

News Media Association Response to the Transparency Review Call for Evidence

The News Media Association represents the national, regional and local news publishers in the UK. Our members publish around 1000 titles, read by 48 million adults each month, in print and online. These include both national titles, such as The Times, The Sun, The Guardian, The Telegraph, The Daily Mail and the Daily Mirror and regional and local titles, such as the Yorkshire Post, the Kent Messenger, the Monmouthshire Beacon, the Manchester Evening News or the East Anglian Daily Times. These publishers are by far the largest investors in news journalism, accounting for around 58% of the spend on original news content in the UK.

Our members have a particular interest in open justice, in view of the integral role of their reporters and their publications to its implementation in practice. The NMA and its members campaigned for opening up the family courts and participated in initiatives by past Justice Secretaries and ministers, past Presidents of the Family Division aimed at securing greater transparency through legislative changes, joint judicial/media guidance on family courts media access and reporting and other measures.

The NMA warmly welcomed the announcement of the Transparency review in the terms set out in *View from the President's Chambers May 2019 'during which all available evidence and the full range of views on this important topic can be considered (including evidence of how this issue is addressed in other countries). The aim of the review will be to consider whether the current degree of openness should be extended, rather than reduced. It is my aim to conduct the review over the next 9 months with a view to producing a report and recommendations by this time next year.'*

In view of the extension of the deadline to 30 April, we do hope that prior to preparation of the final report, the President of the Family Division and Review Panel will engage in detailed discussions with national and regional news media companies, including their editors, reporters and in house legal advisors, and relevant representative organisations such as the NMA and Media Lawyers Association. The NMA would be very happy to facilitate any 'meeting' including representatives of its member national, regional and local news media companies (print and online) and their legal advisors, broadcast organisations, press association and other organisations such as the Media Lawyers Association.

Is the line currently drawn correctly between, on the one hand, the need for confidentiality for the parties and children whose personal information may be the subject of the proceedings in the Family Court, and, on the other hand, the need for the public to have confidence in the work that these courts undertake on behalf of the State and society?

The NMA considers that there must be no retreat from current levels of transparency in the family courts. Open justice enables proper public oversight, public scrutiny and public understanding of the operation of the courts, the application of the law, including to the practices of public authorities, relevant professions, experts and public services, on issues of importance to individuals and to society more widely. It is integral to both the function and demonstration of the proper working of the family justice system – including alert to appropriate reforms. We therefore hope that the legislative, procedural and practical objective of the review will be the extension of open justice. This ought not be restricted to ‘incremental steps’ if more ‘radical’ changes are appropriate. As one of our members commented ‘more emphasis should be placed on the importance of applying the absolute minimum to the derogation to the principle of open justice and this principle is distributed widely and forcefully’.

There are practical steps which would assist the proper application of the current line. These include judicial training and family law practitioner training, steps taken to ensure better observance of guidance, protocols and notice requirements prior to applications for reporting restrictions. These would help address the main problem areas which publishers of national and regional titles continue to encounter, especially before the lower courts. Encouragement of informal discussions between judiciary, practitioners, court staff, editors and reporters and their legal advisors, whether through local court centres or otherwise would also be helpful. These would help inform information, understanding and practices.

There is the need for practical measures to assist media reporting of the family courts. For example, from our earliest discussions on opening up the family courts, Ministers and media recognized the importance of provision of advance listing information that could disclose to the media relevant information about the nature of the case, parties and the identity of a local authority, so that the local, regional and national media organisations would be able to deploy reporters and make other relevant arrangements for lawful attendance and lawful meaningful reporting of the matter, judgement and issues. We would be happy to facilitate discussions involving our members, all relevant government departments and procedure rules committees and others in order to address this.

It would also be helpful for open justice and reporting purposes for judges to hand down final judgments, ready for publication, at listed public hearings.

The NMA would be happy to discuss whether update to the past joint guidance on Family Court reporting restrictions would be useful.

The NMA also stresses the necessity for a freedom of expression’ audit and an ‘open justice’ audit of any new legislation, procedural rules or guidance which impact upon the family courts, which must include prior consultation and discussion with the media. Maintenance of open justice with implementation of the Court Reform programme and digitisation of the courts poses particular challenges and ought to require detailed consultation with the media. Proposals for incremental changes can also raise issues. For example, the NMA is pleased that the recent consultation on dealing with the vulnerable before the family courts led to no calls for blanket categorization of who might be deemed vulnerable, and no suggestions for extension of private hearings and noted the NMA’s comments on avoidance

of erosion of open justice. However, its suggestion that the extension of special measures to civil courts and the presumption of eligibility for domestic violence victims before those courts will require detailed consideration of any transposition of provisions affecting the media, whether they are justified and if so how the protections for open justice and press freedom built into the criminal provisions, including media representatives permitted to remain in court and swift appeals can also be preserved. Youth Justice and Criminal Evidence Act 1999 provisions required detailed discussion and amendment during its passage. Early consultation with the media on any proposed extension would ensure detailed consideration.

The NMA welcomes the Covid-19 announcements on open justice and the arrangements made for the maintenance of open justice and the particular demands of media access to, and reporting of, court proceedings. We hope any media issues and any practical or procedural problems can be raised quickly and addressed speedily at any time while the Covid-19 measures are in place. We hope that constructive relationships and new working practices will aim at promoting and maintaining open justice and media access in the Family Courts, instead of permitting a retreat to greater secrecy. It may be that the experience and the development of media access to court lists, proceedings, judgements and documentation, different demands and means of reporting and operational practices over this period, will prove very valuable in considering the ways and means of effective promotion of open justice in the family courts in the longer term, under the court reform programme and proposals for court digitisation.

Any observations on the Practice Direction: Family Court- Anonymisation guidance issued by the President on 7 December 2018 and the President's Guidance as to reporting in the Family Courts, issued on 29 October 2019

The NMA supported the Practice Guidance: Transparency in the Family Courts 2014.

We were concerned by the divergence of the 2018 Anonymisation guidance from the earlier Practice Guidance on key points, which are also points of critical importance to local and regional media and the communities that they serve.

The 2014 Practice Guidance made clear that public authorities should be named in the judgment approved for publication, unless there were 'compelling reasons why they should not be so named'. The NMA and its members strongly supported this approach on open justice and public interest grounds, especially in relation to the communities served by the particular local authorities or other public services concerned. The NMA therefore remains very concerned by the 2018 guidance which would only allow identification if the judge felt that there was no risk of identifying children, or on balance of the remaining risks that the public interest in identifying the application is so important that it outweighs any risk of identification of the children. We consider that this 2018 Anonymisation guidance should be revised so that it accords with the 2014 Practice Guidance.

The NMA is also concerned that the 2018 Anonymisation Guidance or other developments could lead to unnecessary excisions or create general presumptions against identification of those employed in certain professions or certain public services or holders of certain roles

and identification of experts. This would recreate secrecy problems which the initial legislation on opening up of the family courts and previous guidance was intended to dispel. The guidance could also encourage the removal of other material which might not be warranted in the particular circumstances of the particular case and individual judgment. This would result in the standardization of an over cautious approach.

If the approach adopted by the 2018 Anonymisation Guidance arose out of (unwarranted) concern about subsequent reporting by the media, then discussion with the media (and its inhouse legal advisers) about their approach to reporting would assist constructive review. Local, regional and national media deal daily with matters which are subject to reporting restrictions. Media organisations are therefore used to editing material to avoid jigsaw identification or other breach of reporting restrictions, including with regard to the local knowledge of their local audiences and with reference to industry practices, alignment of editorial codes and other relevant matters (as acknowledged in the joint Judicial College/ NMA/MLA/ SoE Guide to Reporting Restrictions in the Criminal Courts).

President's Guidance as to reporting in the Family Courts, issued on 29 October 2019

The NMA warmly welcomed and strongly supports the guidance. We commented previously that it would be helpful if the guidance also required the provision of case papers in advance to the media and its legal representatives in order to inform its decision as to whether to make any application, to prepare its case and to consider and agree any order.

We hope these comments are helpful. The NMA would be delighted to participate and facilitate any discussions between the President of the Family Division and the Review Panel our members and other media organisations such as Media Lawyers Association. (Please contact Santha Rasaiah LPRA Director NMA santha@newsmediauk.org)

Santha Rasaiah
Legal Policy and Regulatory Affairs Director
News Media Association
3 April 2020
santha@newsmediauk.org
0203 848 9631