Update

Sleepless nights reporting the family courts

This September, I was in front of a judge for the first time in my life. I was applying to relax s 12 of the Administration of Justice Act 1960 because I want to report on the details of care proceedings that saw a local authority remove a newborn baby from his mother, and her struggle to get him back. Having met this woman and heard part of her story, I knew it was an important one to tell. She is, I would venture, unusual for someone who has been through extensive care proceedings: she has insight, perspective and the ability to see both sides. As a journalist this is hugely helpful, because I am always, and pretty much only, interested in looking at why painful and destructive things happen. I am not interested in writing a rant.

Without applying for permission to publish restricted details of her case, however, I knew I would be laying myself open to considerable risk: if I made the wrong call on what to keep in and what to leave out, I would be laying myself open to contempt. This is serious and the sanction is stiff. A fine is possible. So is jail. However, while I was in the air flying to the city in question for the hearing (I cannot identify where for legal reasons) the judge sent an email to all parties, saying he would not be able to determine the application because the local authority had filed its response so late that he had only that morning been able to read all the submissions together. My application, the email explained, now had to be heard by a High Court judge: the earliest that could happen would be mid-October.

I practically exploded on the tarmac. A previous hearing had already been abandoned at the last minute for similar reasons. Given the days of work that had gone into preparation, such delay is incredibly frustrating. It is also expensive – I will come back to the implications of that later. And, of course, it is only if my application succeeds that I will be able to see the court papers detailing social workers'

arguments for why they felt this baby needed to be taken into care just after birth, the reasons for their recommendation that he then be adopted, read blow-by-blow transcripts of what was said in front of the judge, interview the mother and anyone else willing to talk to me on their view of proceedings – and report it all.

At the limited 'directions' hearing which did take place, it became apparent that the local authority was seeking a reporting restriction order that would ban me from reporting many of the details of the case that I currently, lawfully, may. This includes the number of children in the family, all their ages and, although I had already agreed with the mother not to do this, her location, her name and the names of her children who are not in care. The council also argued that it should not be identified: currently I would be at liberty to do this.

It is therefore possible that having, entirely properly, applied to relax s 12, I will end up with fewer reporting rights than I started off with. Even if I do get permission to write about matters which are currently restricted, a reporting restrictions order (RRO) that prevents publication of important facts about this woman's family make-up means that editorially, I will not successfully be able to explain the background to her baby being removed by the state and children's services' swift judgment that he should be placed for adoption. I could essentially be writing about any woman, any family, anywhere – and few readers will bother to plough through 5,000 words of cloudy approximation. For instance, knowing a child's age is critical for a reader to understand their level of attachment to their parents and siblings as care proceedings unfold. The number of children in a family is also editorially vital: the stresses and strains on a single parent with two children, for example, will likely be significantly different to those experienced by a mother trying, alone, to look after seven. If I cannot help a reader grasp these things, as a journalist, all is lost: simply put, I will not be able to do my job.

Since the directions hearing, a conversation with my editor has made it clear that, while she fully supports me in pursuing my application, the extensive RRO now sought means I will not be able to write the article she wants. If it is granted, this long-form commission – a very rare opportunity in the British press to tell the unfolding story of care proceedings and their aftermath in such detail – will collapse.

Back to practicalities: the paperwork associated with my application and the various parties' responses is now well over an inch thick. It will have taken 15 weeks from filing my official request in July until my arguments are heard in October, as well as – conservatively – 6 days of my time spent just on the legal steps required. (My total time including research for this feature will stand at around 3 weeks.) The cost of a return flight for the first abandoned hearing has been wasted and there has been some considerable worry and effort involved in trying to reassure my editor.

I have also – to date – been lucky enough to have 6 days of pro-bono advice and representation generously given by barristers Lucy Reed and Sarah Phillimore on a personal professional basis: both are co-founders of the Bristol-based Transparency Project which aims to increase public understanding of the family courts. And that is all before I find out if I can tell this mother's story in the way I want to – the way I believe readers deserve. For a freelance, it is a significant investment. In purely economic terms, if it does not come off, it is not a risk I will be able to take again for a very long time. Even though I already had some experience of attempting to report private family cases, when I embarked on the research for this commission, I had little idea of just how difficult covering public care proceedings in such detail would be.

There are of course powerful arguments in favour of restricting reporting of family matters. Having your dirty linen washed in public view would be a painful blow at an already traumatic time. It could, in some circumstances, cause harm to children if anonymisation failed to operate effectively because of jigsaw identification. But there

are also excellent reasons why reporting more of the detail of what happens to families in crisis when they end up in court matters. It would hardly be unprecedented: in Crown Courts, extremely sensitive information relating to children's lives and locations is discussed with no reporting restrictions, other than the media being prevented – and even then, not in all cases – from using children's names.

In January 2014, Sir James Munby, President of the Family Division, issued what he emphasised was an initial set of Practice Guidance on increasing transparency. His guidelines made it plain that he wished to improve public understanding of the family court process and so increase confidence in the system. In the case of *Re J* ([2013] EWHC 2694 (Fam), [2014] 1 FLR 523), which Sir James had heard the year before, he had already stated:

> 'One [aspect] is the right of the public to know, the need for the public to be confronted by, what is being done in its name. Nowhere is this more necessary than in relation to care and adoption cases. Such cases, by definition, involve interference, intrusion, by the state, by local authorities and by the court, into family life. In that context, the arguments in favour of publicity – in favour of openness, public scrutiny and public accountability – are particularly compelling.' (para [27])

In balancing the public interest with the potential harm publication might cause to vulnerable children and families, Sir James Munby's guidance explained that while a great deal of information about the history of the case could be set out in rulings that he was encouraging judges to publish, minors and their relatives should be anonymised. Importantly, however, he said that the local authority and any expert witnesses involved should normally be named. But while the publication of judgments is welcome – I have written several stories about local authority abuses of power and shocking derelictions of their statutory duties thanks to rulings now up on Bailii – being able to report such judgments is not, I would argue, enough. For instance, in the last 6 months, I have written two 700-word news pieces for the *Guardian*, reporting separate, highly critical judgments making it plain that Gloucestershire County Council's use of s 20 has caused extensive delays, uncertainty and emotional damage to vulnerable children and their parents. A third judgment relating to the same council, saying exactly the same thing, went up on Bailii on 20 September. Why is this council using s 20 so badly, so often? It is a really good story.

I am now thinking I would like to make an application for sight of those papers and the right to report the detailed reasons for why three different sets of care proceedings have gone so wrong. But – quite apart from the £155 application fee, which for a standard, rather than a long-form article, would be hard to squeeze out of an editor – I simply cannot go through a lengthy legal dance for a likely commission of 1,200–1,500 words that would pay me, at standard *Guardian* rates, £465 tops.

Sir James Munby stated in *Re J* that, 'with the state's abandonment of the right to impose capital sentences, orders of the kind which family judges are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make.' There will be situations where proper accountability is impossible without journalists being able to report the detail of what happened throughout the months – and sometimes years – that a family case is going through the courts.

The problems of reporting how family law affects people's lives go wider than contested care proceedings and adoption applications. Reporting restrictions mean that the effects of controversial government policy cannot be properly scrutinised either. I recently spent 3 hours lying awake worrying after filing a 3,000 word piece for a Saturday supplement, (not published at the time of writing this), that examines the effects of cuts to private family law legal aid. These cuts mean that distraught parents who are splitting up and cannot afford a lawyer have no option but to represent themselves as

litigants in person at one of the most stressful points in their lives. Often they are fighting for the right to see their children. The stakes are very high. Watching individuals with no legal expertise or experience trying to make their case in court – in one instance, observing a woman alleging domestic violence who did not have English as her first language attempt to secure access to her children – could not have been more telling of the effects of legal aid cuts on ordinary people. In his article ' "The way we are": accessing the court after LASPO', published in November [2014] Fam Law 1597, His Honour Judge Stephen Wildblood QC made the point that, 'as the number of litigants in person increases I would suggest that it is essential that we try to improve public understanding of how we operate because without that understanding people will not know how to approach the court process on their own'.

Having filed my LASPO feature, which in part attempts to do precisely this, I suddenly became very scared indeed that, even though I had kept the descriptions of the hearings themselves as general as possible, my article still might be seen as a contempt. To a journalist, this is chilling. It can lead to significant self-censorship, perhaps even beyond the bounds of what is required by the law. It is also perfectly possible that editors will just go, 'too difficult, too risky, too expensive,' when faced with a reporter wishing to write this kind of story.

This is, without a shred of doubt, the hardest reporting I have attempted in 14 years as a journalist. Although I have a deep interest in the family courts, it can sometimes seem like one that is madness to pursue: I have a mortgage to pay, children to support and there are tons of worthwhile social issues I could write about. My good relationships with commissioning editors are vital to sustaining a livelihood that can feel distinctly precarious at times – I cannot afford for hard-won commissions to collapse. It is also right to acknowledge that the pressures on salaried staff journalists are not all that different. They too work in a highly competitive environment, must come up with interesting stories in the public interest and, if they pitch an idea to their bosses, they are expected to deliver. The reason I persist is that I believe how family law applies to private citizens and children at their most vulnerable is a vital area of public policy that cannot remain closed off from scrutiny. If there is to be greater transparency and accountability in the family courts so that the public understands what is done in its name, the process of attempting to report on what goes on in them has to be made easier. Otherwise, as to date, it will hardly happen at all.

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