

1. The Council welcomes moves to make the family justice system more widely understood by the general public and believes that there is an unmet need for better information on the workings of the family courts. The Council would like to see the family courts more open to public scrutiny and recognises that the media has a legitimate role to play in furthering this objective. The Council would support an extension of the right of the media to attend, and report on, family proceedings in so far as this is consistent with the welfare of children, and vulnerable adults, and with the interests of justice.

2. The Council, however, considers that the attitude to the media adopted in the consultation paper is overly sanguine. The consultation paper appears to take the self image of the media as disinterested guardians of the public interest at face value. Media organisations have agendas when choosing which stories to report and how to report them. This is frequently demonstrated, for example, in the way in which stories concerning ethnic minorities are presented. The media has a long history of reporting family court cases in an inaccurate manner and tends to focus on cases which feature celebrities and/or where sensational and salacious material is involved.

3. The consultation paper assumes that allowing the media greater access to the family courts will improve the quality of the media's coverage of family cases - this is a questionable assumption. The Council agrees that all reasonable efforts should be made to assist the media to improve the quality of reporting on the family justice system but would not expect to see a rapid and marked improvement as a result of the proposals contained in this consultation paper being implemented.

4. Little consideration appears to have been given to what the media would actually report. If the hearing were to be reported, this would include only partial, oral material. It would omit written evidence which forms a considerable part of the evidence in many cases. Making all the written evidence in a case available to the media would raise a whole raft of confidentiality and privacy issues, not to mention the extra time and expense

of providing copies for the media. Many expert reports contain material of an intimate, personal and distressing nature and go into much more detail than is usually the case in judgments – it is hard to see what legitimate public interest would be served in giving the media access to written material of this nature and the Council would oppose this. It is for these reasons that the Council proposes that anonymised judgments be provided to the media (see para 35 below).

5. The Council would submit that it is important to give more consideration to the effect of the proposed media presence on the process of assessment conducted before court hearings, including that by the children's guardian and by experts. Specifically, if family members were to be told at the time of assessment that the content of these conversations would be heard by the media attending hearings, this may well affect the content of these intensely personal conversations and affect adversely the quality of the assessment.
6. The Council believes that the media is not the only, nor necessarily the most effective, means of providing the public with information on the workings of the family justice system. The Department for Constitutional Affairs should consider funding a public information campaign designed to raise awareness of what the family justice system is and what it does. The Council notes that the Department has funded an effective public information campaign on issues affecting cohabitants in recent years and believes that a campaign aimed at de-mystifying the family justice system is needed and would be beneficial. At present there is a lack of accessible and jargon-free explanatory material available on the internet and this should be addressed.
7. In the Council's view, the consultation paper lacks supporting evidence for many of the propositions that it makes. The paper assumes that there is widespread public dissatisfaction with the supposed 'secrecy' of the family courts but produces no evidence to support this. The Council is aware that some pressure groups assert that the family justice system is biased against fathers while others assert the opposite, that the courts are biased in favour of fathers. Some pressure groups also assert that the courts are unfair to parents of both genders. The membership of these groups is relatively small

and it is not at all clear how representative they are of the views of the wider general public. The Council would like to see the Government funding research into public perceptions of the family justice system which would provide a sounder evidence base for policy than is apparent in the consultation paper.

8. The Council has not sought to confine its response to the 'tick box' questionnaire format, requested by the Department, as it does not consider this to be an appropriate format for a consultation response on issues of this scope and complexity. However, the questionnaire is annexed (Annex 1) to this narrative and Yes/No answers given where possible.
9. The Council has sought the views of a panel of children on the issues raised in the consultation paper and these are summarised at Annex 2.
10. Turning to the specific issues raised, the Council agrees that, save for appellate proceedings, there are compelling arguments against admitting the public to family proceedings as of right.
 - Such an entitlement would serve no purpose in the public interest.
 - Such an entitlement would be contrary to the welfare of any children concerned
 - It would be impossible to police unauthorised disclosures to the public at large by individuals attending court. Public attendance would lead inexorably to the identification of any children or young people concerned in the proceedings. They would then be exposed to the real prospect of unwelcome attention in their community, within schools, places of worship, places of employment and generally in their everyday lives.
 - The presence of the public is likely to inhibit, and may even intimidate, family members and other non - professional witnesses.
 - Professional witnesses could face harassment by individuals or pressure groups attending proceedings for that very purpose.
 - A presumption of public access with a discretion to exclude would be burdensome upon judges, and likely to add to the length of proceedings.

- Attendance by any significant number of people would create logistical difficulties within an environment which was never designed for their attendance.

Question 1

11. In principle, the Council agrees that attendance and reporting arrangements should apply consistently across all family proceedings. However, the Council would exclude adoption proceedings from the media attendance and reporting provisions proposed on the grounds that the welfare of the child requires the utmost privacy and confidentiality in these cases and this outweighs any public interest in greater transparency.

Question 2

12. The Council agrees that, in principle, the media should be able to attend the majority of family proceedings subject to judicial discretion to exclude them where this is in the best interests of children, or vulnerable adults, or in the interests of justice. The Council, however, considers that the media should be excluded from adoption proceedings. Also, the Council does not consider that it would be appropriate to admit the media to conciliation meetings between parents and CAFCASS officers which are a key part of the process in child contact applications. Conciliation meetings are a form of directed negotiation and, given the sensitive and emotive issues discussed, absolute confidentiality and privacy is required to make them work. The Council would propose a statutory checklist to guide the exercise of judicial discretion attached at Annex 3.
13. The Council would also propose that media attendance at, and reporting of, family proceedings should be governed by a protocol, agreed with all relevant media organisations, covering such matters as anonymised reporting, accreditation (see para 20 below) and an absolute ban on 'door stepping' any persons involved in family proceedings whether as litigants, witnesses, experts, practitioners, court staff or judiciary. Breaches of the protocol must be punished by some effective sanction, such as withdrawal of the offending media organisation's accreditation and, therefore, their right to attend and report on proceedings.

Question 3

14. The Council agrees that persons, other than the parties and the media, with a legitimate interest should be able to apply to attend family proceedings. At present, it is not unusual for the judiciary, with the consent of the parties, to permit the attendance of individuals with a legitimate interest in the proceedings. Such individuals are most often family members but may include lay advocates, family friends, spiritual advisers, those performing a supportive role for parents or children, and professionals for whom court attendance is an essential part of their training whether judicial, medical, legal, or social work.

15. The Council welcomes the suggestion that such individuals should continue to be permitted to attend subject to the over-riding discretion of the court. The discretion should be exercised flexibly by reference to the checklist proposed at Annex 3, together with a consideration of the nature of any oral evidence to be given.

16. As the consultation paper states, each case will be different and must be approached on its individual facts. The presence of, say, a grandmother or a neighbour could, in different contexts, be wholly supportive or extremely destructive. The Council recognises that particular care may be required in cases involving members of some BME communities, where concepts of shame and honour, the powerful influence of extended family members and the involvement of local community and religious leaders may all be relevant factors to be taken into consideration. In these cases, being in the same room with several members of the extended family may be an intimidating experience for the parties and may adversely affect the quality of any oral evidence given by the parties or other witnesses.

Question 4

17. The Council agrees that the current restrictions preventing publication of information intended, or likely, to identify a child being involved in family proceedings should be extended to prevent the identification of adults involved in proceedings. The Council further agrees that the court should have the power to lift and review the ban where it is in the interests of justice to do so, for example where publicity is required in a child abduction case. In

the Council's view, the Government's proposals would give the courts wide powers to protect the anonymity of parties. However, it will be vital to monitor the effectiveness of the reporting restrictions in protecting anonymity. This is especially important where families might be more easily identifiable in their local communities because they are from religious and/or ethnic minorities or where they live in small towns or rural areas.

18. The Council agrees that the following matters should be considered by the courts in deciding what additional reporting restrictions to impose:

- The interests of any child or vulnerable adult
- The safety of parties and witnesses
- The interests of the administration of justice
- Where evidence is of an intimate, sexual or violent nature
- Where confidential information is involved and others attending would damage their confidentiality.

Question 5

19. The Council agrees that publication restrictions should apply only to the public at large and that individuals involved in proceedings concerning children can tell other specified persons in specified circumstances e.g. where a parent consults their MP or an advice agency.

20. However, the Council notes that very few prosecutions are made under the existing criminal offences relating to unauthorised disclosure of information in family cases. The consultation paper suggests that this is an indication of their effectiveness as deterrents. The Council considers that understandable reluctance on the part of the criminal justice authorities to be seen to apply criminal sanctions for disclosure of information, especially by journalists, may be a more likely explanation. This casts doubt on whether a new criminal offence will be effective in protecting anonymity in the family courts. Will the Crown Prosecution Service really prosecute journalists who, perhaps inadvertently, report cases in such a way as to make parties to family proceedings identifiable in their communities? For this reason, the Council would urge the Government to consider a system of accreditation and a protocol for media organisations reporting on family cases which can be

withdrawn for breaches of the protocol. This may be a more effective deterrent than a new criminal offence which will lack credibility because it is too draconian and, therefore, unlikely to be used. Please see paragraph 10 above.

Question 6

21. The Council agrees that adoption proceedings should be treated differently from other family proceedings and that once a placement order is made, the rest of the proceedings should be private. However, the Council would question the reasoning put forward in the consultation paper on this point. The paper suggests that adoption should be excluded from the proposals because they may deter prospective adoptive parents. The Council would submit that this implies that biological and step parents in other families, involved in other proceedings, may also find a media presence intimidating and a source of anxiety.

Question 7

22. The Council agrees that HMICA and CSCI inspectors, MPs and Lead Members for local authority Children's Services should be able to attend family proceedings subject to a judicial discretion to exclude them. The Council would propose that academics engaged on authorised research projects should also have a right to attend family court hearings subject to the same discretion to exclude. This would assist research into the workings of the family justice system and so advance the transparency agenda. The Council also suggests that persons wishing to attend family hearings for the purpose of education, whether as law or social work students, should, in principle, be admitted subject to a judicial discretion to exclude.

23. Given their status, the Council would anticipate that *all* such individuals would exercise appropriate sensitivity. For example, we would hope that they would see fit to absent themselves when evidence of an intimate or sexual nature was being heard, or if a party objected to their presence on reasonable grounds.

24. It is important that anyone attending a family hearing, whether by right or with the permission of the court, has a clear understanding that they hold a

privileged position which must not be abused by the disclosure of any information from the proceedings to others.

25. The Council anticipates that it will be necessary to examine the nature and extent of any processes which may be required so that, for example, the persons attending a hearing are identified and their names recorded. However, we have not given detailed consideration to those administrative and practical issues at this stage.

Question 8

26. The Council welcomes with enthusiasm the proposal that adults and older children, who have been the subject of family proceedings, should be able to access objective information about those proceedings, when, and if, they choose to do so. The Council would urge strongly that it is essential that appropriate arrangements are put in place to support the adult or young person accessing this material. The model of information provision in adoption cases is a good one and might usefully be studied as providing a basis for good practice in this area.

27. The Council does not believe that a short summary of the judgment, or simply the order itself, would be of sufficient explanatory value and recommends that full transcripts of key judgments be provided. In the Council's view:

- The person accessing the information is morally entitled, to a full and comprehensive account of the reasons why the court reached its decisions. Perhaps most obviously in care cases, but also frequently in private law disputes, the judicial decision is likely to have had a profound effect upon their life.
- As a matter of law, judicial decisions in family cases will usually engage the child's right to respect for family life. An inability on the part of the state to provide a reasonable record of the reasons for a decision which, say, permitted a child to be placed for adoption, may arguably be in breach of that individual's rights under Article 8.
- If the reasons for the decision can realistically be encompassed briefly, then the judgment will be short. If not, any summary is not likely to be sufficiently comprehensive.

- It would be a waste of scarce judicial resources to require a judge to create a summary in addition to giving a full judgment.
- The order, of itself, would reveal nothing of the court's reasoning process. It would be remarkably unhelpful to the enquirer to know only that a certain order had been made on a certain day. Nor does this suggestion represent any real improvement on the existing position.

28. Whilst welcome, the proposal in the consultation paper does not go far enough. It is not only children who want and need an objective record of the court process. There is a real opportunity here to improve the family justice system by the simple expedient of ensuring that, following the court's decision, a transcript of the court's judgment is promptly available in written form to the parties, to any child already of sufficient age and understanding and relevant professional witnesses.

29. The advantages are clear:

- A transcript provides a definitive complete and accurate record of the decisions and the court's reasoning process.
- As the consultation paper points out in the introduction, at page 10, "knowing why decisions are made that directly affect them, and for many, having access to a written record of the reasons why a decision has been made" is a significant issue for all those involved in these proceedings, not just for children. This, of course, includes parents and carers. It is also not unusual for members of the extended family, such as grandparents, to be closely involved and properly interested in the outcome of the court process.
- Others such as expert witnesses, CAFCASS officers, social workers and similar professional participants in the process may also be affected, by the terms of the court's judgment. They may be assisted greatly by access to a written record and the court's analysis of their contribution to the decision - making process.
- Parents, some with learning difficulties, some with mental health issues, all inevitably under considerable stress, are often unable to absorb all the nuances of an oral judgment. They need a document which they can read and reflect upon at leisure, assisted where necessary by their legal advisors.

- A transcript provides clarity in terms of the future management of the child's case. For example, professionals working therapeutically with the child can understand clearly the basis of the court's decision.
- A full and reliable record of the court's findings reduces the scope of future litigation, for example, in those sad cases where a parent undergoes sequential care proceedings as new children are born
- If the media is to have the facility to report cases as proposed in the consultation paper, it must have the complete accurate and impartial overview which only a published written anonymised judgment represents. There is undue scope for error in the reporting of an oral judgment as, for example, occurs repeatedly in the fanciful and inaccurate reporting of judicial sentencing remarks.

30. There will be very many hearings, including interim or procedural decisions, and in terms of final hearings, perhaps those related to the level of parental contact or agreed orders for residence, where the advantages of a transcript are so minimal that the court could dispense with the need for one. The Council, however, believes that a transcript should generally be produced in all contested care cases, in linked adoption cases and in private law cases where the court has made a significant decision or findings of fact.

31. The Council considers that it would be highly desirable for technology to be developed which might enable the courts to devise an alternative process to the giving of an oral judgment which is then painstakingly transcribed into written form and then corrected and approved by the judge. However, the Council is not aware of any obvious workable alternative currently on the horizon. Comparatively few judges possess the skills required to hand down judgments, routinely, which they have personally word processed, and even fewer have the time which would have to be set aside to enable them to do so. One possibility is the increased use of voice recognition systems but, at present, even the best produce documentation which still needs extensive checking and amendment. The Council is not clear as to what is meant by an "accessible recording held on the court file" but the objections to simply retaining the tape of a hearing are manifest. Finally, whatever system may be developed for the future, it is vital that the judge personally approves the final version so there can be no scope for future disputes as to its terms.

32. Family cases which require the intervention of the courts are frequently difficult and painful. Once they have reached the point where a judgement is delivered, considerable financial and human resources have already been expended. It seems unfortunate that the minimal extra cost of producing and retaining a full record of that judgment should preclude a better outcome for the families involved.

33. These observations do not, of course, preclude the practice of social workers or CAFCASS officers in creating a “child friendly” summary of the court’s conclusions, appropriate to the child’s age and understanding, which might be useful by way of “life story” work or for the general purpose of enhancing a child’s understanding of the court process. However, the creation of such a summary is clearly a social work and not a judicial task.

Question 9

34. The Council recognises that:

- There is likely to be an increasing reluctance on the part of professional and expert witnesses to participate in court proceedings if they are to be subjected to the scrutiny of the media. This could lead to increasing delay in dealing with some family cases.
- It is important not to under-estimate the additional judicial time which will be required to deal with applications in relation to media and public attendance and media reporting. A significant volume of such applications is inevitable, at least until practice and procedure is established.
- The provision of transcripts would involve additional costs.
- The provision of support for individuals who wish to access the transcript of proceedings in later life is important and will involve costs which are difficult to quantify.
- The issues in relation to the physical suitability of some court accommodation if the media is to be permitted to attend are very real. Many courts, particularly those for District Judges, can barely accommodate the parties and their advisors.

35. The Council sees considerable merit in the Department piloting these proposals before attempting to roll them out nationally. Moreover,

consideration might be given to piloting initially the provision of anonymised judgements to the media and monitoring the use of these by the media, before allowing media into the courts. At this stage it is impossible to identify fully all the practical and cost implications. Further cost benefit analysis is required to identify whether the advantages of greater transparency will outweigh the financial and time resources consumed. It will be important to quantify the costs more robustly than the provisional estimates made in the consultation paper. Diverting resources from hearing and disposing of cases risks increasing delay which is particularly undesirable in cases involving children. The Council feels strongly that however laudable, and desirable, the proposal to provide better later life information is, it can work only if it is to be funded adequately.