREASING REPORTING RESTRICTIONS DURING CASES

The court has the power to relax and increase reporting restrictions. When the judge is considering whether to relax restrictions, she is required to undertake what is called a 'balancing' exercise. This means the judge considers the rights of children and parents to respect for a private and family life and to a fair trial, and the rights of the press to freedom of expression - and thus to report on cases in family courts.

When undertaking a 'balancing' exercise the judge has to explore and measure the nature of the *impact on the child* of what is proposed in the way of reporting following any relaxation of reporting restrictions - against claims about any benefits in increasing the details the press may report.

7.1 What sorts of things should the judge to think about when she is looking at the impact on a child of relaxing reporting restrictions during a case?

7.2 How do you think a young person might feel, reading about him or herself in a newspaper – even if her/his name does not appear in the story?

## D AT THE END OF THE CASE

The automatic restriction on media reporting of the detail of cases and the identities of those involved stop once the case is finished (although the judge can extend restrictions if he/she thinks that is necessary).

8.1 Do you think reporting restrictions on information which may identify children should stop *automatically* once cases are completed?

8.2 Are there some details (information) about children and families which you think should indicate that the court should extend reporting restrictions beyond the end of a case?

8.3 After a case is completed, a parent is generally permitted to talk to the press and can identify themselves and their children by name - do you think that is the right approach?

**Other young people have said where possible parents should seek the permission of their children before talking to the press once a case has finished?**

8.4 What do you think about that view?

Can you think of reasons why parents might not do this?

8.5 Where parents feel they have been wrongly criticised by a social worker or judge or another other professional, should they be permitted to speak to the media and name children, professionals and the judge?

8.6 Many children involved in care proceedings are babies and too young to have a view about being named in any reporting of a case; do you think it matters if their names and pictures are published?

## E REPORTERS' ACCESS TO FAMILY COURT RECORDS

During proceedings there is a lot of written information to helps the judge understand the reasons for the case and to decide what is best for the child/young person concerned. Papers set out the reason for proceedings, statements giving the views of

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**key person involved (social workers' statements say why they are concerned about a child, reports come from doctors who have assessed children and parents and from the guardians/court welfare officer which, amongst other things, gives the wishes and feelings of the child. There may also be information from health visitors, a teacher or head of school or a nursery nurse.**

**At the start of a case something called a 'position statement' tells the judge what each key person thinks about the reasons for the case and what they think should happen. The media does not have an automatic right to see documents but can apply to the court to do so; the court should then seek the views of the people involved before deciding. There is a proposal from the President of the Family Division that - unless otherwise stated by the court – the media should routinely be permitted to read certain (as yet unspecified) documents.**

- 9.1 Do you think reporters should be permitted to read some documents - such as position statements by social workers, parents and children's guardians/family court advisors, and reports from doctors?
- 9.2 If, for example, it is decided that media should have access to some documents, should children/young people always be told about that?
- 9.3 At what point in proceedings should children be told a reporter may see certain documents
- 9.4 Who should tell young people about this (which adult would be best for the child)?
- 9.5 Should parents be told before documents are released to the media?
- 9.6 What do you think the impact on a child/young person would be of being told the media may have access to certain court documents?
- 9.7 Do you think this could affect their willingness/ability to talk to professionals (their social worker, guardian etc.)?
- 9.8 Do you think that if told a reporter may be permitted to read a doctor's report about a young person that may affect the young person's willingness to talk about the issues which made the court case necessary?

## **F REPORTERS' ACCESS TO WRITTEN JUDGMENTS**

**When cases are completed, sometimes the judge/magistrates will give written reasons for a decision (a 'judgment'); this sets out the background to the case, the views of each party and the reasons for the court's decision about the future care and placement of a child or young person.**

**The judgment may be placed on a public website which holds judgments from other cases. Anyone can access these special websites and read a Judgment. Before it is placed there however it should be 'anonymised'. This means identifying details of parents and children are removed. The names of lawyers, social workers, the local authority and the child's guardian and any doctors involved along with the judge remains.**

- 10 Do you think that is the right approach?

## **G PUBLIC CONFIDENCE IN FAMILY COURTS**

**Some newspapers accuse family courts of being ‘secret courts’ – in part because there are restrictions on what they may publish about children and parents and because reporters do not have unrestricted access to court documents.**

11.1 What do you think about that accusation?

**Newspapers argue that access to documents and reporting of more details from cases will allow the public to understand the work of courts where children are removed from parents and the reasons why some will be placed for adoption.**

11.2 Do you agree?

11.3 What message would you like to give to the President of the Family Division to help him address these accusations?

**If a newspaper breaks the rules and publishes something that allows a child to be identified during proceedings, the court can impose ‘sanction’ (a fine or a jail sentence - or both); this is intended to act as a control on press behaviour.**

11.4 Do you think sanctions will protect children?

11.5 Is there anything else you would like the President to consider doing?

## **APPENDIX 2**

### **Rights of the child to be heard - Article 12, UNCRC<sup>61</sup>**

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

### **Pre-conditions for realisation of child’s right to be heard - General Comment No. 12 (2009)<sup>62</sup>**

Right to express views freely in all matters affecting the child, and in conditions and with information that enables the child to make informed decisions

- “Freely” means the child can express her views without manipulation, undue influence or pressure
- able to express his/her own perspective not the views of others

### **Conditions necessary for child to freely express views under Article 12**

- Must take account of child’s individual and social situation
- Environment: child must feel respected and secure when freely expressing her opinions
- Child cannot be heard effectively where environment is intimidating, hostile, insensitive or age inappropriate
- Child must be informed about the conditions under which she/he will be asked to express her views
- Information: child must be informed about the matters, options and possible decisions to be taken
- Right to information is essential – it is the precondition of the child’s clarified decisions

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<sup>61</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>; The DfE in England coordinates government’s periodic reviews on how successful it has been on implementing the UNCRC since 2008 – see <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc>

<sup>62</sup> [www2.ohchr.org/english/bodies/crc/docs/.../CRC-C-GC-12.pdf](http://www2.ohchr.org/english/bodies/crc/docs/.../CRC-C-GC-12.pdf)