

**Transparency Implementation Group**

**Subgroup 2: Publication of judgments**

**Minutes of meeting on 9 June 2022 at 4.30pm**

**(Remote meeting via Microsoft Teams)**

**Attendees:**  HHJ Madeleine Reardon [MR] (Chair of Subgroup), Fatima Ali [FA], Dr Natalie Byrom [NB], Dr Julie Doughty [JD], Marie Gittens [MG], Charles Hale QC [CH], Adam Lennon [AL], Helen Lincoln [HL], Femi Ogunlende [FO], DJ Adem Muzaffer [AM], Lucy Reed [LR],Maxine Monks [MM], Clare Walsh [CW], Jack Cordery [JC], Jennifer Gibbon-Lynch [JG], 2 FJYPB members and Mark Barford [Minutes]

**ACTIONS:**

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**Item 1 - Apologies**

1. MR introduced the meeting and noted the following apologies:

* Jack Harrison (Secretary)
* Tom Foley

**Item 2 - Minutes of meeting on 7.3.22**

1. There were no amendments to the minutes. Minutes approved.

**Item 3 - Report back of smaller working groups, plus discussion/ questions:**

MR expressed her gratitude to DJ Adem Muzaffer, Lucy Reed and Dr Natalie Byrom for their work since the group last met.

1. MR explained the purpose this meeting was to talk through what each group had done and to share the same. She encouraged input from everyone, acknowledging the difficulties of drafting and working in smaller groups, however, she wanted the whole group to retain ownership of everything and encouraged views and questions.
2. MR set out the future aims beyond the meeting were to return to smaller groups to continue work on draft guidance and have another sub group meeting to look at the draft; with the hope to complete a first draft, before submitting it to the President.
3. Members of the FJYPB were in attendance and introduced themselves. MR asked that each speaker introduce themselves before speaking for the benefit of the FJYPB

**Group A [publication – judicial focus groups]**

AM plans to circulate a side report to accompany the proposed guidance. This will provide more detail. He provided a general summary; set out below.

1. *At every tier of judiciary, including legal advisers, is the concern that prioritising in terms of publishing will not work without some form of resource commitment.*
2. *A notion of target for how many judgments each judge must publish per year, will not work unless properly resourced. There is too much added burden to an already overworked and stressed judiciary.*
3. *From the focus groups, it emerged that that no two judges at the same tier approached things in the same way; there was huge variation between judges who would routinely write judgments and those who only give extemporary judgments.; a great difference in working styles.*
4. *We need to accommodate everybody's current practices, when it comes to working without having to be reliant on transcript services, before, looking at the details of publishing something.*
5. *Everyone was broadly in agreement with the Sir James Munby 2014 guidance as a useful starting point*
6. *In promoting public confidence in the family court, we need to include routine day to day private law decisions and until now they have not been deemed a worthy publication.*
7. *During the next fortnight, the subgroup will draw up a document with a view to circulating more widely by July.*
8. *When drawing together responses it is likely to split in the guidance. One aspect will deal with the question of expectation of number of judgments per year. The second aspect is how we prioritise the types of judgements that need to be published.*
9. *Aim is to keep it streamlined, adopt something akin to the 2014 Munby guidance as the type of cases but expanding to include a broader spectrum at the lower end of the system to provide the widest range and discretion to judges to ensure it is representative of their caseload. There will be much an emphasis on reflecting an individual judges’ practice and specialism.*
10. *The expectation on the numbers of judgments concluded that 10% is most unrealistic. Questions were around how to calculate that figure given each judge will have a different number of cases and court lists vary.*
11. *Whilst the funding question remains unclear, and to combat the extent of resistance across the judicial tiers, it is better looking to set out expectations. For example, for District Judges, and legal advisers, possibly an expectation they publish, individually up to 5 judgments per year. For circuit judges, it may potentially be between 5 and 10 judgments per year and the High Court judges to remain the same as current practice.*
12. *Following the 2014 Munby guidance, this reflects the resource demands on each judge at each tier. These are different both in terms of volume of work but also the extent of the measure of support*
13. *It is hoped there will be an anonymization unit who will undertake the work; however, it is likely to be the judge who signs off what is published. There may be resistance to this;*

*not in principle, but the question of how much time it takes.*

1. *This is a starting point and is likely to be reviewed more upward if the amount of admin support or finance is invested.*
2. *Consideration was given to a form of publication light akin to a brief summary of a case with an outcome; like personal injury law. However, the group thought it was not going to serve the purpose of promoting transparency with people being better informed.*
3. *The instinct was that judges were overburdened with too much to contend with and different issues arising out of court reform and modernization. It would need close and careful PR on the benefits to the judges. Concerns were around how judges are going to manage with daily court lists and a lack of physical staffing resource.*
4. *Up to five cases is not headline grabbing, however, over the course of a year with 450 judges sitting on private law cases at District Judge level alone, this will increase the current volume of published cases substantially.*
5. *What was evident from the lower judicial tiers was that judges were fine with the concept of transparency. However, judicial decisions at lower tiers were not going to be precedents and much a sense of who's going to read them. Much work is needed to demonstrate the benefits.*
6. *Most circuit judges did know about the 2014 Munby guidance, but most felt it had been forgotten about. From the small samples, there was much resistance at circuit judge level to writing judgments as it takes much longer than to write a short and concise judgment.*
7. LR was of the view that even if someone done the bulk of work to the judges’ instruction it would still need sign off by the Judge. It is hoped the unit reliably implement judicial sign off.
8. LR thought publication of financial remedy cases should be included. This was omitted in the 2014 guidance.
9. LR considered there was a need for an exercise around what does 10% mean. Looking at the numbers of Judges and tickets we should be able to produce a figure. This is important to provide a target to mark against. This gives the public a sense of how they can rate the difference between what's happening and might make a difference in the quality of information.
10. LR questioned whether there were any expectations for part time judges and if different to full time judiciary? AM confirmed that part time judges of Recorders and Deputy High Court judges were involved, however, there is a need to set expectations of numbers of judgments per year and how they apply to part time judges.
11. LR questioned if the responses from individual judges on the focus group would be identified or whether through minutes or a report. Possibly the public could see an overview of the judicial responses of the focus groups. LR viewed it important that the public know the thinking in setting targets and that judges are consistently saying they are overworked, and that they are saying the target is unrealistic. In terms of an overarching commitment to transparency, this is important, without breaching confidences of judges. AM replied that it had been made clear that anything said by judges would be confidential. He may need to look back at the conditions agreed by the focus group participants; if anything is published it will be on a completely anonymized basis.
12. NB was concerned about the resource constraints and questioned if there was merit in examining what we're trying to achieve with a different mechanism; given the aim is to publish judgments representative of what was happening in the family justice system. She did not feel that the suggested numbers helped the public or anyone to understand what happens in the system. NB thought a courts inspectorate could oversee how families are treated in the courts; like the domestic abuse commissioner. Thinking about procedural justice, like routine surveys funded by emergency aid, it would get to the goal via the role of data. NB viewed the judicial resistance a finding and it important to think flexibly about this mechanism and the data aspect of it. JD drew the group’s attention to the recommendations in the Care Review and circulated this document after the meeting.

**Group B [anonymisation guidance]**

1. LR provided a draft of guidance and principles to be applied in terms of anonymization from work of the transparency project. There are gaps to complete in terms of which judgments will be published. It includes the types of judgments typically published from the 2014 guidance; a useful reference point. Financial remedies are a separate consideration by the financial remedy’s subcommittee in terms of what the law is, or should be, in relation to publication of financial remedy judgments. This document reflects what the law states.
2. LR included in the guidance the question of should I publish this judgement and if so, learning about removing facts to make it safe to publish.
3. JC acknowledged LR had a challenge with considering many different perspectives. JC reflected on why there is a difference between naming and not naming of local authorities’ social workers but naming family courts advisors or children's guardians. JC reflected on the level of abuse and intimidation received and measures taken to safeguard the welfare of staff and children's guardians which is largely unknown within the system. JC did not understand the different view adopted between the two professionals.
4. LR reflected that historically, there are various professionals who are vilified or the subject of criticism; social workers, Cafcass Guardians and lawyers. Unfortunately, the practice that's built up reflects how social workers are often viewed; people taking children away. This was not such an issue 10 years ago before social media. It may need further reflection to line up with what the law states about naming professionals but to highlight that if there is evidence of problems arising as a result of naming an adjustment might be justified.
5. JC felt that the “*welfare of the child is paramount”* should be more prominent in the guidance, given his experience of talking to the Family Justice Young People's Board (FJYPB); the need for protection of children is paramount to children's welfare and especially the consequences of the digital footprint.
6. LR was clear that the guidance drafted is consistent with the law and reflects current practice on naming. If welfare was to be prioritised above art 10, we would be on the wrong side of the law. The law is very clear that you start from a clean slate. Welfare is ‘a primary consideration’ but it's not paramount.
7. HL welcomed the proposal of social workers not being named. Social media has meant a change in how we operate, and we could end up with no professional wanting to do difficult cases. ADCS spend hours getting Facebook to try and take down offensive and unlawful posts.
8. HL was concerned that not all the jigsaw markers had been removed in the anonymization guidance. HL is most worried of people being able to find themselves and find information to identify families. Concern was that children are more identifiable in small local authority areas and it was suggested using regions as some local authorities have unusual characteristics that make them potentially identifiable and a general public interest in knowing of the local authority. If the identity of the local authority is likely to be identifying it should be removed. Other considerations of removals should be the number of siblings or ethnic background of the family. It is known that people can link criminal and care procedures together. Both digital and social media aspects need further consideration. It may need a reminder to judges that when balancing the risks and benefits of public interest that they need to think about not just the risk of identification, the public at large, but the risk of child self-identity.
9. The FJYPB queried whether the family has a choice whether their story is represented. LR view was in order to be procedurally fair and do the balancing exercise, the law states the judge must give everybody an opportunity to express their view on the publication and what should be removed. However, final decision rests with the Judge. Some children who are too young will be represented in the process by their guardian or parents, depending on the type of case.
10. The FJYPB felt that through the anonymization process, children lose part of their story and voices are important; even if they can be identified. Proposals were that there may be a training need for Cafcass and social workers on the arrangements, talking to young people about the process and keeping them informed throughout the process of the possibility that reporters are entitled to come to court. Children need to understand how the process works.
11. JC expressed concern that children should be informed that their case could be published, especially as some are the most vulnerable children who may possibly have given evidence in criminal proceedings.
12. HL agreed that children have a right to a private childhood, however, we must be careful how we help ensure the process does not add more trauma to the child.
13. CW was of the view children who have experienced traumatic circumstances and neglect are operating at a higher level of awareness than most children. They have been in courtrooms and exposed to court process. To deceive or pretend that something isn't happening to them, when it is happening, is worse. Much is happening to them that they probably don't know because social workers are working behind the scenes and discussing with teachers, etc, that they will never be a party to that information or conversations. We must do whatever we can to empower children to take control of their lives as they read that information is in the public domain; albeit anonymously.
14. CW expressed the need to emphasise to judges and staff carrying out this work the vulnerability of families. They are often already marginalised. Their thoughts, ideas and feelings about their situation are out of their control. This needs consideration. Honesty and empowerment is important as there will be some children who might say some facts in a judgment are important or sensitive, however, they understand it can be removed, without making any difference to the judgment as far as the public is concerned. Children may feel much more empowered and involved in the process if their views are heard rather than guessing on their behalf.
15. MR spoke of judgments, which are almost always published, in deprivation of liberty cases. These are cases where, usually teenagers, are kept in accommodation where they are deprived of their liberty in some form for their own safety. Judgments show the balance. These are some of the most damaged teenagers in the country and why they're kept in such accommodation. It is a significant and serious interference by the state in their lives. MR thought it useful to think about that such judgments and the balance of considerations. They are published in a way that does not give too much sensitive or identifying information and infringe on privacy. However, they also make clear the thinking of the court when decisions are taken. Th aim should be to find a way of taking the same approach to all types of judgments where there are factors on both sides of the public interest equation.
16. FJYPB expressed that sharing her experience in the press, with diverse agencies, helped improve on her voice and she liked sharing information.

**Group C [funding for Anon Unit]**

MR reported that discussions are continuing, and this remains work in progress. It was always anticipated this would be a challenge. Plans are to proceed, however, with the clear message that judges were not expected to change the way things are until there is admin support.

Item 4. TNA update

MR reminded all that this was the transition from Bailli to the National Archives to host judgments. There have been no judgments below High Court level yet published on the National Archives due to the requirement to obtain a neutral citation number; this is still being worked out.

Item 5. Plan for first draft of guidance

MR confirmed that plans were for a first version of the draft guidance to be in readiness for mid-July to be shared outside the group.

Item 6. Date for next meeting

If possible, MR would aim to have another meeting mid to late July to look at the final version, make any final changes and reach collective approval. Thereafter, the draft would be shared with the President initially and wider groups in the early autumn.

Item 7. AOB

LR mentioned there were various aspects of the guidance that were incomplete and needed answers. It was agreed the best method was to email other subcommittees for answers. LR confirmed she is now a member on the finance remedies group and their work needs to be built into the guidance but will be a longer time frame.

MR explained that the plan is to prepare an initial one-page flowchart with clear coloured boxes to assist judges on the process and considerations, which will be supported by a more detailed explanation. This will be amalgamated with the anonymization guidance.