

Feedback on the consultation paper titled, “Confidence and Confidentiality : Improving transparency and privacy in family courts”from CAFCASS/FJC Young People’s Panel

Session 16.09.06

1. Introduction

The CAFCASS/FJC Young People’s Forum was formed in October 2005. This group brought together young people selected by the National Youth Advocacy Service (NYAS). These young people have primarily had experience of being in care and public law proceedings however two of them have experience of private law proceedings. Eight young people participated in this consultation and their ages ranged from 10 to 17 years. The young people are from Liverpool and North Wales.

This Young People’s Forum is co-facilitated on behalf of CAFCASS and the FJC by NYAS. Representatives from CAFCASS and the FJC always attend the meetings.

2. The context in which transparency should be considered

Initially questions probed how young people described their experiences as court users. Their responses give a context to considerations about transparency.

In summary, young people identified five main experiences:

Intimidating and stressful:

- *Because you don’t understand what is happening it can be very frightening*
- *It’s like when you go to a review and feel quite small whilst in it*

Vulnerability because of how they are feeling:

- *A young person may feel suicidal and they should be able to speak to the judge about how they are feeling*
- *When there are loads of people involved it can make some young people feel as if they can’t open up and discuss what is important to them*

Surprised about what they hear:

- *Sometimes you hear information that you have never heard before*
- *At times, hearing things for the first time*

Feeling the need for support:

- *Having a lot of people to talk to can be confusing and it would be good if just one person/professional took on this role. Preference is that this person is from CAFCASS*
- *The young person should always have someone to support them so they don’t feel alone*

Court can be a good thing:

- *A young person may be happy that the court is involved as this may change a situation they have felt unhappy about*
- *At times going to court can be a good thing as it is about changes you want to make in your life anyway. It maybe to stop an abuse*

Stating the need for clear information:

- *If a young person doesn't understand they will not engage with the court process*
- *Because you don't understand what is happening, it can be very frightening. That's why it is important to explain what is happening to the young person.*

Wanting access to the judge:

- *Younger children need more support in understanding what is going on, this could maybe come from the judge not the social worker*
- *Young people should have a choice to speak to the judge and they need to be clear about this from the beginning. They also need to feel O.K. about not wanting to speak to the judge*

Relationships of trust and recognising the difficulties of talking about one's personal life in public were also mentioned. In terms of the present consultation, then, it should be remembered that any decision to make the court more accessible must take account of the how the child might be feeling and their capacity to make an informed choice about who might be able to attend when under such pressure and without knowing what they might hear.

3. The role of the press

Following the examination of context the participants were asked directly whether they thought the media should have **the right** to be involved with court cases involving young people. Their responses focused on three themes:

Anonymity:

- *The names of young people should never be mentioned*
- *even when names aren't reported young people living in rural areas may be easily identified*

Checks and balances:

- *The public should have a say in what is reported*
- *If the media were to report, then it would be good for the judge and an independent person to check it out first. This will ensure that the report is balanced and not just what a judge may want to convey.*

Child's right to choose:

- *Young people should have the right to choose between open (cases reported on) and closed (cases not reported) courts*
- *The press should be there it's difficult to agree on what should and shouldn't be reported*

Alternatively, they were asked whether the court should **invite** the press and **the court decides** on what the press report. Similar concerns were voiced around checks and balances within the system:

- *An independent person should decide on what is reported, it shouldn't be up to a judge as the young person may feel that they don't trust the judge or get on with them*
- *should be able to have a second judge that checks this at the request of a young person*
- *If the process does not go right then there should be a good record of the process to rectify this*

In addition the idea of partial or selective reporting was proposed:

- *The press could report the decision of the court and nothing else*
- *The judge should decide what is reported and make sure it is fair and balanced*

The importance of good information for young people was also reinforced:

- *Some young people may protest, but it maybe in their best interest. We need to fully explain the benefits of this to them*

Thus, young people seem to be open to both options and appear to more concerned about the process; that there are sufficient checks and balances in the system to protect their privacy and that they are well informed about benefits and consequences.

A further question on the press probed what young people thought the press **should not report** about cases involving them. Rather than identifying specific information (with the exception of information that 'identifies a family'), responses centred, once again, on the process of how what should not be reported could be decided:

- *The young person should always understand what might happen if information is reported*
- *If there were a family group, brothers and sisters, and there was disagreement about what should be reported on, then young people should be fully involved in the discussion and should understand the reasons why a certain decision was made*
- *It was proposed that a panel considered what should not be reported to ensure the right decision was made. The panel included the judge.*

An additional concern, only expressed by one child but an important consideration in terms of the interface between civil and criminal proceedings, was 'concern about adults accused of doing something but they are not guilty'.

4. Who else should attend court?

The participants were asked which people they thought should **have the right** to attend cases involving young people. Responses clustered under two themes; family and friends who were genuinely involved in the young person's life and the need to obtain the views of the young person about who should attend:

- *The family and friends of the young person who are genuinely involved in the young person's life*
- *Should always ask the young person concerned*
- *Maybe foster carers but always ask the young person first if it would be O.K. to ask them to attend*

Some suggested that a panel should decide. Others made the important point that, if it was up to the young person and siblings were involved their should be a method of ensuring that all siblings had an opportunity to voice their opinion without being intimidated by other family members. This again raised the prospect giving the option to talk individually to the judge. Also it was proposed that there was a need to make sure that siblings, particularly those living apart, are fully updated and no one sibling is more updated than another.

Participants were then asked which people they thought **should ask the court** if they can come to the hearings when young people are involved. The point was again made that:

- *The young person should always decide who should be there – this would depend on their age and ability*

In addition, it was felt that the public should not be in the court; 'It's a family problem and it should remain at that' and it was 'embarrassing for the family if outsiders come'. There were some clear exceptions, however:

- *Specific exceptions are trainee judges, inspectors, civil servants and minister and such like*
- *Law/social work students, trainee solicitors etc. should be allowed in the court as long as they respect the confidentiality of the young person and the young person is consulted about this*

5. Transparency in Adoption Proceedings

The group was asked to consider when a young person is **being adopted** what information they thought the public should have about this. This question seemed to be interpreted in terms of information for the child rather than the public. Responses here focused on the importance of consultation, age related information and respect for privacy and ranged from 'nothing' to an unfolding of information over time. For example:

- the young person should be consulted and this needs to be done at the right age, if the young person is older they will need more information

- young people should have the choice to receive sensitive/difficult information when they feel ready and have a choice to be told the “bad” stuff
- young people should have this difficult information from the start as it may hurt a young person more if they find out about it when they are older and some young people will already have picked up on things being difficult anyway
- an independent person could produce a report and make sure that certain information does not leave the court
- There should be an age limit when reporting in their adoption should be discussed with young person

Generally, there appears to be a consensus that adoption proceedings should remain private (again with the exception of relevant professionals in training) but that the young person who was subject of the proceedings would be entitled to information depending on age and timing. This relates to the final question which probed what information the group considered **an adult may need** when they have been involved with the courts as a young person. There appeared to be consensus that it is important that an impartial record of the hearing is saved for the young person so they can get this when they are older.

6. Not whether but how information is shared: responses to the case study ‘Katrina and Jake’.

The group were presented with a case study about two children, Katrina (15 years) and Jake (5 years). The case explored the sharing of personal information about Katrina (in the form of her diary), press interest in the case (the father was a known local figure) and the attendance of relatives not previously involved in the children’s care. Concerns about the children’s feelings and predicament were expressed. In relation to the present consultation, the ensuing discussion again reinforced the theme that **the way** in which information about children is shared is as important as **what** is shared.

- *(The foster carers) should have told Katrina that they had done this before they passed the diary to Social Services*
- *The foster carers should have just passed the information on about Katrina not being safe rather than the whole diary*
- *The judge should only have read the bits of her diary that talked about Katrina being at risk*
- *The facts should have been shared and not the feelings*

Privacy should be respected:

- *The judge could have talked to Katrina on her own and in private about her diary*
- *The foster carers should not have read Katrina’s diary*
- *Katrina should be allowed to speak to her dad privately about what is going on*

Timing is important:

- *Young people need to know in advance that information about their safety will be passed on*
- *Young people need more time to make decisions about their future and usually more time than adult imposed timescales*
- *Young people sometimes know what they want but the adults take ages to get it all sorted out*
- *Adults expect young people to make important decisions very quickly and they take forever to respond to this*

Young people should be consulted:

- *Need to speak to Jake to see what he actually wants*
- *Children don't get asked about what they want*

Opinions about relative's attendance were divided:

- *The uncles should not be allowed into the court, why get involved now and not before?*
- *If the uncles were allowed into court it may make them want to get involved with Jake and Katrina's lives*

Opinions about press involvement in this case appeared to be clear:

- *The press should not be invited in on this case, it's obvious they don't care and it could make it worse for Katrina*

This final point is worth considering further as it raises the question about how far in principle young people may appear to agree to greater transparency but in practice may not agree to increased public and press involvement. It reinforces, as has most of this consultation, the importance of providing young people with sufficient information to contribute to decision making and the importance of respecting their right to choose. It also brings out an important criterion for young people's decision making about the attendance of others in court; the rationale is that they are there because they care about what happens to a child and not for some other reason (publicity) and that greater transparency does not make the situation worse for the child.

In conclusion

It would seem that young people are not averse to the principle of greater transparency and they are most concerned with the process by which greater transparency is applied. At the very least this should involve clear, age appropriate and timely information to enable young people to make their own decisions and their views about the access of others to courts should be respected on a case by case basis.