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START AUDIO

James Munby: I have nothing to do with the selection of the topic, it is, you will appreciate, a topic close to my heart, so I'm delighted we're going to have these very eminent speakers arguing pro and con about transparency. I don't have anything to say at this stage beyond this; the format is very simple, we spend the first hour listening to presentations from each of the four speakers, who've got about 12 or a maximum of 15 minutes each. Then for the second hour we have a general discussion and debate, there'll be roving mics. After a further hour of that, we break off.

So without more ado, the motion being transparency in family proceedings, is the family court open for business? I will ask Sir Roderick Newton to kick the proceedings off. He, for those of you who may not have known or forgotten, was the judge involved in the Italian caesarean shock horror case.

Roderick Newton: Thank you President very much. Good evening ladies and gentlemen. This talk is going to come with a health warning, because rather like the smoker that's given up cigarettes and becomes a fan of the Clean Air Act, I used to be very opposed to any sort of transparency in family courts. Because I've had something of a conversion therefore, I may be all the more zealous in what I say.

I'm also going to mention the President from time to time, not because I'm being obsequious, because I've got a free reign to say whatever I want, but because he has put the topic very much in the public eye. For that reason there are a number of things which I would want to draw attention to.

A year tomorrow on the 12th of November last year, the President said to the Society of Editors' annual conference:

"We must have the humility to recognise and acknowledge that public debate and the jealous vigilance of an informed media have an important role to play in exposing past and future miscarriages of justice."

I think the tension is even more fundamental than that because it is, I think, between the right of the individual to privacy, an individual who has not sought the intervention of the court and almost certainly doesn't welcome it, with the very considerable public interest in decisions taken in its name. Within that balance is the respect and confidence, that is to say the integrity of the judicial system of which I am a part and most of you are connected in some way.

A couple of weeks later, as the president has already mentioned, it was the 1st of December, a miserable Sunday afternoon. I had been for a walk, come in, had a cup of tea , sat down and turned on the six o'clock news, which is not something I normally do. On the news was an item , the main headline was of an Italian mother who said that she'd been treated like an animal, that she'd undergone a caesarean and that the child had been snatched by social workers, and the baby had been adopted by strangers. That was the bulletin, there was no more information.

On the 10 o'clock news, so later on that evening, there was a bit more information. It was only once the scant details became slightly more filled in did I realise that it seemed slightly

reminiscent of a tragic case that I'd heard about 10 months before. It was only then that the penny began to drop that in fact it was one and the same case.

The following day I went to court as usual and I turned on my computer, and it was as though I'd been away for months. The emails rolled, the telephone rang, everybody was coming to see me. I had the President's office on the phone, I had various judges on the phone, I had the press on the phone, Number 10 had been on the phone, there was interest in Parliament. In fact I didn't know really what had hit me. The most important thing it seemed to me was that I should get out my Judgment and then find out what was going on. I discovered that the story had then been reported in the Express and the Daily Mail.

It was subsequently followed in a number of newspapers, and a lot of photographs, most of them of me looking like I'd just appeared from some Sheridanesque play, and looking very out of touch. Most of the reports were tendentious to say the least. By Tuesday my judgement was public, it went across the world, and when I say across the world I really do mean that. It wasn't just in this country in every newspaper, on every radio and television channel. The whole judgement I m told appeared on CNN News, it was across the African continent, Asia and Australia. The public interest was extraordinary.

I discovered something which I hadn't anticipated or known about before, which is online newspapers. That is to say, you can read what's online and then add your ha'pence worth if you want. The comments were appearing by the second from all over the world, most of them uninformed and ill informed, occasionally, somebody having a sensible contribution to make.

Three days later, apparently unconnected, another case from Essex also hit the press, also concerning my Judgment ina

different case. I had allowed an appeal against a decision made by the justices of a young baby against a parent. The magistrates had made care and placement orders. In a linear approach the grandparents had been dismissed from the proceedings at an earlier stage. I allowed the appeal and I ultimately restored the baby to her grandparents. For a whole variety of reasons it was important that a decision which I found unjust should be in the public domain.

So there are a number of threads to those two cases, both of which came very close together.

The first was that both decisions were characterised by the headline, the mantra of secret family courts. Where you read 'secret' you can interpret 'suspicion' because that's what was said. The second case, the grandparents' case, I'd been approached by Channel 4 News who the grandparents had got in touch with, and asked if I would release my judgement. I did so, as a result, the debate was sensible, it was informed, it was measured, because I took the view, as had Channel 4 News, that it was a story, it was an injustice which deserved to be in the public domain.

The first case, the Italian case, which everyone has heard of, the reporting initially was pretty inaccurate, actually wildly inaccurate. That wasn't necessarily the fault of the press who had little or nothing to go on when the story was first sent to them. When I released my judgment on the 2nd of December it led to a much better discussion. Indeed by the following weekend, all the Sunday papers were full of debate and comment about the story, including proper discussion and reflection about adoption, which as all of you know is quite different in this country to elsewhere. So really good commentary about how we deal with it and whether we deal with it in the correct way. What the Italian case did was well and truly launch a comprehensive national

discussion about how these sensitive issues can and should be addressed.

As the President said at the time, and repeat again,

“It’s hard to imagine a case more obviously and compellingly that requires some public debate which should be free and unrestricted. The child had a compelling claim to privacy and anonymity, the mother had an equally obviously and compelling claim to be allowed to tell her story to the world. Courts should be slow to prevent parents from expressing their views, even what they saw as the failings of the courts and judges. If ever there was a case of which the right should not be curtailed, it’s surely this case. To deny the mother, in circumstance of this case, the right to speak out if this is her wish, using her own name and displaying her own image, would be affront not merely to the law but surely to any remotely acceptable concept of human dignity and humanity itself.”

Interestingly, the local authority in that case made a number of applications about publicity, and in particular about identification of the child. I’d just comment one of the really serious problems that we face is that the child, who had two half siblings in Italy, was identified across the world, because a number of people in this country identified those children on various websites and various Tweets. The result was, in fact that the identity was easily identifiable outside this jurisdiction. That is a deeply troubling state of affairs

The point about that case was that it sparked a national debate, everybody appeared to be talking about it, and it, I would suggest, put into sharp focus how we report and deal with cases in the family courts and the court of protection.

To put it really rather bluntly, if a judge can change the whole of someone’s life by the stroke of a pen, then there is a pressing

need , an overwhelming need I would say, for openness. The conundrum really is this; despite the rise in social media and the ever increasing amount of detail that's available, posted by young people on the internet, if you ask any young person, any child whether they want the details of their private life over which they have got no control, broadcast across the world, the answer of course would be no.

Their view, would be because they have no control over it, it's outside their own control, and its potentially frightening, they having no trust in the media , would be to resist it. Their voice is only one part of what is really quite a complex and sophisticated balance, just as the wishes and feelings of the child in dealing with issues under The Children Act. They are one of the many important issues in determining a child's welfare. Often to the public, and to many other people, the wishes and feelings of the child are not just paramount, they're the only thing that matters. That is not the balance that the court conducts and the same, I would suggest, applies here.

So, open justice is the fundamentally important and starting principle. The starting point really ought to be that anybody ought to be able to enter, see, hear, speak about and if they're the press, report proceedings. Of course there are exceptions that were defined, many years ago, over 100 years ago in fact, there were exceptions - trade secrets, lunatics, as they were described, and wards, they were treated in very different categories. In modern times, perhaps not so modern, in 1960, Section 12 of the Administration of Justice Act, this is not a law lecture but it's important, prevents the reporting of court papers and what goes on inside a court. That together with Section 97 of the Children Act is an important combination of protection.

Contrary to popular belief, there is no statutory protection for the identity of the local authority, or for social workers, or for experts.

The court can relax automatic restraints, balancing the competing interests under Articles 6 and 8 and 10. The pressing question is to how that balance should be held and by whom. There is, having regard to the cases which I have been a part of, a compelling need for proceedings to be transparent, both from a pragmatic point of view and as a matter of principal.

So two areas require consideration; first is public confidence, and that's not just respect for the decision, but also for the process itself. It's in everybody's interests that it should be so, but particularly the children. The workings of the courts need to be properly scrutinised so that the decision, the judgement which comes from the judge, and those who made the judgement and what leads to it - that's the evidence and what the experts say; social workers, parents, all subject to scrutiny thereafter.

The law has to have regard to current realities, one of those realities in some quarters of the family justice system, is that there are often strident complaints about secret justice. Based on ignorance very often, misunderstanding, misrepresentation or sometimes worse. Maintenance of the judicial system has to be brought into account as a very weighty factor in any consideration of the balance.

Often, those of us who are concerned in the family justice system, and I include myself in this at least until sometime ago, react to the accusation of secret courts by saying that that is an unfair accusation, and that it confuses a system which promotes privacy with that that which promotes secrecy. So far as the public is concerned, that really cuts no ice, it's seen as lawyer-ish or semantic. As the President said, borrowing an expression of over 100 years ago,

"There is much to be said for the disinfectant power of exposure to forensic sunlight."

The second aspect are the views of the children that we're really concerned with, those people that we are trying to do our best for, and find it difficult sometimes to protect. Both of those matters; that is the children caught up in the process and the system itself are matters of public interest. They require in some way, open and public debate. Surely an aggrieved participant, a parent or anyone else, is entitled to express their own views of the failings of the system?

So whilst the charge is often said that this debate is driven by the media, and it necessarily involves the media, the media is in fact the mechanism by which the very strengthening of the system which we are all a part of, and seek to maintain, can be made more effective. Whilst it may be for the judge to determine a particular case, weighing all the considerations, how something should be published. It's not for the judge to exercise editorial control. There's always a balance between the press and those who seek to exploit the licence, but the remedy is for the evidence as a whole to be in the public domain. The two cases which I've mentioned are perfect examples of that.

More damaging, in particular to the unwilling subject, that is the child, is the corrosive damage to the integrity of the process as a whole. If a system is constantly accused of being secret , biased and unaccountable, the children in whose name we try and make the best decisions are the ones that ultimately will feel undermined .

From the judges perspective it's unhelpful if I'm seen as a sort of Major Picquart in the Dreyfus Affair, but that is the perspective from where I come. In 2009 the press were given the opportunity to come into court. I have to say I don't think in the early days, until quite recently, they've made much use of that right. More recently the press have been coming into court a lot more and

there is a proper discussion between the judge and the press as to what they can and cannot report.

So where are we now? At the moment there is a consultation as to the future of the judgements which appear on Bailii. It is obvious that that is one way forward. There are consequences about that, there may be impacts on families and children, including the unintended consequences, that's what's known as the jigsaw effect. There may be impacts on professional witnesses or experts or social workers. There needs to be some consideration as to whether it really has improved the level of debate. Enhanced listing, the press already use the listings but its fairly hit or miss for them. Disclosure of documents is under consideration, particularly with case summaries, other documents I think raise really quite difficult issues .And lastly whether or not it is necessary to hear some cases in public. There should be a pilot sooner rather than later.

There has been a wholesale shift in the attitude of many,despite the considerable concerns of us all , it is really necessary to take balanced comprehensive perspective.

I finish with one case which I heard in the summer. It's a case which has received a lot of publicity, where there are, I think, now seven judgements in the public domain. When I came to hear the case, there was an agitated throng of people outside my court. Supporting leaflets were being distributed, and quite a lot of noise. On application I had everybody in; the press, all the supporters, everybody came in ,I explained what it was that was about to happen. I permitted them to listen to the debate, to the evidence and to the submissions and the judgment, with warnings as to what could and could not be published.

Every day there is considerable traffic on the internet about that case, but interestingly what I asked them to do has been

respected and complied with to the letter, despite the very high tensions and very high feelings. So it's a good example of putting into practice what many people think may be overdue, subject to safeguards, a proper understanding and appreciation by the public at large of the really very difficult decisions that are taken in its name. Thank you very much.

[Applause 0:18:32]

James Munby: Well that was a voice from one side of the debate. Sue Berelowitz, who is the Deputy Children's Commissioner and member of the Family Justice Council, is now going to address us from the other side of the debate.

Sue Berelowitz: Thank you very much, and good evening everyone. I am indeed going to address you from the other side of the debate, and in fact I want to start with the title of this debate, which I do think is rather curious really. So transparency in family proceedings, perfectly obvious, opening of the family courts to the press; we all understand that. Is the family court open for business? The answer to that is quite clearly yes, family courts are open for business all the time. The real question that's being asked is, are the family courts open to honouring children's rights to have their best interests considered at all times?

That is where I am coming from on this absolutely vital issue. What I want to do is start with the voices of some children; our statutory duty is to promote and protect children's rights. Those are the rights as set out in the UN convention on the rights of the child. I will be drawing on them heavily this evening.

In some research that we commissioned from Julia and Joyce Plotnikoff and other eminent researchers in 2010, 51 children

were spoke to in an excellent piece of qualitative research. Those were children and young people who had gone through both public and private law proceedings. Eight out of ten of the children who had gone through public law proceedings were absolutely clear that under no circumstances would they want the press in any court hearing in which they were involved. The figure was 9 out of 10 for children involved in private law proceedings. So an overwhelming vote of no.

These are just some of the things that some of those children said. This is a girl of 14, “No, it’s too private.” A boy of 11, “No, it’s none of their business.” A boy of 12, “No, it’s none of their business.” A girl of 14, “No, it’s too private.” A boy of 14, “No, no, it’s private stuff.” So it went they were absolutely clear, unequivocally, that they did not want the press listening to their private stuff. It’s not about control, it’s not about the losing of control, because I’m talking about- with children and young people about the issues of losing control in the context of sexual violence on a regular basis. This is not about losing control when things go on the web, it is about their private pain being listened to by those who have no right or business to be in the court.

Let me take you through in a bit more detail the issues that arise in relation to children’s rights in this context. What does the UN Convention on the Rights of the Child say about media access to family proceedings? I’m going to draw on some particular articles, the first of them Article 16 from the Convention, a child’s right to privacy. The Convention says, “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”

I can tell you that one of the things that troubles children most about all of this is the stigma that arises from care proceedings being completed and entering into the care system. Children

being seen to be at fault for their own trauma. So the issues around reputation and honour are absolutely central to children. Secondly in relation to Article 16, “The child has the right to the protection of the law against such interference or attacks.” Children do indeed perceive them as attacks.

Article 40, juvenile justice, which is pertinent in this context, “The child shall have his or her privacy fully respected at all stages of the proceedings.” The Committee on the Rights of the Child has said that this principle should also apply to children in family proceedings or those children who are victims of violence. Article 39 requires ___[0:23:02] parties to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse.

In addition of course the underlying principles of the Convention are particularly important in this context, including in particular the right to survival and optimum development that’s Article 6. The requirement that the best interests of the child be a primary consideration and, in the context of the Children Act 1989, the paramount consideration in decisions affecting the child, so of course that’s Article 3 of the Convention. The child’s right to be heard and for their views to be given due weight in all the decision making processes about them, whether judicial or administrative – Article 12. Of course what Article 12 says is that a child has a right to express an opinion and a right to be heard, and that second component is absolutely critical.

It is worth bearing in mind that the UK government will be examined by the UN Committee on the Rights of the Child with regard to our progress on children’s rights against the Convention, in the summer of 2016. The report will have to go forward for consideration this autumn, setting out our perspective in the Office of the Children’s Commissioner as well as the other

Children's Commissioner's offices across the UK. Then the government will submit a report as well, setting out what progress they consider has been made. I can assure you that this issue is going to feature in our report and the committee will then decide on the basis of those reports received this year on what issues they will be examining the UK government in 2016.

In our view in the Office of the Children's Commission, the Convention requires that family proceedings fully protect the privacy of any child involved. So that whether named or identified by other details enabling jigsaw identification their views, circumstances and histories are never disclosed to the public. I'm gravely concerned when hearing that actually the child in the Italian case was identifiable as that seems to me to be illustrative of exactly why this is so serious.

So this is for two main reasons; firstly, the direct harm to the child that may be occasioned by identification - this could take the form of bullying, and is something that children have mentioned repeatedly; secondly, reprisals or negative effects on family relationships. Indeed one of the things that children said repeatedly in the research was that they would be constrained about talking about what had been done to them for fear of what the impact might be, particularly on their mothers. They were worried about what that might do to their mother, or how their mother might then view them.

So a negative effect on family relations, further exploitation or abuse, potential impact on employment and educational prospects and of course the psychological damage to the child him or herself.

Just to quote very briefly from the much more recent report that Julia has led on for NYAS and the ALC I'm sure Julia will say a lot more about it so I'm just going to draw on a few aspects of the

report entitled ‘Safeguarding Privacy and Respect’. Here are some quotations: this is a young man of 20, he said, “When I was younger and people found out I was in care, I was bullied quite a lot because of it. If people had known what actually happened, why I was put in care; that would have made it 10 times worse.”

This is a young lad of 16, “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.” Here we have a quotation from a young woman aged 24, “If a child is abused by her mum or dad and that information leaked out, later in life it presents risks. The child is already vulnerable because of the fallout of earlier abuse; any paedophile could target the child because they know that the child has been made vulnerable.”

I can tell you that these are extraordinarily wise words from the extensive work that I’ve done and the enquiry I’ve led into child sexual exploitation, including a dedicated report in relation to children living in residential care where we know that they are being targeted by those who are so inclined. A final quote from a young woman age 17, “When I read things about why I was in care, I felt a lot of self-blame and guilt.” I will come back to that shortly.

I’ll give you one more; “I know of someone who took their own life because of something on Facebook. Their whole life gone, you can’t get it off Facebook,” and that was a young man of 16. Gone indeed are the days when today’s newspapers are tomorrow’s fish and chip wrappers. Once something is out on the internet it is out forever, it can never, ever, ever be clawed back. I know from children and young people to whom I’ve spoken, of the devastating impact of knowing there is something out there about you which you do not want to have out in the ether over which you have no control. So there are issues of control there, but

primarily for them it is about having their private stuff displayed around.

Publicity which allows identification of the child would in our view breach Article 16 of the convention. Notably the international covenant on civil and political rights – Article 14. ___[0:28:49] terms that any judgement in ___ law shall be made public except where the interest of juvenile persons otherwise requires. Or the proceedings concern matrimonial disputes or the guardianship of children. The Committee on the Rights of the Child emphasise that in any reporting on, for example, sexual abuse or family problems, the dignity of the children should be protected and special emphasis given to not exposing their identity. Disclosure of their identity had been described by the Committee as a clear infringement of Article 16. Pretty unambiguous.

As detailed above, being identified or even the fear of being identified from public case reporting, can negatively impact upon a range of substantive rights under the Convention, including children's health, education, recovery from abuse and protection from further violence and abuse. In addition, children's rights will be affected by the impact upon family proceedings themselves of further publicity. The president's consultation considers both the media reporting of cases and the disclosure of case documents, and potentially some expert reports. In its general comment number four, on adolescent health and development, the Committee on the Rights of the Child addressed the issue of medical confidentiality and said that in order to promote the health and development of adolescents, healthcare providers have an obligation to keep confidential medical information concerning adolescents.

Young people in the recent research that Julia did for NYAS and the ALC detailed the fear that these proposals would affect children's 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," said a young woman of 16.

They also cited fears for other children and young people who will be afraid to tell adults what is happening in their families because of the fear it will get into the media. "Children will not reveal ill treatment. It allows abuse to continue behind closed doors." That's a young man of 16. And those sentiments were absolutely echoed in the work that was done for us by Julia and Joyce and others in 2010.

These young people therefore identified two serious risks. Firstly that cases will be compromised because children are not open with professionals, compromising their right under Article 12 of the Convention to participate in the proceedings, and the court's ability to decide the case in their best interest under Article 3; and ultimately to protect children from abuse and neglect under Articles 19 and 34 of the Convention; and also, further, their rights, where appropriate, under Articles 7 and 9, to a relationship with their parents. Secondly, the risk that the system as a whole is compromised and that disclosure of abuse will reduce because of more widespread fears around media reporting.

Improving public confidence in the family-justice system is indeed important. But, in our view, increased transparency is an extremely risky step that may severely compromise the court's

ability to guarantee children's rights, as set out in the UN Convention.

Even piloting has an impact on both individual cases and children's fears that their privacy will be invaded. We therefore believe that there should be no further transparency initiatives that would allow the identification of any child, including by jigsaw identification, and that the privacy of all children involved in family proceedings should be fully protected at all stages.

What I suggest needs to happen is that we need to make sure that judges and lawyers are well trained; they need to understand how children's minds work. We need to ensure that we have a justice system that is about truth, not about winning battles played out in family proceedings over children's bodies and children's lives. And I find it interesting that I have offered to do training for the Judicial College, particularly on child sexual abuse and child sexual exploitation. That's quite a long time ago. That offer has never been taken up. It remains.

Having the press in criminal proceedings does not lead to justice being done or being seen to be done. So I am curious as to where the evidence is. We have only to think about some of the shameful attacks on victims that we have seen played out in sexual exploitation and rape cases. And I've sat in on some of those trials and witnessed that for myself and shameful it is indeed. And I've spoken with journalists who have been truly appalled by the bullying and repeat victimisation and re-traumatisation of vulnerable witnesses. And yet their presence has not mitigated this abuse in any way, shape or form at all.

Why therefore does anybody believe that having the press intrude into children's private misery in family proceedings will somehow impact positively on justice? Where is the evidence?

I have worked closely with profoundly distressed and damaged and trouble children all my working life. I know and understand their minds; it is my job so to do. I know how little it takes to tip a child over the edge.

I know too that it takes only 30 seconds from when a child puts a bathrobe cord around their neck for that child to die. I genuinely fear that it is only a matter of time before this deeply misguided motion, which has at its heart, I believe, an utter disregard for the welfare and best interests of children, and is, in my view, therefore unlawful, will result in the death of a child. And who amongst us tonight says that this is a price worth paying?

(Applause)

James Munby: Baroness Tyler, who is the chair of Cafcass, will now wind up the debate for the motion.

Claire Tyler: Thank you very much, President.

I don't know if I'm going to wind the debate up as much as wind you up. But let's see where we go to.

I want to speak tonight in support of transparency. In its broadest sense but very much from the perspective of the voice of the child. So very much a similar starting place to Sue, but ending up in a rather different place. And I hope that I can make actually a very practical contribution to how this debate can be taken forward in a way that I hope most people feel they can sign up to.

As you may know, our vision in Cafcass is that every child who is subject to a family-court application can be heard loud and clear with their wishes, needs and feelings really brought to life.

Now, I think it's important that I set out now what I mean by 'transparency'. For me, it means that all decisions made about children are transparent; are clearly understood by all concerned; and have evidenced, informed reasons. And it's vital, I think, that these reasons are clear to all the family members involved and that children and young people can grow understanding why certain decisions were taken about them or on their behalf.

And it's very much in line, I think, with one of the central principles of transparency; namely that public officials, and most of us, or many of us in this room are officials in one form or another, do what we do in the open and that those informational processes they are responsible for are neither secret nor hidden from view.

So I see transparency as being about being open and honest with the individuals in a family-court case, which, of course, is what all

professionals working with children and families are attempting to do, often in very, very highly charged circumstances. We've already heard some very stark examples of that tonight.

But unless I misunderstood for why I'm standing in this camp tonight, I also want to say very clearly what I think transparency isn't about. I certainly don't think it is about exposing children or their families to the glare of publicity in any way. Shining a spotlight on a child's needs is not the same as their story being told or, even worse, sold to the world.

In general, of course, as others have said, children do not like to be singled out. Even for some children going up and receiving a prize, you know, at a school prize day can make a child highly anxious. And many children are terrified about the consequences of speaking out about what's happening to them at home, as of course they are terrified with the experience itself.

Yes, of course, we must respect children's feelings. And, indeed, I still have the words of one member of the Family Justice Young People's Board on the potential impact of having their wishes and feelings made public ringing in my ears. And I quote: "I would feel under pressure, uncomfortable, and like my life is being broadcast to the world, which would make me feel insecure."

Thus, in my view, the current method of media access to family courts, and the current way of reporting cases anonymously on BAILII is probably going just about far enough. That enables everyone with a general interest in what's happening in children's

cases to read about the important cases and case law and if they wish, of course, to write or campaign on the issues involved.

Most of our press, sadly, are interested mainly in the sensational elements of these cases and not the underlying issues that they generate. Although I do accept what [Bronwyn 0:38:41] said about sometimes you can get an informed debate going.

So I suggest tonight that transparency could and should be enthusiastically supported from the perspective of a child-focused and child-inclusive family-court practice. And that's the practice of judges, of magistrates, yes, of Cafcass practitioners, local-authority social workers, lawyers, and experts.

And I just want to develop that theme a little. I would like to see us developing a national standard for transparency which sets out what might be expected. Now, groundwork has already been carried out by the Family Justice Young People's Board who are developing and promoting a national charter for child-inclusive family justice.

Now, this board is I think a truly remarkable group of 44 children and young people. They are aged between seven and 25 and they've all go personal experience of the family-justice system. And they want to make it better; often, quite frankly, better than it was for them. And these young people have played a major in promoting the importance of children over 10 having a right, where it is appropriate, to meet and speak to the judge in their case. And in the Leeds pilot which started last week, all children

aged eight and over in public-law cases and in private-law cases where a Section 7 report has been ordered, will be able to meet their judge. And joint training for the judiciary and Cafcass took place very recently and, as you would expect, the project will be evaluated after four months.

Nationally, I think, more work needs to be done to finalise how this could work smoothing and positively in courts up and down the country. But I do think it is a good example of what transparency can mean to children. I think it's good that we have a justice minister who is willing to take the initiative on issues like this, even though, of course, it means ruffling a few feathers along the way. Is that the only way? I think trying these new things is the only way we can make progress.

I'm also pleased to say that all agencies in the family-justice system, including the government departments responsible, have all signed up in principle to the Charter. The young people are looking forward to reviewing progress in its implementation at the third Voice of the Child Conference in London next July.

Now, I want to make it clear that I neither nor justify defensive practice and unnecessary obfuscation when it comes to children's cases. I see no justification for some of the secrecy orders which have been applied for and granted. As Mr Justice Jackson said in relation to the recent case, "Public bodies have a responsibility only to apply for restrictions that can be reasonably justified."

This can only be approached, in my view, by understanding the impact of an order, in deed any order, on the child or children concerned. And in our work in Cafcass, and increasingly in local-authority social work, we are undertaking child-impact analysis in relation to the impact of a court application, whatever it is, on the child.

So for me, this really is the starting point about transparency. It's not an ideological assumption, but it's the impact on that child. And, of course, it can be a difficult assessment and judgement to make.

On the one hand, I feel we do need to shine a light on the desperate plight facing some children inside their own homes. We also need to shine a light on some of the trends in society which are affecting children. So the question arises for me, what is sufficient transparency?

To move to some ground that Sue has already touched on. If we had known more about child sexual exploitation 10 years ago, perhaps we would have been able to protect more children affected. Thus the proper exposure of a child's plight in some of the wider policy and practice issues this raises is what I would call 'essential transparency'. And I think it only becomes unacceptable transparency if the impact of exposure on a child is detrimental.

So the example I alluded to about what has happened to some of the girls in the child sexual exploitation criminal trials, I say Sue's

already referred to this, and I very much agree with what she said. Because there were multiple defendants in many trials, girls were asked the same questions repeatedly and intrusively and, indeed, the word ‘bullying’ has been used, by the barrister of each defendant. The experience of giving evidence was so traumatic for some of the girls that they have refused to ever do it again, which of course is a victory for the perpetrators.

And I hope that ultimately one standard within a national standard for transparency might become a standard for a child witness in any form of court case or trial, be it criminal or civil.

Next I’d just like to remind everyone about the ages of children and young people in family-court cases. Whilst issues about transparency might be broadly the same for an adult who is 30 or indeed one who is 60, there is a world of difference in what transparency means to a two year old and to a 16 year old. On the public-law cases on Cafcass’s case load, 27% of children were under one; 30% were one to four; 25% were five to nine; so 82% were under 10. Put the other way around; 18 % of children and young people were aged 10 and over.

So I would put it to you of the 82% of children, most whom just want a decision taken which makes their life better and which takes the pain and the conflict away which allows them to grow up, rather than to spend the whole of their life angry, afraid or worried, but looked at retrospectively, as a number of young people and adults want to do, the test that most who search for the truth about what happened to them in their lives in a back catalogue of report and file, want to apply the test is, “Why was I

taken away from my family?" or "Why was I forced to see my father?" or, "…my mother?" or "Why was I left at home to be hurt again?"

In my view, these questions for the transparency agenda are more profound than the question of whether a particular court should be open to a particular journalist in a particular case on a particular day. And indeed it's a test that comes back to haunt professionals in the family-justice system who made what they thought was the right decision at that time.

So each new case challenges us to put ourselves, I think, in the shoes of the two year old, the six year old, or the 10 year old in 30 or 40 years' time when they approach our successors to ask these questions, as they undoubtedly will.

And this is why another transparency standard is not just about the publication of judgments on BAILII but making sure that the files that each organisation holds on a child have a well-written, well-analysed and well-organised record that is maintained for a period of time which will allow for proper retrospective scrutiny.

In the Cafcass response to the President's still current consultation on transparency, we are arguing for the production of a standardised decision summary in each case based on a succinct explanation of why the decisions were taken. We also think it would be a good move if the press summaries published by the Supreme Court were extended to family courts in individual cases after a thorough child-impact analysis and test.

Now, of course, in making these suggestions I'm aware of the practical and resource constraints and that they would need a lot more thinking through.

And finally, I just want to argue that transparency, whether we like it or not, is taking on a life of its own with the more widespread use of social media. A number of recent cases have highlighted the huge rise in the use of social media. For example a few months ago the case Ashya King sparked worldwide media interest. Hundreds of thousands took to social media to highlight perceived deficiencies in the mainstream media's reporting of the case. Over 200,000 people signed a change.org petition calling for Ashya to be reunited with his parents. And it was this groundswell of public opinion that led a number of senior publications speaking out in favour of the King family.

So as we know, the world is rapidly changing and many, well, some individuals at least, are increasing publicising themselves, writing their own stories, and of course this leads into citizen-led journalism. The same situation therefore can be the subject of many separate subjective accounts, sometimes making objectivity really elusive.

In the future, we may have the court record, the summary decision, professional files and personal statements elaborated into various social-media formats. Public policy and the law tends to lag behind these social trends. The 'transparency challenge', as I call it, is for the family court to keep up with this without violating the paramount principle of the welfare of the child.

And I think, as Roderick said at the beginning, it will always be a delicate balancing act between a child's right to privacy and the public's right to know what the justice system is doing in its name. But balance it we must. Maintaining public confidence in the work of the family court is essential. Not least due to some of the very misleading perceptions that exist, often promulgated by people with a very one-sided agenda about the way it goes about its business. To my mind, simply to argue that one or other of these principles is sacrosanct is to miss the point and [say just endless story 0:48:11].

Good public policy often requires delicate balancing acts and this is the task of policy makers but ultimately and, most importantly, parliament. So to conclude by supporting this motion, I'm really arguing for the development of a transparency standard which I think should be both contemporary and child focused. I certainly don't underestimate the difficult of this, particularly with so many pressures and resource constraints in the system at the moment. But if we don't make steady progress, I think we will lag behind the judges in the ultimate court, and that's the court of public opinion.

(Applause)

James Munby: Finally last, but certainly not least, we have Julia Brophy who has spent many, many years of distinguished academic service as a researcher in all sorts of family law and practice. And she has been, pivotal in the most recent research on the topic. Julia.

Julia Brophy: Thank you, James.

First of all I'd like to start by thanking the Family Justice Council for returning us to this debate. It's not often we return to the same issues in a short period of time. But I think it demonstrates what a difficult area it is for people, both for practitioners and for judges and, indeed, for families and, not least of all, children.

I'm rather short of time, so I will give you the route map for what I'm going to say. I'm going to summarise some of the things which Sue has so elegantly said about the perspective of children and young people with one or two examples and then to summarise the messages from young people in terms of future policy. Then I will look at some of the claims that are made about what the media can and can't do in this field. And finally I want to look at whether we're going in the right direction in relation to the changes that are proposed.

So first of all, what is it that young people say? Well, the summary is that almost all of those children - and we have the views of about 200 children now from 2007 through to 2014 in the latest study - are opposed to media access to most hearings. They're opposed to access to court records and they are opposed to the relaxation of any rules in relation to what can be published from proceedings. We haven't talked about those rules at all at the moment and that's going to be the really tricky one, because debate doesn't end with the current stages. There will be another debate about what the media can publish if they get to see court records and if they are permitted access to medical records. Because the next argument will be, "What's the point of

showing us if we can't report it?" So there is another debate to be had yet on issues around what can be reported.

One of the key things, I think, to come out of both the consultations is how strongly children and young people feel about the media; they simply don't trust the media. They talk, particularly the older group of children, very eloquently about the commercial imperatives of the media that militate against truth telling. They say that the media will cherry pick the headlines. And they, not surprisingly, pointed to the recent phone-hacking trials but also their own experience of the media. So there's a confidence issue there which we can't buck.

Secondly, as Sue pointed out, they are opposed to the disclosure of medical reports to the media. There are two arguments for this. First of all they say that if children are told about media access to medical reports, they will disengage with the process. And that's a very serious thing. It's serious for children, in terms of their safety; it's serious for the courts, in relation to the quality of information they have; and it's serious for the clinicians that are trying to help them.

Young people also say that actually professionals - and that's everybody, from the social workers through to the guardian and to their legal advocates - are under a duty to tell them and to tell them early enough about media access to hearings and to reports so that they can exercise their rights under Article 12. Sue has talked a bit about that. But remember in Article 12 of the UN CRC is enshrined the valuable *assurance* of the right to express

views *freely*. They do not feel they can express their views freely if the media are going to be in court.

Next is the issue of safeguarding. Children say they look to Family Court judges to protect them. They also say Family Court judges must know that when parents are in crisis they don't necessarily put their children's interests first in relation to a decision to talk to the press. For example there are some very eloquent discussions in the ALC-NYAS report about the Jeremy Kyle show and whether the parents on that show should be able to talk about their children and to show photographs of their children, in the way that they do; in short because those pictures and that information is going to be on the web - and forever.

The other thing that they talk about is the dangers of social media. Sue has talked about that. Social media is a tool. But for these children, it's also a source of terror in their lives - of real terror. They live in daily fear of exposure.

Young people argue that a bar on publishing their name is simply not enough. 'Jigsaw identification', as Sue has already said, enables these children and their families to be identified and there are some examples of where that has happened. Not only does it put children at immediate risk, but it puts some children at long-term risk in relation to their increased vulnerability to further abuse from predatory adults.

So what are the messages from young people?

It’s important and - its ‘unpalatable’, in the current debate but privacy matters! Protecting children’s privacy is part of the safeguarding agenda. Sanctions as solutions to any breach of confidentiality in relation to children simply miss the point; it’s a lawyer’s response. They say it’s a lawyer’s response to a life-long problem for a child.

Their key message, I’m afraid, for the family-justice system is stop trying to please the press. It won’t work. It won’t end claims of secrecy or criticisms of judges. And if you look at a jurisdiction like Australia where the media have had access to the federal Family Court since 1975, there are still claims of incompetent judges, bad decisions and gender-bias decisions. So I think there’s some evidence to support their view about that.

What about the options?

Young people were not naïve about this debate; they are aware of the issues but they pose some alternative solutions to increase accurate public information, and to deal with complaints about the system. They talked about literature on the web for children and young people. They talked about court open days. They talked about school educational projects. They talked about interviews with judges where there are controversial cases - for example, the ones that have been discussed today. They talk about materials to address allegations of unfairness and explain due process and how the operates, some issues around judicial review - and a need for this to be in lay language.

In relation to complaints by parents, young people are aware that parents sometimes complain about the system. They gave examples of other options that could be explored. For example, the system of inspection of other public services, like for example the Quality Commission for the Inspection and Regulation of Health and Social Care, something equivalent to Ofsted, the equivalent of the local-government ombudsman - maybe an ombudsman specifically for family justice.

They suggested an independent inspection unit with briefing powers to attract public support chaired by an independent person – tricky –

(Laughter)

– and on which lay people could sit. They want this unit to have powers to consider referrals, to review cases, and to publish findings.

These young people are not ‘anti-transparency’. But equally it seems that they are not of a generation or by experience that is wedded to the notion that the media in its evolved commercial form is the best - or the only mechanism through which transparency can be facilitated.

I want to take a couple of minutes just to look at some of the claims about the media. And perhaps you’d save the rotten fruit until I’ve finished.

(Laughter)

I want to deal with three of the four claims. (i) the media as scrutiny or watchdog, so that the media will ensure proceedings are conducted appropriately. (ii) it will increase confidence and improve public opinion about judges and about family courts and (iii) the media will educate the public about the work of the family-justice system.

What are the rebuttals to these?

Well, first of all, there is a query over the watchdog role. And I know this is going to be very unpopular. But the question is: will judges do things different under media surveillance? I think the answer to that is, “No.” And I can only refer you to the comments of the previous President of the Family Division, Sir Mark Potter, who said in 2008, “I must say that there is a misguided suggestion by the press that in some magical way a number of miscarriages of justice that have occurred would have been avoided. Of course they would not.”

What about improving public confidence? Well, it’s argued that public confidence in the family courts is low. It may be; it may not. A recent Ministry of Justice survey indicated that some 67% of people trusted judges to make the right decision in an example of a care case. So it’s about two thirds. I suggest perhaps that journalists and politicians would give their ‘eye teeth’ for that rating.

(Laughter)

According to survey data from an IPSOS MORI poll, neither journalists nor politicians have exceeded 22% in the years between 1983 and 2011 in terms of public trust in them to ‘tell the truth’. So I think we should be a little cautious about issues around public confidence.

Turning to the issue of the educational agenda. During 2006 and 2007, ministers argued that the press would report on the process, not the intimate details of people’s lives. Well, there’s been some shift in that policy objective, I think. Journalists at that point responded variously that informing and educating were different tasks and that it’s not the job of the press to educate the public; equally it’s also not the job of the media to ‘sell’ family courts.

Other journalists recognised the systemic problems and obstacles and particularly the pressures to sell news in a highly competitive market, often making it necessary to incorporate elements of drama, entertainment and shock into reporting.

Does the public look to newspapers for education?

We all read newspapers, but there is some research in this field which I think is quite interesting and it’s Canadian. It identified a degree of public apathy and disinterest in the civil-justice system - unless and until people need to use the system. At that point it seems most people don’t go to newspapers; they go the Internet for information. Under half of the sample in this study, (40%),

explored newspapers, less than half of those (44%), found anything helpful. What's the message? Well I think the key message here is: be cautious in embracing or taking too much comfort from arguments about the media and access to family courts in terms of what it can achieve.

Finally, I want to look at one or two conclusions. Are the stated objectives for the family justice system likely to be achieved? As I've said earlier, I think the experience of other jurisdictions suggest that we need to be cautious about that. Is this the right way to do it? The next step proposals have not been subject to parliamentary scrutiny. They reflect some of the content of what people will remember as part two, stages one and two of the Children, Schools and Families Act in 2010, but they actually go further. Part two of that Act was not subject to parliamentary scrutiny. Many of you who were around at that time will remember that it was the subject of a wash up. It did however contain some safeguards for children; those were lost when part two was repealed.

The Justice Committee acknowledged some concerns about Part two and a need to protect children and their privacy and it recommended that the MOJ start again. I believe the Family Justice Review also suggested that this issue should go back to parliament. The current government then failed to honour a commitment to consult further with young people before moving forward (and it's the current government, if you look at the dates in terms of that documentation).

So my question is: should these proposals be returned to parliament? Should there be a proper consultation in which the views of young people to date, as a key constituent group, are set out? It would be a grave situation for the Family Justice System if

changes were implicated in the death or exploitation of already vulnerable children in relation to their exposure by the media and the social media - and where the changes permitting this exposure had not been subject to scrutiny by the public and by parliament.

There are also some hidden costs. This is not about bringing out the bodies, bring me the cases. These lie in the emotional health and wellbeing of abused and neglected children as they attempt to hide the reason why they're in care. They described the fear of exposure and public humiliation and living with shame and anxiety as they struggle to rebuild their lives. Fear of exposure is a daily presence. They talk about the added pressure of potential media coverage of cases and the spread of information to social media, information then available forever at the press of a button - for friends, enemies, potential employers, HR departments, future partners - indeed anybody doing a serious or an idle search. Yet the 'Next Step': do not ask if documents, including medical reports should be disclosed to the press, but rather which ones? A step in the democratic process I surely missed.

I have a final point to make and that's about members of the public. Many members of the public are parents; many care about the circumstances of their own children - but also other children. The success of The Children In Need Appeal is a demonstration of that concern. The concerns of young people in care are unlikely to lost on parents in the general population. Would they want those anxieties that I've just described and those burdens for their own children? Would they wish to see other children to carry this burden? I think that's a question hat has to be put to them. This is not an argument against the 'T' word; it's not an argument against transparency. Rather, for her partner the 'P' word: privacy, and ways in which we can increase public information and where necessary methods of accountability for

everybody in the system, including judges, but which also safeguard and guarantee the privacy of young people.

EU jurisprudence includes the right to be heard in private. Why does privacy matter? Really read what young people say and take a look at what powerful adults say about issues when their privacy has been breached. We don't want to look back on this period in family justice in the way we now look at 'Oranges and Sunshine' and ask how could it have happened? Thank you.

James Munby: Nobody who's listened to those very powerful presentations can doubt for a moment how tremendously important this whole debate it. I'm not just talking about the debate in the formal sense, the wider transparency debate. We've had a lot of very thought provoking ideas and comments. The next part of our proceedings, dare I say it, and I'm sure my speech will be taken in the way that it's intended, is equally important. We all need to hear as many view as possible. We've got a wonderful collection of people here tonight, coming from every discipline in and outside the Family Justice system, and speaking entirely for myself I'm very anxious to hear what you all have to say. As in previous years, the proceedings are being recorded, in the interests of transparency, in the interests of public debate. The transcript once it's been tidied up will be publicly available on the Family Justice Council website. Don't feel shy about expressing your views. All I would ask is that when you stand up, whether it's to express a view or to ask a question, could you give your name and also very briefly who you are in terms of what your professional background is. There are roving mics, who is going to plunge in? Yes.

Rebecca Musgrove: Hi, my name is Rebecca Musgrove I work for the Family Justice Young Peoples Board. And what my understanding is that there are lots of people in this room for each side and I certainly do have views for and against. It would be nice if you ___ talked about. You consistently talk about child ___ family justice so ___[01:07:09]. Secondly I think that, as a ___, is that literally the word transparency ___ that young people would like to have information about their case and they would like to know more about the process that's happening, whether it be how courts work, the professionals involved in their lives and what's being said about them, because that not only has a short term impact, but a long term impact when they become adults.

I think certainly from the perspective of information is published about them and they then go on to read it later in life, and that could be seriously damaging for them. The other thing I would say is that, from the young people that I've spoken to that even cases that are currently being published, there is no guarantee that they can remain anonymous and that then maintains the risk of what that involves for them educationally, the psychological damage, and the impact upon their families.

Mary Lazarus: Good evening everybody, my name is Mary Lazarus, I'm a barrister. I also sit as a tribunal judge in mental health, dealing with vulnerable adults and as a family recorder. I'm extremely sympathetic to the, what I anticipate can be characterised as the democratic and constitutional pressures that have led to the need for transparency. It's clearly very important that we dispel notions that are these myths of secret, unfair courts, and one can see that impetus very, very strongly, within the transparency guidance. I'm now going to also quote our current president and then paragraph 16 of his guidance states, and this is a very important statement within it, that, "Permission to publish a

judgment should always be given whenever the judge concludes that publication would be in the public interest". Now that is a very important impetus behind this need to dispel these mistaken notions about family justice. However there are two key fundamental problems which have been identified by Sue and Julia. The first is the exposure of children and vulnerable adults, and the second is that the press doesn't really have an interest in educating the public. There are other means to educate, there are other means to open up, and I notice that Julia has kindly provided her paper, from May 2009 I notice, in which she identifies that there are other, better means than access to courts and publication of judgments. I would heartily condone proper steps being taken to educated the public by other means, for which there is good research, to suggest that it isn't simply access to courts and publications of judgments.

However, we now do have the transparency guidance, we now do have the publication of judgments. It is not going to be possible, I would suggest, if we look at it with a realistic eye, to row back from that level of transparency. We therefore must ensure, and this is the second thing that we can try and do, to ensure that the current levels of transparency are both safe and balanced. For them to be safe, I as both practitioner and a judge, have felt very keenly that's there are things that we can do. They will require funding. They will require training. They will require guidance and they will require resources. Because simply the task, as properly identified in the transparency guidance of anonymising the names or key identifying features to reduce the risk of jigsaw identification, is only one small step toward ensuring that transparency is safe. We know that in fact the practical task of doing that is immensely difficult. In a complex case it often takes several pairs of eyes and even then mistake are made.

I know that only a couple of weeks ago a judgment was withdrawn from BAILII because there were revealing details in the judgement or in the schedule to the judgment and in fact, I apologise for boring you on this, but I did in fact bother to write and article about all of this earlier this year, and I'm very grateful to the speakers for bringing it all back to my mind. But anonymisation can only be done if it's done properly. And it cannot be done properly unless we are properly trained and unless there is time. Who is going to help Bailey, which is a voluntary organisation, to deal with it properly? Who's going to pay damages under the Human Rights Act? Is it going to be the court service, is it going to be the local authorities? These things need to be considered and dealt with in more detail.

Then finally, in addition to the correct impetus of the public interest in knowing that we are not secret, unfair conspiratorial places of forced adoption, we need to balance that and there needs to be a rebalancing, resetting exercise, whereby there is a formal recognition alongside that of the public interest, that we can consider as judges, the impact on the children's welfare in any particular case, with more weight to that aspect of the balance than is currently provided for. For example, to obtain a report on a restriction order, one needs to have quite considerable evidence of harm to a child, whereas the information I'm gleaning from Julia and from Sue is that we, as practitioners and as judges, do not necessarily have the full and proper understanding of what it means to children's privacy. And we call it on the Ethernet the 'Timmy Problem': little Timmy is only two, we therefore don't really consider what's going to happen when Timmy is 12 and 22 and 32; when technology changes and develops so that it's much easier for people to follow up little Timmy. So, in my very humble submission, I suspect we do need better training, better evidence about harmed children, and we need to reset the status of children's

privacy within the balance of the public interest so that there can be an additional factor to be borne in mind when applying the guidance. Because we can't row back form that level of transparency, but we can try and ensure that it is safe and that perhaps certain decisions are not published when it would be unsafe to do so. So I would recommend progress to making our transparency safer. Thank you.

James Munby: Do I see a hand anywhere? Yes.

Samuel Stein: Samuel Stein - I'm both a child psychiatrist and a barrister. I think there's a worrying confusion between transparency of process and transparency of information. I think that in a just society that the law is open to scrutiny is absolutely essential. That's not the same as knowing the intimate details of vulnerable children. And my concern is that in the name of transparency we're going to know more and more about the children and the judicial process would be just as opaque as it ever was. I think we have to be transparent about the law, not transparent about the children.

James Turner: I'm James Turner; I'm a barrister doing a lot of family law. Lot's been said about children and transparency and the problems, can I just say a word or two about the position of adults? Although it has a knock on effect, what I'm concerned about, in relation to children as well. Adults who get involved in family law disputes are forced into the family law court system. They can't go out and have duels or whatever to resolve their disputes with the other parties so they're locked into the family law system. They've got no choice. On the other hand they ought to have some rights, if the system is going to oblige them to fight out and expose their

dirty washing in front of a judge, they ought to have some rights, the article eight rights of privacy. Of course we all know the balancing is the problem. But it does seem to me that to some extent already, in the name of transparency, things are already going too far the other way. For example, we now have not just the press being able to be present in closed court hearings, in private hearings, and there's a measure of control over that, despite the problems of jigsaw reporting and all the rest of it. But what about open court hearings? Because there's a current trend for some judges to for example hear matrimonial finance cases in open court. That's bad enough for the husband and wife who are involved, because if it's open court the press go out and report it: they report their names, they report all the juicy details. And it's all very well the judge saying, "Ah yes but the press mustn't report the name of the children". These are usually well known people and everyone knows who their children are. So it seems to me that adults have some expectation, some legitimate expectation of privacy and also the knock on effect on children is even worse in those situations in open court. I add of course that the presumption of the family proceedings rules is that family proceedings are heard in private, so unless there's some positive, really good reason for hearing them in public, why aren't they being heard in private?

Lucy Gould: My name's Lucy Gould, I am a solicitor doing family work. Just following on from what James has raised about family financial proceedings and the much greater transparency we often come across in matrimonial financial proceedings: there is, in my view another very good argument when it comes to financial proceedings for greater transparency and that is there's an increasing push, I think, for financial disputes in families to be resolved in some other forum whether it be by mediation or

collaborative law even, and actually people who are concerned about their privacy in terms of if they end up at the courtroom, I'm finding when clients are making their decisions about that they're willing to do, whether or not their privacy will be maintained informs the process that they choose. Surely, to a certain extent, in financial proceedings, I'm not talking about- the concerns about the children are sort of different, but it does encourage people to stay away from the court and try and resolve their disputes in other ways, which again we're also told we should be encouraging.

Anthony Douglas: Thanks, Anthony Douglas from Cafcass. I think the reason the politics of transparency has stalled is obvious from the quality of the debate, because although we try never to sit on the fence in cases this is a debate where I think you can sit on the fence quite respectably, because the arguments for and against are equally powerful.

I wanted to say a little bit as an adopted child about growing up in an adoption, in an atmosphere of complete secrecy, where nothing could ever be said. Although it's two generations ago, I think it's quite powerful because a light was never shone in those days on any child's particular situation. I want to use an example from today, which isn't about courts, but it about transparency, which I think might point to the importance of transparency for a purpose, with an intended outcome. I say this in relation to the public advertising of children who need to be adopted which, in my charity work, we've done with various newspapers and TV programmes including the Sun. Where the idea of having children who needed adoption being on the front page of the Sun was anathema to a lot of people. In fact a few weeks ago I saw again, two children who had been advertised in that way who were happily adopted as a sibling group, who never would have been

without that degree of exposure or publicity. A lot had to be worked through, in their case and in every other case. I lot had to be worked through with them, they were older children, aged at the time six and eight. A lot had to be worked through with their birth parents. A lot had to be worked through with their schools, because there were great consequences in the school of the exposure and so on. But certainly the outcome for those children of greater transparency was not being consigned to a further period of interim care, which might well have lasted throughout their childhood. So I suppose that's a pro transparency speech, where there is a clear purpose of the transparency for an individual child, with a clear intended outcome.

Jan Loxley-Blount: Hello, I'm Jan Loxley-Blount. I'm a former teacher and children's work professional, who then late in life married and had two children who had profound difficulties. They're both very talented, but one's got autism and the other's got Ellis Downes Syndrome and the older one probably also has that, which was previously thought to be ME. When they were 10 and 5 we were wrongly pulled into the child protection system because people didn't understand, they particularly didn't understand autism, didn't understand a boy who had poor social skills and couldn't make eye contact. We got ourselves out of it because we had the contacts to get ourselves out of it, but a lot of people with a lot less education than us don't have that ability to get themselves out of it in that way.

I'm here today representing Parents Protecting Children UK and False Allegations Support Organisation, but I've been talking recently to a lot of other organisations, including Parents Against Injustice Network, including the National Autistic Society, including [Ellis Down Rush UK 01:24:05] and the Hypermobility Syndrome's Association. And Autism Women Matter and a lot of

other organisations. We between us are very, very, very concerned about the number of cases of families that have got autism spectrum disorders and families that have got collagen deficiency disorders, including Ellis Downes Syndrome, Osteogenesis Imperfect etc. who are being pulled into the child protection system. Some are reaching court, some are not reaching court, but in all of them a lot of misunderstanding is occurring, and in many of them injustice is being done. A lot of people are wanting to research in these areas, and this is where I'm really- my question today is: how do we do that? Because once they're in the child protection system, they're gagged. I've got 80 questionnaires; maybe more than 80 questionnaires and I can't really do anything with them, because a lot of the information on those questionnaires is information I probably shouldn't have been given. I've been talking to a Canadian professor; we wanted to do a narrative study. We thought that if we based it in Canada we could possibly get by on some of the secrecy things, but then we found we couldn't. And we're wanting to look at those families, at the experience of those families, families that have got disabilities, not just those disabilities, other disabilities as well. Families with bereavement, families with hysterectomies, families with all kinds of things who are wrongly pulled into the system. But how do we research and bring that matter to attention when the families can't tell us what's going on because they're gagged?

Phillip Wheeler: My name is Phillip Wheeler; I'm at the BBC. I'm a solicitor advising editors and programme makers at the BBC on matters that they can report and I'm going to make a couple of points on behalf of the media, and I suspect that makes me distinctly in the minority tonight. However, I do feel honour bound to put these points. The points I'd like to make, actually they're questions

really to Sue and Julia, if I may. The first is: Sue in particular, you came up with some very emotive comments from the children that had been part of your survey, and I'd like to ask you, to what extent were those children and young people made aware of the statutory restrictions that do apply under Section 97 of 1989 Act in respect to identification and also under Section 12 of the Administration of Justice Act 1960 in terms of what can be published from court hearings themselves. Because of course, in effect it makes family court proceedings of a general nature, very unattractive for the media to report in the first place.

The second question is: if I understand you attitude to transparency to be the one that I believe it to be, how would it be that cases which really reveal the injustices of the system, for example the case that was revealed in the president's judgment in the case of child D very recently. How would it that those issues would be brought into the public domain? Because those issues require a real case to become something that the public can find out about in the first place, and for the press to report upon.

James Munby: I think perhaps at this point we should pause. We've got a question, so the panel will answer the question, and perhaps the panel might like the opportunity of making any general comments about what we've heard thus far from the floor.

Sue Berelowitz: Shall I start by answering that question? Thank you. Oh good heavens. The first thing I want to say in relation to your question is that it's not simply about the reporting, and Julia will comment on the awareness, the children and young people who were involved in the research had, of all the restrictions, because Julia led the research. And I'm very confident of how that was done. The point that young people are making, and emotive, emotional,

it’s what they feel, so I make no apologies for that. We had a very strong argument made at the beginning of the opening to the audience this evening about children and young people’s voices and there not being children and young people here. My job, in the absence of children and young people themselves is to bring their voices into this room, and they feel very strongly this whole issue. So I make no apologies for it being quite emotive, quite emotional, I don’t mind which.

Their point is: it is their private stuff. Set aside reporting, they don’t want you there. They do not want you listening to their private misery. They don’t want you in the room at all, and that is the basic point. Reporting is a different issue, but that is their starting point, “Please stay away”.

Julia Brophy: First of all, their understanding of the reporting restrictions. They were gone into with great detail in both samples, and it was explained, but they just don't buy it. And that's where the Jigsaw identification argument came from. It doesn't matter that their names aren't there, although the argument is that there shouldn't be, details are published that allow them to be identified.

I'm afraid what they said was, “The press will get around that. They will describe things that allow us to be identified.” And we have examples, post the change of rules in 2009, where young people were identified by reporting, because it simply gave some details from the case which to people in the local community, who knew about a mother's mental health problems, who knew about the impact in the child, who knew the school that the child attended.

Even though in theory the reporting restrictions weren't breached, in practice, the child and the family were identified. And that family, and their extended family, on a housing estate, were

housebound. So although they understand the issues, I'm afraid they don't trust the media to protect their wider identification issues.

In relation to complaints, and I think this is really, and I think it goes back to your comments as well, how do we deal with real complaints about the system, about evidence and about due process. And I think that is a real problem. Children and young people didn't buck that.

What they said was, look at other options. Look at inspections. Look at ways in which there could be a tribunal to which parents and others could take their complaints, with independent people that could review the complaint. Leaving aside the limitations of the appeal system, leaving aside the limitations of judicial review. This is not a complaint about a rude judge, these are complaints about process and evidence, and outcome.

Something that could deal with those in the way as I've said, like the Commission for Healthcare Standards, like an ombudsman in relation to the local government. They had lots of options of the way in which those things could be taken forward and reviewed, without putting children, and their welfare, and their future, and their privacy, at risk.

Claire Tyler: Just a couple of points, if I may. I found it very interesting, hearing everyone's different perspectives on this. I guess my position is, and I think it was – sorry, the lady in the, I think, the third row, who put it really succinctly. I don't think there's any rowing back on where we are now on transparency, nor would I wish to argue for that.

But I think the debate, really, going forward, does need to be about how you can make that transparency safer. Have we got the right safeguards in place?

And I was also very taken by two or three of the contributions were around, actually this transparency debate is about a lot more than just media presence in courts and access to reports. I think lots of the contributions have said that, and certainly that's what I was trying to bring out myself as well.

Indeed, I mean, if I could humbly make one suggestion as we take this debate forward, I think that it actually, in the interest of balance, it would be right to have, on a future panel, a young person, certainly, and actually a member of the media, so that we're not just looking at them as if they are completely sort of the enemy, and shouldn't even have a seat round the table.

Because there's an important perspective we've just heard, which I think needs to be part of that debate.

My final point, if I may is, as it came up, as I think you would expect, I did read very, very carefully the submission that the Family Justice Young People's Board made to the President, in terms of the guidance.

And I was very, very taken, actually, with both the concerns that were raised, which I thought were very, very legitimate ones, but also the conclusion, which I thought showed a huge degree of maturity in acknowledging, actually, these difficult sort of balancing acts. So I thought that was an absolutely excellent submission.

James Munby: I don't want to get involved in the general debate, but one thing which has been very valuable tonight, and it's the point that [Mr Cairs 1:34:29] made. We've had a number of contributions from

the floor which show that the transparency issue, the transparency debate, is not – although the primary focus may be on the present, and the reporting of proceedings in court – there are all sorts of other aspects to it. And the point that was made, I think by more than one person, one of the great failings of the system at present is we are not producing a proper record for the future, for the private use of the children in the system.

And I have said this before, I have said it publicly, I have said that in my view it is an astonishing aspect of the system that if you happen to have your case dealt with by a magistrate, there is a statutory requirement for written reasons, and, therefore, there is a written record which you can look at, in principle, 10, 20, 30, 40, 50 years in the future.

If your case is dealt with by a judge, sitting at the higher levels, the judge will give a judgement. It may or may not be transcribed, it usually isn't. And if it isn't, if the child, now an adult, maybe an adult in middle age or an adult in old age who wants to find out what was going on, there's nothing there. And that, I think, is a very serious failing in the system, and in the widest sense of transparency. It's transparency as well within the process, within the system. It's something we've got to grapple with, and we have to.

Anybody who has had occasion, as I have recently, to look at an old adoption file – it so happens the case I was looking at was an adoption file from 1930, and in a sense I was surprised at how much there was in it – but there is very, very little in old adoption files. And I suspect in far too many cases, even today, even with the transparency we have in place at present, there are far too many children going through the system who, if in years to come, they say, “Why did the judge decide that?” nobody will be able to answer that question.

And a very interesting and important point was made about access to this material for research purposes. In principle, court records can be made available for approved researchers. There are rules which set it all out, there are processes which set it all out. I spend a significant amount of my time reading papers put up to me, for me to give my approval or not, as the case may be, for some research project.

The rules in relation to that are fairly strict, the practice is fairly strict, and I suspect the reality is that whereas it's comparatively for somebody like Julia, with a beautifully prepared academic research project, to jump through all the hoops, it may be much more difficult for organisations like those you've mentioned, similarly to have access to the materials.

So there's another aspect to this debate, which is making the material available for research purposes, and that is very, very important. At present, I suspect the system is not working as well as it might be.

And then there's a very interesting point made, of course we're not just talking about children, particularly in the money cases we're talking about adults. And the fascinating question which was raised, a very profoundly important question. Is it actually – in a sense the point you were making almost came to this – is increased transparency in money cases a good thing, as it will have the effect of driving people away from the court, and using alternative mechanisms which don't involve publicity.

It's an interesting question, as well, that is actually happening, and I was fascinated to hear your experience that it was happening, and that your clients were looking at alternative methods which would guarantee privacy.

But that's another aspect to the debate. We tend to think in this debate, and very much if I may say so, I'm not remotely criticising

the [balance 1:38:46] in the terms, as it were, that Rod Newton and Sue Berelowitz were focusing on. But what this has brought out is that there are actually many, many other aspects to this debate, which we've hardly begun to grapple with.

Julia Brophy: Can I just add to that?

James Munby: Of course.

Julia Brophy: One of the things that flashed through my mind was the issue of Later Life Judgements for young people. That was on the agenda, I think, in 2008, 2009. It seems to have died a death, I don't know if anybody knows what happened to that proposal from the MoJ, but it was a way in which young people, children and young people would have a document for later in life.

One of the things which some of the older young people raised with us was, “Look, you're talking about giving the media access to medical reports, we don't approve of that, but access to other information which we don't see. What is it? What is it that stops you telling us what's going on? Often we don't know the reason we've been taken into care, in its entirety.”

What's happened to the judgements in relation to children and young people? Where is the information going to come for them? Because that seems, as I say, to have ‘died a death’.

The other difficulty is young people in private law proceedings. They are at a particular disadvantage. They are not represented. Who is going to protect them? Who is going to tell them about their Article 12 rights?

Particularly of course with litigants in person, who is actually going to protect and put forward the position of the child at the point at which there needs to be an application for the restriction of media access to documentation? Where are these children in this debate?

James Munby: Now, you've had a breathing space to think about questions, comments. Yes.

Caroline Little: I'm Caroline Little, I'm a children's solicitor. I've got a question, really the matters raised on this side of the table raise a very profound issue of informed consent, about the capacity of children and what are very vulnerable adults who normally come in front of the care judges, particularly of the lowest socio-economic group, often with profound difficulties, with drug and alcohol, mental health difficulties and learning difficulties.

Surely, if the courts are going to be opened up to the press more, and at the moment all lawyers and professionals working in court must hold up their hands and say, “We don't tell children and adults that the press are going to be in court because they usually aren't.”

And so we're being dishonest to children. We're being dishonest to adults. Because if they turn up, we scrabble around and try to deal with things.

But a particular question for Claire, as Cafcass is the representative for children within the court process. I'm aware because I've raised the issue before on the justice council that there isn't a policy, or there isn't training for guardians to tell children about what's going to be happening in court, whether the

press are going to be there, whether details about their lives are going to be in court. I'd like to know what will be done about that.

I also want to take it back, because, take it back much further, because when a legal planning meeting takes place in Children's Services, at that point decisions are being made about potentially going to court. Shouldn't social workers talk to young people then, and parents, and say, “What you say to us is going to end up in the press.” And if they do, what are the implications for child protection?

(Applause)

Claire Tyler: You raise a very good point about the training for Cafcass guardians and staff. Anthony, am I able to turn to you to ask you to respond on that very specific point?

Anthony Douglas: No, Caroline's quite right, and I think it would be a good idea to produce some guidelines.

Claire Tyler: I mean, I think we ought to – I think it's something we ought to do, yes.

Sue Berelowitz: The other question-

Julia Brophy: Can I go further on that?

Sue Berelowitz: Yes, yes.

James Munby: Of course.

Julia Brophy: I think it's a much more tricky question, because some of the young people that we talked about in the NYAS study said, “Actually we should be told,” as Caroline was indicating, “We should be told much earlier. We should be told much earlier, and by our social workers.”

Now, the work that we've done since 2010, you know, I've done a number of conferences with guardians, and with social workers, and with lawyers. After the change of rules in 2009, I tended to say to people, “Can you put your hand up if you've represented a child over the age of nine? Can you put your hand up now if you've had a conversation with them about media access?” No hands go up. And the argument is, it's too much to discuss with a young person, with the added trauma of the court proceedings.

Absolutely understandable. But when you talk about that with young people, what they say is, “We're going to be removed from our families. That's enough trauma. You owe us honesty, you owe us integrity. We need to know.” And I know it's a tricky one, but I think social workers, and lawyers, and guardians have to bite the bullet, really, and have that conversation.

Tricky it may be, but let me tell you, when you're dealing with children in a different situation, in a health care situation, when you're dealing with terminally ill children, paediatricians use Article 12 to talk about those issues with children. Now if you can do it in a scenario where a child is likely to die fairly soon, it seems to me that the family justice system and the allied services have to man up. We have to find ways of communicating.

If we are confident about the decision to let the media in, then we have to respond in a grown-up way with children and young people, and treat them as adults in relation to the information that they have to deal with. And if we're not prepared to do that, why are we having the media in court?

(Applause)

Anthony Douglas: Can I just emphasise the importance of that, and also say it's a view that's very strongly held by the chief social worker, and that court skills for social workers are likely to be a pass or fail in the test that's coming up on social work accreditation. And the President and David Norgrove, and ADCS who represent Children's Services and Cafcass, have talked about this, and we're trying to build on that by producing some court skills training that's national for social workers.

Obviously there's an issue about guidance for children, but it's important social workers also understand how to give evidence properly, and so too do the parents also know what to expect in court. So there is a programme to try and develop some court skills preparation for children, adults and social workers, so that all are not at sea in what can be such a highly-charged and emotive process.

Julia Brophy: Can I just pick up the issue here?

James Munby: Yes, of course.

Julia Brophy: Sorry, Sue.

Sue Berelowitz: You go up.

Julia Brophy: I'll just finish that. I think that's very welcome, Anthony, but I think you also then, we also, I think, as a community in the family

justice system, have to take on board that many of these children may well vote with their feet. And that's the position, that's the difficulty we've got ourselves into, with this policy development.

In the same way with clinicians who have to talk to young people about the fact that their report will no longer be confidential to the people involved in proceedings, children will ‘vote with their feet’. They won't say any more. That's the difficulty.

So training is important, but it's not going to be the answer in my view.

Sue.

Sue Berelowitz: Yes, I just wanted to pick up Caroline's important point about consent, but I just wanted to reaffirm what Julia said.

I was given an example of a child who had made a very detailed disclosure about their sexual abuse. They were then – and that was outside of the ABE process. They were then taken to the place where they were going to have to give their ABE interview, and en route they were told about the possibility that when this finally came to court, the press might be present. That child would say nothing at all for evidential purposes, and had to be brought back, and that was the end of the story.

It is very, very, very dangerous. Caroline asked the important question about the implications for child protection. The implications for child protection are very grave indeed, and an awful lot of the young people involved in the research that we commissioned were very clear indeed that they need to know, for integrity reasons, they needed to know at the outset, and if they know, they then would not say. They wouldn't tell their doctor, they wouldn't tell the paediatrician, they wouldn't tell the psychologist, they wouldn't tell the social worker. They wouldn't

tell anybody at all, because they did not want the press intruding into their private pain.

I want to pick up the point Caroline made about informed consent, because the issue of consent is a very vexed one indeed, and it's a really important issue to raise. I just want to illustrate it with two examples that we've had recently.

One was in relation to a young man with whom I was having some conversations, when I was doing some work investigating issues around mental health and young people in the criminal justice system, and the provision for them, particularly within the secure estate. I talked to quite a lot of young people in that context.

We made a movie that was all anonymised. In fact, it was the voices of the young people, but actors actually played out the young people, and it was being used for various publicity purposes. And then the media got very interested, which was great, we wanted that.

One of the young men was extremely keen to go on the television himself, and be interviewed. The journalist was very keen for this to happen. And he said he didn't need his face pixellated, he was absolutely up for it.

Now, I overruled him. He was a 17-year-old, he came from a very small village in the north, it happened to be in the north f the country. He had committed a lot of crimes, turned his life around, but committed a lot of crimes.

Having him identified in that way, I knew, was going to be very, very, very bad news for him. You know, somebody could have construed what he was saying as consent, and indeed as informed consent, because I made very clear to him what the likely outcome would be, and the risk to him would be. And he still

wanted his moment in the lights. We didn't allow it, and it didn't happen.

The other case I want to use to illustrate this is something you may all remember, I don't know if there's a journalist from the Sun here, but there was a story recently of the 'Devil Boy' in the Sun, front page of the Sun. The child was identified and was alleged to have the mark of the Devil on him.

We, like others I'm sure, had conversations with the Sun around that, only for us, the conversations were between the Commissioner and me and the editor and managing editor of the Sun. We had a very, very detailed discussion about this. We were profoundly concerned about the implications for that child of being named on the front page of the media as marked by the 'Devil'. He'd been 'invaded by the Devil'.

The starting point for the Sun was, “Well, his parents had given consent, so it was absolutely fine.” I'm pleased to say we had a very mature discussion with the Sun, who were very willing, after we'd spent some time with them, to recognise the real risks that pertained to that child as a consequence. And the fact that the parents had agreed was not sufficient, because the parents were misguided in giving their consent for their child's face and name being splashed all over the media.

It was the headline news on the Today programme, when I first became aware I was listening – woke up in the morning, listening to the Today programme and I heard the name of the child, and the child's mark of the Devil being described, and was profoundly concerned.

It doesn't look like that child was the victim of abuse, I don't know what the origin of the mark was. But of course, from my background, my first thought was, “Who has hurt this child, such

that this mark appeared?" So there may also have been a child protection issue in that regard as well.

But the issue of consent is an immensely important one. Caroline, you're quite right to raise it. And we mustn't confuse somebody giving consent with something also being in somebody's best interests.

(Applause)

James Munby: What you've raised is yet another aspect of the debate which hasn't been brought up before. As practitioners, participants in the family justice system, we tend to frame all the debate, we tend to frame the questions in terms of cases where there are proceedings going on, or where there have been proceedings going on.

If there have been no proceedings at all, and a parent exposes a child to some television reality show, or something of that sort, it may be profoundly damaging to the child. The child there has less protection than a child in the system has. What do we do about it? That raises a very, very big question. Frequently one sees things on television, in television reality shows, and one thinks, "Well, what is the child going to think about this in future?"

The classic example was the programme which started, I think, 40 years or more ago with a group of 7-year-olds. And they were followed every seven years, and it was very interesting, because each time it came up again, someone had dropped out, because they had got to the point that it was just too embarrassing, too cringeworthy.

And in fact, one of the participants was a barrister who I knew very well, and a lot of people have known who he was. And he was filmed gamely performing, I think at the age of 42 or 49. But

when one looked, because each programme, as I recall, started off with clips at each stage. So here was this highly successful, very prominent barrister, aged either 42 or 49, for the amusement of the public, being shown at the age of 7, at the age of 14, at the age of 21, at the age of 28, and so on and so forth. It raises very, very profound questions. But what the answer is, I haven't the faintest idea.

Well it's another aspect to this debate which we need to think about.

Steven Allen: Good evening, everybody. My name is Steven Allen, I'm a Mackenzie Friend. I'm also a school governor, and I'm not used to speaking in public. I also work for News UK, publishers of the Sun and the Times, but I'm not a journalist.

I just wanted to talk about legal aid in Family Court, litigants in person, and the fact that many of them have no assistance at all in Family Court. This often leads to a feeling of injustice, a feeling that they haven't had the right to a fair hearing, and also seeking redress through a system that they don't understand.

A natural consequence of that is to seek help, in inverted commas, from the media. And the two, in my view, seem to go together. The media wants to hear stories, like this, of injustices, personal battles being fought against all odds. And I wondered if the panel had any views on what can be done to prevent this kind of sensationalism in the family courts.

I have one question of Anthony Douglas. Whose authority does he seek when he publishes what many people call 'children for sale' in magazines?

Thank you.

(Applause)

Anthony Douglas: Well, the authority in those children's cases comes from the local authorities with care responsibilities, and usually the courts. It's a very difficult judgement, but the judgement is about whether children in specific groups, or children with special needs, can have permanent care.

On balance, for some children, the decision has been taken, with some pretty strong checks and balances, that it was in their interest.

As I say, having met a number of the children who are now a little bit older, they judge what happened then, the process, in terms of the outcome today.

James Munby: What I think may in part lay behind the question is the undoubted fact, and it is a fact, if you go on the social media, if you go on the web, a constant source of complaint – I report this as a fact, I neither assert or deny it, is a correct statement of the facts, I express no opinion. It is a fact that a constant source of complaint on the website by certain groups is that the system comes down on us like a ton of bricks if we get in touch with journalists. We are stopped from talking to journalists, and yet, there are pictures of our children up on the web, up on newspapers, being advertised for adoption.

Now, the fact that those comments are made, and it is a fact, the web is awash with comments of that sort. It's a very constant source of complaint. I don't know to what extent the complaints are justified. I rather agree with you, Anthony, that the balance is often very, very difficult. But we do need to recognise, as people in the family justice system, that this is something about which

people constantly complain. And in fact another example, something where we're not, as part of the system, managing to explain adequately, in a way which has conviction, what it is we're doing and why.

So it raises, I mean, in a wider sense, an education. How one does the educating, that's another question. But I think we do need to recognise that there is that constantly-voiced voice of concern.

And there's no doubt at all that – I say no doubt at all, it's my impression, and I read a large number of newspapers fairly consistently these days, just to keep my finger on the media pulse – my impression is that a very large number of cases which hit the headlines, often those in the most graphic form, are cases which are there because a family, usually a disgruntled parent, has gone to the media with a story which the media thinks is of interest. After all, that's what happened, I imagine, in the Italian case.

And one of the things we've got to face up to is that whatever the rules are, whatever the law is, whatever judges say, the internet and social media are to a very significant extent in the real world, outside control. Judges can go blue in the face saying, “You must not do this,” we can grant injunctions, we can say the law is this, but a determined parent will put something up on the web. That is the reality, and it's very difficult.

I gave a judgement on this some time ago explaining the difficulties. If the website is located somewhere offshore, and they're often deliberately located in places where local law enforcement won't have any effect, it's actually very difficult to do anything about it.

But the fact is, this material is out there, and the question which in a sense the Italian case raised in a very stark form is, looking at

the matter in the round, and with the benefit of hindsight, was the interest of the child, was the interest of the mother, were the interests of the justice system, best served by a story which broke at a time when there was nothing in the public domain, when in consequence the reporting was very inaccurate. Some might use a stronger word, I'll simply say inaccurate. And where, once the story had burst in the way in which Sir Roderick described, the real facts then came out. And of course the real facts never achieved the public traction, the media traction, which the original story had.

And as it happened, and this is all in the public domain, so I'm not saying anything which isn't publicly known. As it happened, I was the judge who at the very end of the day gave the final judgement which permitted the adoption to take place. I think I'm right in saying that judgement, which I gave in open court, was either not reported at all in the media, or had minimal reporting.

One of the reasons was that it didn't, as it were, fit into the story, the legend, which had grown up around the case, because nothing had been in the public domain at the outset.

And there's no point – this is a problem, and we've got to find a solution to it. And it's easy to say we've got to find a solution to it, it's difficult to identify what the solution is. But the solution, I suspect, has got to be on the basis of recognising there are different interests involved. They are starkly in conflict. It is actually, at the end of the day, trying to compare and balance incomparables. It's balancing apples and pears. But that, I suspect, is the best we can hope to do, unless we have an absolute position, which many people probably think, whether it's absolute on the one side or the other side, is not actually going to work very effectively.

Sue Berelowitz: Can I-

James Munby: Of course.

Sue Berelowitz: I just want to pick up the earlier point you made about the fact that images are out there, and therefore – I don't know if I'm interpreting what you're saying correctly – but it sounded to me like they're out there, there's very little we can do about it, therefore we just have to recognise that this is a sort of fait accompli, and hold our hands up.

And I would counteract that very strongly. If we just take the example of indecent images of children, we know from the Child Exploitation and Online Protection Centre, from CEOP, that there are tens of millions of indecent images of children out on the web. Do we therefore say, “Well, there's nothing we can do about it. Let's just hold up out hands and say it's a fait accompli, we'll leave it.”

I think that is a deeply immoral stance. We should not be countenancing such an attitude. If it's not okay in one arena, and we say we have to do something there, why not in another? To say that something's there and happening, and therefore we have to just kind of give up.

We cannot give up on this. We have to find ways to deal with it, because children's well-being and lives and welfare matter too much.

(Applause)

James Munby: Perhaps I didn't express myself accurately. That is not what I'm saying.

Sue Berelowitz: That's jolly good.

James Munby: It is not what I have said, and indeed, in the judgement which I made reference to a minute or so ago, I said, in terms, we've got to face up to the challenges. We can't just hold up our hands and say there's nothing that can be done.

All I am saying is that that is a reality, and we have to take account of that reality. And what we do to take account of it, how we cope with it, is a very difficult question.

But it is a reality that the web is awash with this stuff. I mean, the Section 12 of the AJA is being breached every minute of every day online. I'm not saying that is right, it obviously isn't. I'm not saying we just wash our hands. All I'm saying is it is a reality, and part of our reaction to this whole debate, we've got to get a grip of that reality, and do better than we are at present in addressing it.

Roderick Newton: Yes.

Adam Wolanski: Yes, My name is Adam Wolanski, I'm a barrister and I specialise in media law. I'm an occasional tourist to the family courts, where the issues that you have to look at are very special, and involve particularly difficult areas.

But I think it is important to have a wider perspective. Because the courts, across the board, have to deal with sensitive issues involving people's reputations, involving medical issues, and so

on. And there are a lot of people who use the courts who don't want to be identified, but the courts allow them to be identified. In fact they insist that they are identified.

I'll give an example, it's quite a stark example from a case I was involved with this summer, where an individual was named in the Old Bailey during the course of a criminal case about sex abuse. He was named by a witness, and the witness said that he had perpetrated sexual abuse on children. He wasn't a defendant in the trial, he wasn't a witness in the trial.

He came into court and said, “I want an order stopping the identification of me as this person, because it's going to ruin my life.” The case went to the Court of Appeal – he lost in front of the judge, the case went to the Court of Appeal, and the Court of Appeal threw out his appeal and said, “No, you've been named in open court, and open justice is too important for us to start making exceptions for people like you.”

And so this individual now confronts a situation where he says his life is going to be ruined, that people are going to think he's perpetrated this terrible crime. But the court has said, well, that is the price we to pay, because open justice is so important. Why is it important? Because it's fundamental to the rule of law.

And I think it's necessary for everyone here to understand that there is a wider debate, and in other spheres of practice, it's a balance that is struck very differently than sometimes is the case in the family courts.

And this is less with reference to children, who have very particular difficulties that need to be resolved sensitively, but I suppose it's more with reference to what the gentleman over there was saying about financial disputes. These kinds of disputes are litigated all the time in other courts, and very sensitive issues arise. One does have to have a wider

perspective before jumping to the conclusion that there really should be privacy.

James Munby: One of the curiosities - I think I'm right in saying that if you are a couple whose relationship has broken down without the benefit of matrimony, the resulting disputes about your property, which may involve raking over conduct in just the same way as a divorce case, are heard in a court which sits in public, and where the assumption is that it's open court. I think I'm right in saying that attempts in such cases to restrict reporting usually fail. If you have exactly the same situation in a case where you have the benefit of matrimony, your case is dealt with in a court where the rules are very different.

So there is an important aspect that the challenge has brought out, and one of the difficulties, I think, one of the realities is that the law consists even now of a lot of different little silos, and most people's perspective is based upon the silo they tend to occupy. The consequence is that if you're in one silo where the rule is privacy, one is astonished at the concept that in another silo, where the rule is open court, they could possibly have that view, and vice versa.

So Adam, you have brought out yet another aspect of the much wider debate in which we have to operate.

Lucy Reed: I'm Lucy Reed, I am a family barrister, and I'm also a blogger. I blog about family law. So I have a sort of dual perspective on these issues, having written about several cases, including the Italian case.

I suppose that in a forum like this, there's a tendency to talk about transparency and privacy as if they are mutually exclusive, as if

they are incompatible. And I think my starting point, and this, the nuances that have developed in this debate, is that they're not necessarily mutually exclusive. One can have a moving forward with transparency without throwing out the baby with the bathwater.

It seems to me that the consensus, although there's lots of disagreement about specific issues, the consensus is that we need to find better ways of getting better information out there, and enabling better public debate and understanding without causing problems in terms of privacy, particularly for children, but also for adults.

My perspective, as somebody that represents parents and children in court, and who engages through social media with lots of people who have a range of different views about the family justice system, is that there's an enormous amount of information out there. It's generally of pretty poor quality. It's certainly very, very variable.

The press, for reasons – I don't criticise the press for being selective, they have a commercial imperative, but the press aren't the answer to the transparency problem. They may be part of the solution, but they're not the whole solution, and I think we have to be far more creative about enabling people like bloggers, or other mechanisms and projects, to get better information out there, in a way which properly safeguards the privacy of the participants in the process.

There is a risk in relation to identification, it's been highlighted by Julia and Sue. But it seems to me that with the extent of social media and the internet, and the amount of use that parents and children make of it, those risks exist for all of us, and for all of our children, and it's not always connected to the proceedings, or to the moving forward of transparency. I think they may be separate,

independent risks. We just have to make sure that when we're publishing information, or giving access to information, that it's done in ways which are very careful in terms of the risks of Jigsaw identification in particular.

And if we have proper processes in place, then I would hope that we would be in a better position to give meaningful reassurance to the participants in the process about how they can be safeguarded, and what will and won't be out there, and what the impact will be upon them.

So I suppose, really, it's about finding an appropriate balance, and drawing up very careful processes. But we can't operate on the basis of a watertight system, it's not watertight at the moment, it's extremely leaky.

I think one of the things I would like to highlight is that people like me, who want to put out better information – when the Italian case came out, I wanted to put out better information to explain to the public what was probably going on behind the scenes, to help them understand the legal framework in which that case was moving forwards. But it's really difficult to do that, because of the constraints of Section 97, Section 12 of the Administration of Justice Act.

And the sad reality is that for people who don't care about those provisions, they have no effect. There may be cases, there are some recently reported cases in which the court has dealt with contemnors in relation to breaches of injunctions. But the vast majority of cases, there is no action taken by the court, and the court could not hope to take effective action to prevent that information being out there. And once it's out there, as children have identified, it can't be got back. So it's there, and it's the reality.

I think that because there isn't good quality information out there, because there is effective prohibition on people who want to report responsibly on getting that information out there, it is, perversely, a driver of people publishing material who are aggrieved with the system. And that, it seems to me, is dangerous to children and families for two reasons.

One is because there an awful lot of identified children out there who are named, who are being actively sought on the internet by their parents, or by people who want to make contact with them. That is risky for those children. They are being driven by this dialogue about secret family courts, about their perception of the courts as being a closed system which will not do justice for them.

The second problem that it creates for the effectiveness of the justice system is that the people I represent, the parents I represent, come to court having taken in that really corrosive information about what the justice system is and isn't, and it profoundly affects their ability to engage with proceedings.

And in some instances, I'm sad to say that I think it affects the outcomes for children, because parents disengage, because the information out there is so corrosive. We have to get more and better information out there to do justice for children, but we have to do that in a way that balances their privacy needs as well.

(Applause)

James Munby: Well, I think we've overrun. Thanks to all of you for the quality of the debate, and thank you for the fact that we have overrun.

One very quick point, if I may. The point that Lucy has brought out is we tend, the debate tends to treat the media as a monolith. And one of the interesting aspects of the Italian case, and I'll end

up where we began, in my judgement in the Italian case, where I analysed the media coverage, I think I said there were four different strands in the media coverage. And one of the strands was very critical coverage by the blogosphere of the print media.

So one has to recognise that there are two different medias out there. There's the daily beast, and then there's the blogosphere. And the blogosphere has an important role to play in this. What Lucy has brought out is that paradoxically the blogosphere which plays by the rules may thereby be hindered, in relation not to the daily beast, but in relation to other people who just publish whatever they want.

But it's brought out yet another facet of this very wide debate.

All I can say in conclusion is thank you very much indeed for coming here. It's been absolutely fascinating, and you have my assurance that I haven't yet come to any conclusion as to where I'm going. I wanted to defer coming to a conclusion until I had heard today's debate. I will be studying the transcript of the debate very carefully, and it will feed into my thinking on what the next steps should be, if indeed there are any further next steps.

So thank you all very much indeed.

(Applause)

And of course our thanks in particular to the four members of our panel.

(Applause)

END AUDIO