

The Children's Commissioner
for England's report on:

The views of children and young people regarding media access to family courts

March 2010

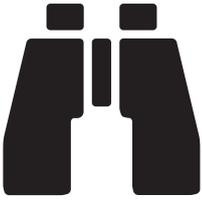


MILLION



Dr Julia Brophy

The Oxford Centre
for Family Law and
Policy Department
of Social Policy and
Social Work
University of Oxford



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1. Who are we

11 MILLION is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson.

The Children's Commissioner is a position created by the Children Act 2004.

The Children Act 2004

The Children Act requires the Children's Commissioner for England to be concerned with the five aspects of wellbeing covered in Every Child Matters – the national Government initiative aimed at improving outcomes for all children. It also requires us to have regard to the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC underpins our work and informs which areas and issues our efforts are focused on.

Our vision

Children and young people will be actively involved in shaping all decisions that affect their lives, are supported to achieve their full potential through the provision of appropriate services, and will live in homes and communities where their rights are respected and they are loved, safe and enjoy life.

Our mission

We will use our powers and independence to ensure that the views of children and young people are routinely asked for, listened to and that outcomes for children improve over time. We will do this in partnership with others, by bringing children and young people into the heart of the decision-making process to increase understanding of their best interests.

Our long-term goals

1. Children and young people see significant improvements in their wellbeing and can freely enjoy their rights under the United Nations Convention on the Rights of the Child (UNCRC).
2. Children and young people are more highly valued by adult society.

Policy priorities

Keeping children safe from harm is one of 11 MILLION's policy priorities for 2010-2011. These are key areas in which we will influence emerging policy and debate.

For more information visit our website for everything you need to know about 11 MILLION: www.11MILLION.org.uk



1.1 Foreword

As Children's Commissioner for England, it is my job to ensure that the views of all children and young people, and in particular, the most vulnerable, are listened to by professionals and policy makers who make decisions that could change their lives.

Last April following representations from journalists and others the Government changed the rules to permit the media to attend family hearings. There are current discussions in Parliament as part of the Children, Schools and Families Bill to allow journalists to report more widely on cases.

Family courts deal with a number of issues including child support and disputes between parents about residence and contact with children, restraining orders or the welfare needs of children who have, or are at risk of suffering significant harm in parents' care.

For any child or young person a family court case is an extremely unsettling time. Their parents could be going through a divorce, they may have been physically abused or neglected by a parent. These scenarios result in a child's home life being severely disrupted.

Intimate details about these children and young people's lives, although anonymised, could appear in newspapers, on websites, radio or TV. It is therefore only right that their views are included in the current debates about the information that the media can place in the public domain.

For our research, we spoke to more than 50 children and young people, and what they said raises a number of serious concerns. The overwhelming view was that reporters should not be allowed into family court proceedings because the hearings address matters that are intensely private. The events discussed are painful, embarrassing and humiliating and the children and young people said their deeply personal details were the business of neither newspapers, nor the general public.

They did not trust the press to get the facts right and felt strongly that articles would be sensationalised. They were worried about being identified and fear being bullied as a result.

It is of great concern that the children and young people said that if a reporter was in court to hear the evidence, they would not speak freely to professionals charged with undertaking assessments. This could seriously impact on a judge's ability to make difficult and often life changing decisions in the child's best interests.

Although I, and the Interdisciplinary Alliance for Children, a coalition comprised of over twenty children's organisations, support the principle of more open family courts, I strongly believe there are more workable and sensitive solutions that would better safeguard a child's identity. We look forward with interest to the outcomes of the Family Court Information Pilots to test whether judges should publish an increased number of summaries of anonymised judgements.

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In addition the highly successful open days that have taken place in some London courts, where the public were able to meet with court staff, judges and magistrates, ask questions and engage in mock proceedings, demonstrate that alternative ways of informing the public are effective and valued.

Serious consideration is now needed to ascertain who the beneficiaries are and who would be most adversely affected in any decision to amend the reporting restrictions that currently apply to cases concerning children.

Article 12 of the United Nations Convention on the Rights of the Child states that children should have a say on decisions that affect their lives and article 43 says the law should protect children's private, family and home life. It is critical that these rights are adhered to so that children's rights are not breached when a decision is reached on the rules surrounding media access to family court proceedings.

Whatever the way forward, the Government must proceed with immense caution because of the impact the decision will have on the future of so many children and young people.

My sincere thanks and appreciation goes to the children and young people who so willingly shared their views with us.

I am especially grateful to Dr Julia Brophy at the University of Oxford for her commitment and dedication in bringing this project to fruition.

A handwritten signature in black ink that reads "ME Atkinson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Dr Maggie Atkinson
Children's Commissioner for England

1.2 The author and research team

Dr Julia Brophy with Julie Doughty, Dr Jagbir Jhutti-Johal, Charlie Owen, Joyce Plotnikoff, Dr Lesley Scanlan, Judy Tomlinson and Deborah Turnbull.

Dr Julia Brophy was the project director and is a senior research fellow at the Oxford Centre for Family Law and Policy, Department of Social Policy and Social Work, University of Oxford.

Children and young people interviews were conducted by the author and Dr Jagbir Jhutti-Johal (researcher and lecturer, School of Philosophy, Theology and Religion, University of Birmingham); Julia Doughty (research and teaching associate, School of Law, University of Cardiff); Joyce Plotnikoff, (senior researcher and consultant in Management, ICT & the Law, Lexicon Limited); Dr Lesley Scanlan (freelance researcher); Judy Tomlinson (Independent Social Worker); Deborah Turnbull (lawyer and independent researcher). Deborah was also the project coordinator, playing a key role liaising with local authorities, participation teams and youth workers referring children and young people to the project, appointing interviewers); Charlie Owen (Senior Research Officer, Thomas Coram Research Unit, Institute of Education, University of London), was responsible for data entry and statistics. Gloria Holligan was the project administrator.

Acknowledgments

First and foremost thanks go to the children and young people who participated in this study: for their time in fitting us into busy schedules and their willingness to address difficult issues. Their honesty, thoughtfulness and challenges were impressive, as was their desire to do something to help other children facing family court proceedings and to provide information to help the judges and professionals charged with protecting them.

We are heavily indebted to colleagues in the family justice system for assistance with this work. Special thanks go Carol Edwards, Dr Danya Glaser and Joyce Plotnikoff who at very short notice worked with us on refining the research tools, and to Jane Robey (National Family Mediation) and Alex Clark and the Family Justice Council.

Thanks are also due to colleagues in Local Authority Children's Services and participation teams, project workers and social workers, and to the National Youth Advocacy Service and Youth Works Consulting for facilitating contact with children and young people; also Helen Oakwater and Jonathan Pearce (Adoption UK). We are especially grateful to Emma MacManus and to Adrienne Katz, who so generously shared her contacts and expertise in consulting with young people. Thanks also to Syd Bolton.

We are indebted to Kate Aldous for the illustrations used in the vignettes, and to the Principal Registry of the Family Division and Caroline Little for facilitating these. We are grateful to the advisory group: Sue Berelowitz (Chair and Deputy Children's Commissioner for England); Carol Edwards (clinical psychologist, family therapist children's guardian and trainer, Joyce Plotnikoff (Director, Lexicon Ltd - consultancy, research services, researcher in civil, criminal and family jurisdictions); Dr Danya Glaser (Consultant Child and Family Psychiatrist – GOS/FJC); Jane Robey (Chief Executive, National Family Mediation); Caroline Little (Co-Chair, Association of Lawyers for Children); Jonathan Pearce (Director, Adoption UK); Alison Ronouf (Strategy and Development – CSF, LB Camden); Elena Fowler, (Chief Executive, National Youth Advocacy Service), Amy Smythe (NYAS, Youth Group); Mike Lindsey (Children's Rights Alliance for England); Nicola Wyld, (Voice); Roger Morgan (Children's Rights Director for England).

Our thanks also go to Sue Berelowitz, Deputy Children's Commissioner, who was a constant source of support and inspiration in working with children and young people.



2. Executive Summary

This report is based on an independent study of 51 children and young people with experience of proceedings¹ and seeking their views regarding press access to and reporting of family proceedings. Respondents are drawn from a range of geographical areas in England and interviews were undertaken between November 2009 and January 2010.

The framework for this study is three fold. First, debates about ‘openness and transparency’ in the family just system, and recent changes in the Rules to permit the media to attend family court hearings; second, further proposals contained in the Children, Schools and Families Bill to extend the information that can be reported from cases concerning children; and third, concerns about the impact of those changes on children and young people in the context of their rights under Article 12 of the UN Convention of the Rights of the Child 1989, and General Comment No.12 (2009)

The study is unique on several levels but primarily because in exploring the views of children and young people it provides a context in which participants can express their views by using ‘real’ cases (vignettes) to explore the issues.

This ‘real life’ methodology allows participants to focus on real situations in proceedings concerning children in a more complex, reflective and discursive manner. It moves beyond opinion survey methods allowing space for conditional responses, reasons and justifications for views, caveats, and additional views.

This has provided information that is more reliable in terms of children and young people’s experiences. For policy and practice needs, it provides an evidence-based approach that is more reliable than information based on survey questionnaire or opinion survey research.

Reporters in court

- Almost all of the children and young people (79% in the public law sample, 91% in the private law group) were opposed to the decision to permit reporters into family court hearings.
- The major reason for this was because the children and young people said that court hearings address issues that are ‘private’. They concern events that are painful, embarrassing and humiliating for children and an overwhelming majority said this detail was not the business of newspapers or the general public.

Children’s safety and welfare

- Findings indicate substantial problems are likely to arise for children and young people and indeed clinicians and thus family courts, with serious implications for children’s safety and welfare.
- Almost all the children and young people interviewed (96%) said once children are told a reporter might be in court they will be unwilling or less willing to talk to a clinician about ill-treatment or disputes about their care, or about their wishes and feelings.

¹ See Chapter 11, Methods (over 90% had experienced either private or public law proceedings).

- Where children young people are unwilling or unable to talk about what has happened to them, family judges and magistrates may be faced with making difficult and often life changing decisions about a child in the absence of, or with incomplete, 'sanitised' or changed evidence from children and limited or no information from clinicians about children's wishes and feelings.

Ethical integrity

- Children and young people said clinicians must inform them about press access to hearings at the start of an interview and before any substantive issues are addressed. This will enable young people to make informed choices about whether or how to proceed; they said any other approach would be dishonest and a betrayal of children's trust.
- This raises a range of concerns regarding compliance with Article 12 of the UN Convention on the Rights of the Child (UNCRC) and General Comment 12 (2009), which provides guidance on the conditions to realise the rights of children under Article 12 of the UNCRC.

Publishing information from cases and judgments

- Children and young people felt much of the information about them (their age, schools, interests and activities, religion, etc.) and about the content of cases, by their very nature, would allow for the identification of families. Indications are that young people have different views to some adults regarding what information could or should be published.
- They are unconvinced that formal rules prohibiting publication of identifying information will automatically protect them. They do not trust reporters and felt information would get out, allowing them to be identified, shamed and bullied.
- Most children questioned about a sample judgment said children would not be happy for any information in the judgment to be reported in newspapers (79% in the public law group and 91% in the private law sample).
- A minority of children in the public law group (33%) felt some information from the sample judgment could be published. Without exception these children selected statements vindicating children of blame or responsibility for events leading to care proceedings: they wanted it known that they were not 'bad' or 'naughty' children and that they had done their best in awful circumstances.
- With regard to any information in the judgment that might be helpful for the general public to know, most children (and 91% in the private law group) said 'no' to making information public and some were either doubtful or cynical of a public education role on the part of newspapers.
- In the public law group 48% selected some statements as acceptable for public consumption – again only those regarding a lack of fault or blame on children for the decision to place them in care. That was the extent of information children and young people in this group felt it might be helpful for the general public to read about.

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Views about children's rights to privacy

- The views of children and young people regarding their privacy and implications for their safety (notwithstanding respect for private and family life under Article 8 of the European Court of Human Rights) - is different to that articulated by some adults and policy makers.
- Young people said judges and magistrates should seek the views of relevant children before deciding whether to admit the press to a hearing.
- This view, coupled with children's rights to be heard in any judicial and administrative proceedings (Article 12, UNCRC), indicates welfare and legal representatives must seek their views in preparation for a hearing.
- Objections to parents talking to the press about a case (even though children should not be identified in reporting) were strongest in the private law group: 92% objected to this during proceedings, 45% after (those who thought parents could talk to the press after completion added conditions).
- In the public law group 37% said parents should not be permitted to talk to the press during or after cases were completed; following completion, 41% felt parents could but added further conditions.
- Almost all young people (96%) said where children are capable of expressing an opinion parents should seek their permission before talking to the press.

Children and young people's views about the press

- Children and young people said the press sensationalise information, or construct bold headlines that do not reflect the content of cases, and will 'cherry pick' bits of information. They are mostly doubtful that the press will print a truthful story and are doubtful - some cynical - about an educational function.

Children fear 'exposure'; they are afraid that personal, painful and humiliating information will 'get out' and they will be embarrassed, ashamed and bullied at school, in neighbourhoods and communities. This expectation is not limited to children in rural communities and is particularly relevant for those from ethnic minority communities. They also appear unconvinced about the capacity of laws and adults to protect them.

Educating the public

Some children and young people did see a role for public education about family courts and especially for dispelling myths that children involved in proceedings and those in long-term foster care are somehow 'at fault'. However, they did not on the whole think these issues could or should be addressed by reporting from real cases, where the focus was on details that might put children at risk.

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Naming social workers, guardians, family court advisers and doctors in newspaper stories, and allowing reporters to read their reports

- Most children and young people said newspapers should not be permitted to name professionals – unless they agreed. As to whether there might be a public interest in doing this, most rejected that view – they said there were other ways to achieve this. Respondents were also strongly opposed to reporters having access to reports (e.g. 96% in the private law group). They said this would be a breach of their trust and privacy.

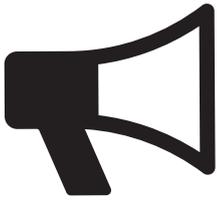
Evidence-based policy

- Certain caveats apply but data indicate that a key issue regarding media access to family courts has not been explored. This is the view of children and young people and their concerns about privacy and safety, and thus the practical impact of press access to courts.
- In those circumstances and where children already feel vulnerable and powerless, it is not perhaps surprising to learn that they may in effect ‘vote with their feet, ‘play safe, and say nothing’. That position needs careful and more detailed consideration.
- The right to be consulted is contained in Article 12 of the UNCRC, and the right to information is essential, because it is the precondition of the child’s clarified decisions (General Comment No.12 (2009).
- Nevertheless telling children and young people – but also not telling children - that a reporter might be in court has implications for their ability to express their views. Both responses may result in circumstances which arguably breach Article 12.

Key Recommendations

1. We would like for there to be an independent review of the rules on media access to children’s hearings in the context of Article 12 and General Comment 12 of the UNCRC. This review should include proper consultation with children and young people who are subject to proceedings and options and procedures where children are unable or unwilling to discuss issues.
2. Findings regarding the inability or unwillingness of children to talk about issues in the light of potential media attendance at court - coupled with children’s views about the very limited amount of information they think should be reported from cases requires serious and detailed consultation before further changes to law and practice are made.
3. Consideration should be given to the underlying motivations for naming professionals in the light of the views and impact on children in proceedings, and a review of whether the objectives in naming professionals could be achieved by other methods.

4. An independent review of the work of professionals (expert witnesses, social workers, children's guardians and family court advisers and children's advocates) regarding approaches to and the timing of informing children and young people about media attendance at hearings in the light of Article 12 and General Comment 12 of the UNCRC and underscoring professional ethics.
5. In the context of improving information about the family justice system, further attention needs to be given to user friendly educational materials about the system in general (for parties and the general public) and controversial issues. This could include websites for controversial topics (with relevant judgments, judicial speeches, research evidence and statistics), public newsletters from courts and an extension of family court open days.



3. The study

3.1 Introduction

This report presents findings from an independent study of the views of 51 children and young people² regarding press³ access to family courts in private and public law proceedings.⁴ It completes interim findings set out in an Interim Report to 11 MILLION in January 2010.

Historically most family cases and especially those concerning children have, for the most part, been private. This meant that usually only those involved in the case were permitted to be in court and have access to the documents filed in cases, and reporting of cases by journalists was not permitted or highly restricted.

This research follows a period of intense debate about ‘openness and transparency’ in the family justice system, how best to achieve this and the role of the media in that endeavour. Debate has focused on whether and how and under what conditions the media might be permitted to attend family court hearings, and most recently, what information they should be permitted to publish and whether they should have easier access to certain reports filed in cases.

It is not the intention here to rehearse the debate for and against these moves,⁵ these have been undertaken for and following consultation papers⁶ and in responses to a change of ministerial approach to this issue – despite concerns by some children, children’s charities and others regarding the impact on children and young people.

² Over 90% of which have experience of proceedings

³ In practice the debate covers newspaper, TV and radio journalists and access to family hearings is restricted to those who are ‘accredited representatives of the media’ (holding a press card from one of the organisations authorised by the UK Press Card Authority. For the purposes of this study with children and young people we have focused on newspaper reporters – in part, for simplicity and in part because indicators are that it is the printed medium and potential to post information from newspapers on to the internet that raised most concerns for young people. Thus where we talk about the research findings these are in relation to the newspaper press (we did not, by choice, ask our sample about TV and radio). However, many of the findings are relevant for the media in general (i.e. TV and radio reporting of proceedings). In this report when we refer to the questions and findings we refer to the ‘press’ – meaning newspaper reporters. In more general discussions about policy and law we use the term ‘media’.

⁴ Private law governs the relationships between individuals, thus proceedings in relation to children involve disputes between parents and others about, for example, where a child should live and how much contact she or he should have with the non-resident parent. Public law governs the powers and duties of local authorities and other organisations towards children and parents: proceedings address disputes between local authorities and parents regarding ill-treatment of children, and for example, contact with children looked-after by a local authority.

⁵ See for example responses to the proposals contained in the first government paper (Department for Constitutional Affairs (2006) Confidence and Confidentiality: Improving transparency and privacy in the family courts) in, Department for Constitutional Affairs (2007a) Confidence and Confidentiality: Improving Transparency and Privacy in Family Courts. www.justice.gov.uk/publications.

⁶ Improving Transparency and Privacy in Family Courts. Ministry of Justice (2008) Confidence and Confidentiality: Openness in Family Courts – a new approach (www.justice.gov.uk/publications)

The rules were changed in April 2009⁷ permitting the press to attend family court hearings in both private and public law cases. Further changes (which have not been the focus of a proper public consultation) are proposed under Part 2 of the Children, Schools and Families Bill.

Part 2 of the Bill is extremely complicated.⁸ In brief, the Bill proposes a two-stage process in relaxing the rules on what may be published from cases. In Stage one, certain things ('identification' and 'sensitive' information⁹) cannot be published (without consent of the court), thus children and parents should not be identified (and that will remain) but experts instructed within proceedings may be named.

However, Stage 2 of the Bill deals with deferred changes, these are designed to change the way in which 'sensitive personal information' acquired by observing or listening to a family court hearing is treated so that it may be published unless the court prohibits or restricts publication. So for example, the list of what is to remain confidential would be amended so that only 'identification information' would be confidential (but the identify of expert witnesses and possibly other treating clinicians may be revealed). Some personal information would be able to be reported 'as long as this was not identification information'. Stage 2 would thus remove the reference to 'sensitive personal information', the court could restrict publication (under 'condition 5 of the restrictions) if it was necessary to avoid 'an unreasonable infringement on the privacy of any person', and the standard of proof required before a court would restrict publication would be lowered.

The complexity of the proposals, their workability in practice and the implications for delay and cost is a matter of ongoing concern. What is less clear is the impact on children and young people who are the subject of proceedings. This is not simply a case of having to interpret and explain complex rules to children and young people but also their perceptions of what constitutes private information and their trust in legal rules and adults to protect them and their social and psychological identities at the most vulnerable time in their lives.

This study therefore explores issues about press access to family courts and publication of information from cases. Rather than asking about abstract principles or engaging what for some will be nebulous concepts, it does this by utilising a vignette exercise to work through 'real' cases with children and young people. This method affords them an opportunity to engage with the issues outlined above but in a concrete way that allows them to reflect on the needs and complexities for children and young people involved in proceedings, and to respond in a more nuanced and reflective way than has been the case to date.

⁷ Potter, Sir Mark (2009a) Practice Direction: Attendance of Media Representatives at hearings in Family Proceedings; (2009b) President's Guidance in relation to applications consequent upon attendance of the media in family proceedings.

⁸ For example, Clause 34, s. 34-37 sets out five conditions to be met by publishers.

⁹ This is defined in schedule 3, there are four categories: Information given by a relevant child, information relating to a medical, psychological or psychiatric examination and information relating to health care, treatment or therapy.

3.2 The sample

Respondents are aged between 9 and 23 years, the majority are between 11 and 17; they are overwhelmingly White British (96%). There are more females than males in the overall sample (59% are female, 41% are male).

3.3 The aims of the study

The aim of the study is to ascertain the views of children and young people to the various dimensions of policy in this field - both present, following changes to the Family Court Rules in April 2009¹⁰ which in principle permit the media to attend family court hearings, and with regard to further proposals to change legislation covering what information may be published from children's cases.¹¹ The study provides information to assist policy makers assessing the impact of changes on vulnerable children and young people in the context of issues of children's safety, rights to privacy and rights to be consulted on all matters affecting them and their willingness and ability to discuss/disclose parental treatment and to work with and trust professionals.

The study also aims to provide information to assist professionals and courts concerned about the impact on children's evidence where judges are expected to make what are frequently life changing decisions about their safety and welfare.

It is set within the framework of Article 12 of the UN Convention on the Rights of the Child (UNCRC) 1989, and General Comment No.12 (2009). Article 12 is the cornerstone of the Convention's insistence that children must not be treated as silent objects of concern but as people with their own views and feelings, which must be taken seriously. General Comment No 12 (The Rights of the Child to be Heard) sets out the conditions for realising those rights. Thus, a child should be freely able to express a view (without pressure, manipulation or undue influence) in conditions that take account of the child's individual and social situation, and in an environment in which the child feels respected and secure when expressing opinions. It also states the child's right to accurate information (to be informed about matters, options and possible decisions to be taken and their consequences (emphasis added)).

A key principal is that a child cannot be heard effectively where the environment is intimidating, hostile and insensitive.

3.4 The themes and questions pursued with children and young people

The broad themes and questions explored with children and young people through a vignette exercise were:

Preparing children and young people for possible press attendance: views about when parents and professionals (social workers, children's guardians, family court advisers, doctors (providing assessments as expert witnesses)) should tell children and young people about press attendance in court.

Reporters in court: views about whether reporters should be permitted to be in court and the likely impact on children and young people.

Publication of information from proceedings: what kinds of information from cases do children and young people think could be reported and what type of information should not be reported and the reasons underscoring this.

¹⁰ See note 5 above and Potter, Sir Mark (2009c) Speech to the Family Law Conference (16 October 2009)

¹¹ Children, Schools and Families Bill, Part 2 – Family Proceedings.

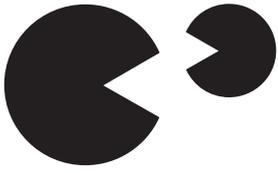
Press access to documents: views about whether press access to documents (reports and court orders) will influence children's willingness to discuss ill-treatment by a parent, experience of the breakdown of parents' relationship and disputes about their care, and their wishes and feelings.

What do children and young people think courts, other adults and policy makers need to know and understand about their position?

What would children and young people like welfare and legal representatives to tell the court when it is considering press access? What would young people like the court to consider - in terms of their rights to privacy, their concerns and the integrity of their social and emotional development, ongoing social relationships and social and psychological identities - when deciding whether to admit a reporter? What do children and young people want policy makers to consider when making decisions about this area of law and practice?

3.5 Preparing children and young people for the discussion

The method chapter in this report outlines the research protocol, issues of confidentiality, and the ethical and 'gate keeping' issues involved in the study. In short, once ethical approval for the study was obtained and access and consent and gate keeping issues were completed, information about the study was given to young people and interviews arranged. At the start of the interview time was taken to go over the leaflet and again explain the background of the study, the issues to be addressed and why their views are being sought. The current position regarding a ban on publication of information that would allow a child to be identified was explained – and reiterated during the interviews.



4. Clinical assessments of children and young people within proceedings

4.1 Use of specialist clinical assessments and report for courts

A major development in Children Act 1989 proceedings has been the use of expert clinical evidence. This work is crucial in enabling courts and parties to come to a decision about what is best for children where there are allegations of serious ill-treatment or where parents are in dispute about a child's care.

In public law proceedings where there are allegations of serious ill-treatment by a parent or others in a family, research demonstrates most cases (about 90%) involve some expert evidence.¹² This evidence comes primarily from child health specialists (paediatricians, child and adolescent psychiatrists, and psychologists) with child psychiatrists and psychologists providing much of the reports.¹³ Their assessments extend the information provided by social workers who are not clinically trained. In addition to extensive NHS clinical work with vulnerable, sick, injured and disturbed children, many doctors have substantial experience in assessing vulnerable children for the purposes of family proceedings.¹⁴

A major concern by key stakeholder organisations and others regarding media access to family hearings is the impact on children and young people and their ability or willingness to talk to doctors about ill-treatment (i.e. non-accidental physical injury, sexual abuse, and physical and emotional neglect). While the work of clinicians is crucial to the work of family courts, they in turn are dependent on what children and young people are willing and able to discuss. Information from children is critical to courts in ensuring their interests are paramount in court decision-making, and their wishes and feelings and physical, emotional and educational needs are considered along with any harm they have suffered, and how capable each parent is of meeting a child's needs.¹⁵

¹² Brophy et al; 2003; Brophy 2006

¹³ Brophy et al 1999a; 2006

¹⁴ Brophy et al. 2001

¹⁵ s.1 (1); s.1 (3) CA 1989; S.1 (1) (a) – 'When a court determines any question with respect to the upbringing of a child...the child's welfare shall be the court's paramount consideration'. Section 1 (3) (a-g) sets out a checklist of matters which must be considered by the court when a decision is being made, for example '(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding) and (b) his physical, emotional and educational needs'. The checklist applies in both private and public law proceedings.

Doctors instructed in proceedings have to tread a careful path. They have to create a 'climate' in which highly vulnerable children and young people feel sufficiently safe to talk about painful and often humiliating treatment by parents. But they must also explain limitations to confidentiality for this exercise as this is prescribed by law and work with minors and the Children Act 1989.¹⁶ In a short time frame they must establish their own ethical integrity with children while also developing rapport and trust and demonstrating empathy.

Research indicates that in most cases children and young people have been able to extend the limits of confidentiality to include the family court, arguably in the knowledge (pre April 2009) that this was a largely private arena where only those involved in the case would hear the evidence and have access to the report. Clinicians note however that there are issues, which may be of importance, and which a parent or child may not wish to discuss and that is a known limitation to the process.¹⁷

¹⁶ Information and guidance on good practice and ethics when working with children and young people are contained in General Medical Council guidance documents. See: http://www.gmc-uk.org/guidance/good_medical_practice.asp

¹⁷ E.g. Glaser, 2009.

4.2 How do children and young people subject to proceedings usually feel about talking to a doctor during family proceedings?

There is little research evidence about children's views and experiences of being assessed by clinicians in the context of family proceedings. We therefore began the vignette exercise by asking respondents whether children and young people would be worried about talking to a child psychiatrist or psychologist about ill-treatment by a parent, or the breakdown of their parents' relationship, and their own wishes and feelings:

- Overall, almost all respondents said children and young people would be worried about talking to a doctor about what had happened to them in their family (93% in the public law group, 96% in the private law group)..
 - Many said children would be anxious (47% and 50% respectively)
 - Over a third said children would be frightened (38% and 36% respectively)
 - Many also said children would feel ashamed and embarrassed (29% and 50% respectively)
- Respondents also said children and young people would be worried about letting a parent down at this interview (48% in the public law group said children would worry about letting their mum down; 27% in the private law group said they would be worried about letting both parents down).

“They'd be worried - they wouldn't want to talk about it, they'd want to keep it to themselves.”

Male, 13 years

For example, with regard to children subject to care proceedings, respondents added:

“... you wouldn't want to talk to anyone, you wouldn't want to share it with the doctor “cos it's private stuff - it's personal!”

Male, 14 years

“They'd be frightened and ashamed – they wouldn't want to talk about these things...” **Female, 14 years**

“This is the last thing [abused children] would want to do...”

Female, 16 years

- Where mothers experienced serious mental health problems, children are likely to approach this interview with additional fears for their Mum and her welfare and safety. For example:

“... [the young person] would be upset, frightened, ashamed, embarrassed, guilty – and worried about letting her mum down – a bit of all these things.”

Female, 16 years

“It's their mum – so [they] would be worried about letting her down.”

Male, 12 years

- Older children may also carry a sense of guilt and anger because they have been unable to protect a younger sibling from a parent. Respondents said the prospect of assessment by a doctor could increase their anger because yet again they feel powerless to protect a sibling - this time in the face of an interview with a stranger and where the outcome is unknown. That background may result in a decision to say as little as possible to a doctor – at least until a level of trust can be established.

4.3 Issues of trust and betrayal: The best time for a doctor to tell a young person that a newspaper reporter might be in court

- Overall, almost all of the children and young people (over 94%) said children must be told at the beginning of a clinical assessment that a reporter might be in court to hear the evidence. They said that was ‘the right’, ‘the honest’ thing to do.
- Most said the doctor should tell the child or young person right at the beginning (56% in the public law group said this, 59% in private law group), others said doctors should tell a little in to the discussion – in an introduction, once a child had been settled (and most said the child would need settling and reassurance) - but importantly before any substantive issues were raised: ‘before any private stuff was said’ (88% in public law, 96% in private law said this).
- For most young people this is a simple question of honesty and truthfulness with children, but also one of their safety. Children must be informed a reporter might be in court to hear the evidence at the beginning of the clinical interview. For example,

“She has to be told right at the beginning so she knows what will happen.”

Female 16 years

“If she is told at the end – that would be a betrayal,”
Female 16 years

‘If [children] are told right at the beginning then if they don’t want to say anything they don’t have to – instead of dropping it in like a bombshell at the end.’

Female 14 years

“They must be told at the beginning – but they may not [then] say anything – and they may not say what they need, and they may change what they say – or say nothing.”

Male 13 years

“They should be told right at the beginning – but if we are told at the beginning, we wouldn’t talk about it.”

Male, 12 years

- For almost all respondents the timing of this information was non-negotiable; they were emphatic: doctors should tell children and young people at the beginning of the session and before any personal or substantive issues were addressed. Even when reminded that any subsequent coverage of proceedings in a newspaper should not identify the children, this did not impinge on views about the responsibility of doctors to tell children at a stage where children could make informed choices about whether or how to proceed. One young person put it very succinctly:

“...they have to be told. When to tell is a very hard question. If told – and they should be – at the beginning, children will not want to say anything. If they are told later or after [discussing what’s happened to them] that would be too late and a betrayal of children’s trust – yet the doctor needs as much information as possible to help the child.”

Female, 15 years

4.4 Press access to hearings: would being told a reporter might be in court affect the ability/willingness of children to talk to clinicianst?

- Almost all of the children and young people (96% in the public law sample and all those in the private law group) said being told that a reporter might be in court to hear the evidence, would impact on what children and young people are willing to say to clinicians:
 - In the public law sample, almost all respondents (86%) said children would be unwilling or less willing to talk about their own ill-treatment, their wishes and feelings, or their mother and her failures/problems. Some 52% also said children would be unwilling or less willing to trust the doctor.
 - In the private law sample, almost all respondents (96%) said children would be unwilling or less willing to discuss their experiences of family breakdown; 64% said children would be unwilling or less willing to talk about parents. Some 55% also said children would be unwilling or less willing to trust the doctor.

For example, in the public law group young people argued:

“Its far too personal...I wouldn't want a newspaper to know about it.”

Male, 11 years

“Some things ...certain things should not be shared with [the press].”

Male, 17 years

“You'd be concerned about whatever you said, that it would go against your Mum and Dad.”

Male, 17 years

“[They] would be unwilling to talk about mum if it's being put in a newspaper... we don't want.... I think it would be showing mum up.”

Male, 12 years

“The [press] will report bits – what they want to write, they will pick [select] bits.”

Male 11 years

“You wouldn't want to tell anyone, you'd be feeling pressures from both parents, [but] you wouldn't want to take sides.”

Male, 15 years

“If you know it's going to be in the paper you would not say anything too strange or embarrassing.”

Female, 13 years

And in private law proceedings concerns for parents again surfaced:

“You'd be afraid of making it worse.”

Female, 12 years

“...Children would be worried you might make it worse and get them [parents] in to trouble.”

Male, 11 years

- With regard to the impact of a potential press presence on children and young people's willingness to trust the doctor, respondents argued:

“Children would be worried and scared and might not want to talk – you have to be able to trust the doctor before you can talk to them.”

Female, 13 years

“I wouldn’t trust the doctor. Once this stuff is out there [published] it’s to late [irretrievable]...I might not say something against Mum in case [other children] are taken off her.”

Female, 16 years

“Children will think about their friends and what people will say if a reporter writes about the case. [But] a doctor should do what you want – you can trust doctors. If children know things are going to be reported then a different relationship is created. The child will be worried about how the reporter will use her story, the reporter may twist things and tell it in an untrue way – they always do this [and] this fear will stop children from talking to the doctor.”

Female, 12 years

“...there would just be things [a child] would hold back.”

Female, 16 years

“Yes – it’s private stuff and I’d be concerned about it getting on the Net.”

Male, 15 years

- Several young people said this development indicated contradictory messages were being given to young people regarding privacy and confidentiality in their exchanges with doctors. For example:

“[A young person] would feel able to be more open with the doctor if a reporter is not allowed to be in court – he would tell the doctor more stuff...”

This young person continued:

“With other stuff – like sexual health [education] and talking to doctors - we’re told we can talk to the doctor because it’s confidential, it’s private. Then this doctor’s suddenly telling you it’s not.”

Male, 14 years

One young person was not sure whether children should be told a reporter might be in court. She was concerned about the possible consequences of any newspaper story for a young person’s future relationship with her mother and thus the dilemmas a young person may face:

“She might get angry and not talk to the doctor, and it might also make her angry with her mum - because she has to go through this case and the possibility of [press coverage] because of the behaviour of her mother.”

This young person, like other respondents, went on to talk about the impact of what a child would be able/willing to say if told at the beginning of the assessment:

“...She might change her story because she’s afraid her mother might get angry with her if she reads a newspaper story about the case and realises her daughter has said things.”

Male, 12 years

4.5 If told a reporter might be permitted to read a doctor's report, would that affect what children are willing to tell a doctor?¹⁸

- Almost all children and young people (90%) said being told a reporter might be able to read the doctor's report would also affect children's willingness to talk to a doctor:
 - In the public law group, most (89%) said children would be unwilling or less willing to discuss ill-treatment, wishes and feelings, any problems they were having at school, or to discuss a parent. Some 52% said children would also be unwilling/less willing to trust the doctor.
 - In the private law group, all respondents said this information would result in children and young people being unwilling or less willing to talk about their experiences, what they wanted to happen next, and any problems they were having at school. Some 88% said children would also be unwilling or less willing to discuss parents, and 36% said children would also be unwilling or less willing to trust the doctor.

"If children at school find out about the case – there are bullies around school and they're going to get bullied."

Female, 14 years

For example, young people said:

"They'd speak if they didn't know - but they have to be told - and then they will not talk about [ill-treatment] or what they want – or about their mum if it might be in a newspaper...and they'd be unwilling to trust the doctor."

Male, 12 years

"It's bad enough this has happened in your family, but for information to be published around...you're just going to stop and say nothing."

Female, 16 years

"The only reasons you can talk to [the doctor] is that it's confidential, if that's gone, there is no trust."

Female, 16 years

"It's their life! Why should anyone know about it? With celebrities, it's their choice [but] children are not in court through choice – they have no choice!"

Female, 15 years

"...young people will not talk - he might feel the doctor is linked with the reporter."

Male, 17 years

"...[This is] difficult [because] the doctor needs to know how to make [children] safe."

Male, 13 years

"...I'd be very worried about [information] getting on Facebook – and on the Net and that."

Male, 14 years

"Doctors are meant to treat issues in confidence – and it's not anyone's business!"

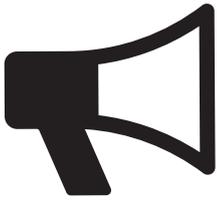
Female, 15 years

¹⁸ Bearing in mind that any subsequent reporting should not allow for the identification of the child

- Two young people were unsure about the impact of press access to reports; one felt that in order not to have a negative impact on a child's willingness to discuss things with the doctor, the doctor would have to go into detail about what the reporter was there to do and how. Another said if the doctor explained fully just how much the reporter would get to know 'from just sitting in court', then a young person might be slightly more willing to go into some detail with the doctor - but not if the reporter was given access to the report.

4.6 Key findings

- Findings indicate concerns about the impact of press access to court hearings on the ability or willingness of children and young people to talk to doctors are justified.
- Children are already likely to be worried about these assessments, facing them with varying degrees of anxiety, fear, and anger. Most are also embarrassed and ashamed – albeit through no fault of their own. They are also already afraid of letting parents down, and fearful about the impact on future relationships.
- Children and young people said doctors must tell them that a reporter might be in court to hear the evidence and they must be told early - before any substantive issues are addressed; any other approach would be a betrayal of children's trust by doctors.
- However, indications are that this information is likely to have a substantial impact on what children and young people are then able/willing to tell doctors - about parental ill-treatment, the impact of disputes between parents, and their own wishes and feelings.
- These responses indicate a reduction – and if findings are replicated in larger samples – a dramatic reduction in the capacity of clinicians to safeguard children by providing the court with crucial information.
- Family courts may face having to make crucial decisions about children, where their evidence and wishes and feelings are either missing, changed, incomplete or 'sanitised' by a child or young person in an effort to protect him/herself - and perhaps a parent - from the gaze of the press.



5. Reporters in Court: the views of children and young people

We moved into the courtroom scenario with respondents and with supporting information and text, asked respondents a series of questions about the case and what they thought should happen.

5.1 Do young people think the press should be permitted to attend family court hearings concerning children?

- Almost almost all children and young people said the press should not be permitted to be in court to listen to children's cases (79% in public law, 91% in private law).

"No – there's [already] a lot for [children] to deal with."

Female, 14 years

"Its up to people – how they feel, they should have privacy. If I was the mother: I've done wrong and [neglected the children] - but I wouldn't want the whole world to know."

Female, 14 years

"No it's too private. Even if the child is not named [in a newspaper story] it should be up to the children and young people to decide in each case."

Female, 14 years

"No, it's none of their business! If reporters are permitted to be there – the family should have a choice."

Male, 11 years

"No, it's none of their business."

Male, 12 years

"No – and if [they are], families should have a choice."

Female, 15 years

"No it's too private – even if the children are not identified in a story."

Female, 14 years

"No No - it's private stuff."

Male, 14 years

– One young person in the private law group felt press coverage of a dispute might result in some sympathy for the child or young person involved. However, most other young people strongly disagreed; rather than sympathy they said it was far more likely a young person would be teased and bullied if information about parents' disagreements became known. Most respondents said embarrassment, shame and a fear of bullying was what most children feared from press coverage. One young person said children went to great lengths to keep family breakdown out of the public gaze:

"...they would not even want to discuss this with their friends."

5.2 When should professionals and parents tell children and young people a reporter might be in court?

- In public law proceedings most respondents (67%) said the social worker should tell children and young people about press access to hearings, 26% said their foster parent should tell them and 30% said their lawyer should also ensure they are informed:¹⁹

“I think the social worker should tell them...I trust my social worker to look after me.”

Male, 11 years

- In private law proceedings, most young people (74%) said where children are living with their mother, she should tell them a reporter may attend court, 35% said a non-resident father should do this and 13% said both parents should tell their children. Some 26% said the family court adviser should also inform children and young people.
- Overall most respondents (70% in the public law sample and 83% in the private law group) said professionals and parents should tell young people as soon as possible: at the beginning or a little into a discussion about forthcoming proceedings.

5.3 Should judges or magistrates seek the views of children and young people when deciding whether to permit a reporter?

- Children and young people were unanimous about this: 96% in the public law sample and all those in the private law group said judges and magistrates should seek the views of children and young people when deciding whether to permit the press to attend a hearing. They should also ensure children have an opportunity to give their views ‘in private’ so these can be expressed freely without pressure from other adults in proceedings:

“Yes - absolutely.”

Female, 15 years

“Yes – but not in front of everyone; the judge should ask when children and parents are able to [freely] give their views.”

Male, 11 years

“Yes the judge should ask for their views – and in private so they are freely able to give their own views – outside of the eyes of other adults.”

Male, 12 years

¹⁹ It should be noted that a substantial proportion of children subject to care proceedings (indications are over 50%) are already likely to be living away from birth parents at the time of a care application (e.g. Brophy Brophy 2003).

5.4 Should parents be permitted to discuss a child's case with the press while it is ongoing – if the child is not named?

- Overall most children and young people said parents should not be allowed to speak to the press about their child's case while it was ongoing. Almost all children in the private law sample (92%) and 37% in the public law group said this should not be permitted:

"No they shouldn't – I wouldn't want that."

Male 11 years

"No – the papers will exaggerate sometimes, like, the press will make it up - make it more sensational."

Male, 11 years

"No, - papers exaggerate things."

Male, 12 years

"No, the press will sensationalise..."

Male, 12 years

"No – and courts should protect children by telling parents not to discuss the case with the press."

Male, 14 years

- In the public law group 52% said parents should be permitted to talk about the case - provided children could not be identified:

"Yes it would help them write more, and it's her story – she knows the truth."

Male, 12 years

"Yes, to say her story."

Male, 11 years

'Yes – it would help them to write [about it] and it's her story...'

Female, 16 years

- A small number of respondents were unsure about whether this should be permitted: one worried 'because she [the mother] might lie', the other felt 'the mother should first obtain the child or young person's permission'.

5.5 Should parents be permitted to discuss a child's case with the press once a case is completed - even if the child is not named?

Children and young people were more divided about this issue

– In the private law group 45% said they should not, 15% felt that perhaps they could - with certain conditions; others (16%) said it would depend on whether their children agreed to this.

– In the public law group respondents were also divided, 41% said parents should perhaps be allowed to talk to the press once a case is completed, some 37% felt they should not, the remainder were unsure:

“Yes – if she [mother] feels she wants to.”

Female, 14 years

“Yes because then [the reporter] would know the truth.”

Female, 12 years

“[No] I don't see why she needs to – it's like trying to sell the story. I wouldn't like that.”

Male, 17 years

“No, I wouldn't want that.”

Male, 11 years

“No - because its private!”

Female, 16 years

“No, it's not fair on the little people.”

Female, 13 years

“No – the judge has already decided [so] it wouldn't change anything.”

Male, 12 years

“No – she could try and change things.”

Female, 16 years

“It depends, if they have the children's consent it might be OK.”

Male, 15 years

“It depends –perhaps when things have settled down, and it's children so it may take a couple of years [to settle down].”

Female, 15 years

“I have some experience of this...it depends on the case, how the children feel...”

Female, 16 years

5.6 Where children are capable of expressing an opinion, should parents seek their permission before speaking to the press – even if children cannot be named?

- Respondents were emphatic about this (93% in public law, 96% in private law): where children are able to express a view parents should seek their permission before talking to the press about proceedings concerning their care and future:

“Yes – and their answer is most likely to be ‘No’.

Male, 11 years

“Yes, then they would know about it and [are prepared].”

Female, 16 years

“Yes [they] should involve them...they should not leave them out.”

Female, 14 years

One young person in the public law group discussed the situation where a child was living away from their mother (in foster care) because of parental ill-treatment:

“Because they are her children, it’s difficult, but it should be up to their social worker.”

5.7 Key findings

Reporters in family courts

- Almost all children and young people were opposed to allowing reporters into family court hearings (79% in public law and 91% in private law).
- The major reasons for this were that hearings address issues which children consider are private, they are usually painful, embarrassing or humiliating in content, and they are not the business of newspapers or the general public.
- Most said children are not involved in proceedings by choice; they have done nothing wrong and have a right to privacy.
- Even though they could not be named, respondents said that allowing the press to attend hearings and write stories would allow for them to be identifiable.
- They would then be teased and bullied at school and in local neighbourhoods and networks, and at a time in their lives when they are least able to deal with this.

Who should tell children/young person a reporter might be in court?

- In public law cases most children and young people (74%) said their social worker should inform children. In private law cases most (74%) said where children lived with their mother, she should tell them; 35% said a non-resident father should also tell them.
- Children and young people must be given this information at the beginning or at least a little into a discussion about forthcoming proceedings.

The role of family court judges and magistrates

- Given existing rules, children and young people said that when judges and magistrates are considering whether to admit a reporter they should seek the views of the child or young person concerned before making a decision.

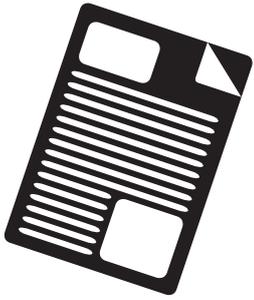
11 MILLION

The views of children and young people
regarding media access to family courts

March 2010

The freedom of parents to talk to the press about a child's case – provided children cannot be identified

- While private law cases are ongoing, almost all children and young people (92%) said parents should not be permitted to talk to the press – even though children could not be identified in any subsequent reporting.
- Once private law proceedings were completed, 45% said parents should still not be permitted to talk to the press about the case. Others wanted to attach further conditions including prior agreement of the child or young person.
- While public law cases were ongoing, 37% said parents should not be permitted to talk to the press. Some 52% thought they should - provided children could not be identified. Some struggled with the balance, concerned that a parent might lie to the press, or said prior permission should be obtained from the child or young person.
- Once public law cases were complete, 37% felt parents should still not be permitted to talk to the press; 41% felt parents should, provided children were not identified.
- Children's objections were based on the view that information about them should remain private. There was also a risk of parents changing information they gave to the press. And as the judge had made a decision, talking to the press would not change the result.
- Children and young people also do not trust the press with the information a parent might give them: they said newspapers exaggerate things and sensationalise information.
- Children and young people in both private and public law groups were almost unanimous (96%): where children are capable of expressing an opinion parents should seek their permission before talking to the press.



6. Publication of information from children cases

6.1 Factors contributing to failures of parenting in care proceedings

Research over some seventeen years of Children Act proceedings demonstrates that most care cases are complex; they involve multiple allegations of child maltreatment and multiple failures of parenting. 'Single issue' cases are rare.²⁰

Moreover, research indicates some 43% of all mothers subject to allegations of child maltreatment are likely to have serious mental health problems in addition to other problems contributing to failures of parenting. This finding on high levels of maternal mental ill-health has remained fairly constant throughout available studies.

With regard to types of child maltreatment, about 70% of cases are likely to contain allegations of physical and emotional neglect of a child, with evidence about the impact on the physical and emotional health and well-being of children, the physical conditions in the family home, and any impairment of children's educational achievements.²¹

In private law cases, reports address the intimate detail about the breakdown of the parents' relationship, perhaps the introduction of a new partner by one parent and protracted disputes about where children should live (residence) and how much time they should spend with the other parent (contact). Reports for the court (welfare and clinical) will address the impact of these issues on a child's emotional, educational and psychological well-being.

Moving to the final hearing of the cases in the vignette exercise and with an extract from the judgment, we ask a range of questions about information children and young people thought might be published, information they thought might be helpful for the public to know and why, about whether the press should have access to professional reports in the cases discussed and whether newspapers might publish the names of professionals,

²⁰ It See for example, Brophy 2006

²¹ Brophy 2006

6.2 How might young people feel about a reporter being in court to hear evidence concerning the impact of their mother's mental health problems and conditions in their home?

- Most children/young people in the public law sample said children would be very distressed by this: many said children would be upset (26%) and angry (33%); most would be embarrassed/ashamed (48%). Many would fear this information would get into the public arena resulting in teasing and bullying at school (26%); some (19%) said children would also be fearful for their mother. For example:

“They won't want them to – it's like telling a stranger your life story.”

Female 16 years

“They would be worried and angry at not being asked for their views about a reporter [being in court].”

Male, 11 years

“It would make the outside world understand but the outside world should only be given examples of a family... just made-up examples where no real people are involved – just to open people's minds but [Information] should not use actual court proceedings and actual children.”

Female, 15 years

“They'd go mental! Horrible to hear your Mum couldn't cope – not nice... They'd be angry and she wouldn't be comfortable knowing other people heard about what happened to [her children].”

Female, 14 years

6.3 How do children think the mother might feel, reading about her mental health problems and failures of parenting in a newspaper (even though she should not be identified)?

- Almost all young people in the public law group sample felt the mother would be distressed: 30% said she would be upset, 23% said she would be angry, 31% said she would feel guilty and 39% said she would feel ashamed and embarrassed. One young person added 'It could cause [another] breakdown... she might want to write something back'. Another said, “Horrible – [she's] not done enough for her kids, she'll regret it for the rest of her life.”
- One young person in this group thought the mother would be all right – she could cope with it.

“They'd be frightened this would get out and they will be bullied and scared.”

Male, 12 years

“Intruder! – It's a hard enough time for the children with everything going on, [without] having to think of people knowing about.”

Female, 16 years

6.4 How might children feel, reading about their parents' disputes in a newspaper (even though they should not be identified)?

- Most respondents in the private law group said children and young people would be upset (39%) and angry (22%) and embarrassed and ashamed (61%). Over half (52%) also said children and young people would be frightened that information about their family problems would 'get out' (into the public arena), and they would be bullied at school.
- Children said even if their parents were not named, others will know that they are having problems, 'they will be able to identify the parents from a story and [putting details together] they will be able to identify the children who will be embarrassed and afraid.'
- None of the young people in the private law sample felt children would be alright or 'OK' with this development, or that although upset, they could cope with it.
For example:

"Even if they are not named, friends will know – they'll be embarrassed and if people know – if they can identify the parents - they will be able to [identify] the children."

Female, 14 years

"No, children would not cope – because they [the press] will give more information – more detail."

Male, 13 years

"They would feel completely let down if they were not consulted first – and their health problems and behaviour may get worse."

Female, 15 years

"They would feel exposed – because their personal lives are now there for people to pick up and read."

Male, 15 years

6.5 Should reporters be permitted to read reports by social workers, children's guardians and family court advisers?

- Overall most children and young people were opposed to the suggestion that reporters might be permitted to read welfare and clinical reports (96% in the private law sample, 48% in the public law sample).
- The major reason for rejecting press access to welfare reports was because young people said these reports were private: 'its personal private stuff', 'no-one outside the case should be permitted to read it'. Children were also afraid information would get out via reporting, and people at school and in local neighbourhoods would find out.

“Yes, the reporter should be able to read the social worker’s report and the guardian’s report. . . because it will help the reporter understand the case better or give them information they will not hear in court - or help the reporter tell the full or true story.”

Female, 12 years

“Yes - if everybody agrees; he [reporter] shouldn’t have access when he wants, everybody’s got to agree [because] the reporter wants to get a good story, make lots of money.”

Female, 14 years

“No they should not be permitted to read them - because it will be all over the world.”

Female, 14 years

“No – its private! [Reports] should not be read by people outside the case – it will upset the children and their friends will find out.”

Female, 16 years

“No – I don’t see the need for a reporter to be in the courtroom. Although the names aren’t used, it seems like a breach of confidentiality. Some people could work it out – their classmates.”

Male, 17 years

“At the time they need to know all the facts to write something – but at the same time, its personal.”

Female, 16 years

“No – because social workers and guardians know an awful lot of what’s happened in your family - and quite a lot of it is embarrassing.”

Female, 16 years

“It’s none of their business.”

Female, 16 years

“Not without permission from the family court adviser and the doctor.”

Male, 11 years

“Yes – you’ll see their [social worker and guardian]’ point of view”

Male, 12 years

- A small number said it might depend on a reporter’s use of the information but they emphatic about the need to protect children and concerned that this provision will make children and young people less willing to talk to professionals.

6.6 Should newspapers be permitted to publish the name of social workers, guardians and doctors involved in care proceedings?

- In the public law group, the vast majority (70%) said reporters should not be permitted to publish the names of these professionals. On the issue of whether there might be a ‘public education/interest’ element to publication of names, most in the private law group were adamant: the press were not the vehicle to do this, young people argued.⁴

“...there were other ways to do that.”

Female, 15 years

- A small number (22%) in this group said newspapers should be permitted to publish the names of the social worker, guardians and doctors, for example:

“...because they had all tried to help.”

Male, 11 years

- In the private law group the vast majority of children and young people (79%) also did not think these professionals should be named by the press – or should only be named by choice/with the agreement of the professional; 13% felt they should be named.

6.7 What information from a sample judgment do children think could be published in a newspaper story?

- In deciding contested issues judges and magistrates set out the issues in cases and their reasons for coming to a final decision. Using an extract from a judgment (one in public law proceedings, one in private law) we asked young people what information they thought the children in the cases might be happy for a reporter to use in a newspaper story.
- With children and young people in the public law sample we discussed comments from a judgment in which the judge gave her reasons for placing two children in long-term foster care.²² With those in the private law sample we discussed comments from a judgment in which the judge discussed the behaviour of both parents, gave his reasons for refusing a contact application by a father and making a residence order in favour of a mother.²³

²² The judge said that the children had tried to help their mother, that it was not their fault they were removed from their mother or failed to attend school; that their mother had ongoing mental health problems and could not care for them; that they needed better care and stability in their lives, that their social worker had not moved quickly enough to protect them from their mother’s mental health problems and neglect.

²³ He said: that the father’s behaviour had shaken the children’s trust and confidence in him; the mother had a better understanding of the impact on the children of their parents’ separation but neither parent had explored issues sufficiently with the children and a change of approach was necessary by both parents. Both children felt rejected and humiliated by their parents in a small community, both needed some peace and stability in their lives. An order dealing with where they should live would best serve their interests and welfare at this point; he hoped the parents would now work together with the clinician they had seen and that an order for contact would not be necessary. If that remained the case they could come back to court.

- In both cases the judge made some positive comments about the children involved and was critical of the behaviour of some adults. In both cases children were assessed by doctors specialising in the assessment of children subject to parental ill-treatment, or behavioural problems in children where parents have separated and children are the subjects of bitter disputes over care and contact.
- Overall, most children and young people (79%) said the children in the cases described in the vignettes and sample judgments would not be happy for any of the information outlined in the judgment to be reported in a newspaper (91% in the private law group, 52% in the public law group).
- In the public law sample, 33% said children and young people might be happy for a story to reiterate certain types of information about children from the judgment, for example:
 - “The children needed better care and some stability.”
 - “...the children needed to live in one place after several periods with foster carers.”
 - “They had tried to help their mother...”
 - “It was not their fault they were removed.”
 - “It was not their fault they had not attended school.”
- In other words, all the information selected from a judgment as acceptable for publication by children and young people described what they called the ‘good things’ about the children in cases.
- Respondents in this group also said the children involved in the case would ‘absolutely not’ want the judge’s comments about the mother’s mental health problem, or the detail of her neglect of the children to be published.

6.8 Do young people think some information from the sample judgment would be helpful for the general public to read or hear about?

- Overall most children and young people (63%) did not want any information in the judgment to appear in the public arena – even if children are not identified, many were doubtful or dismissive of any public education role. For example one young person makes two points about the press in general – and about messages being given to young people:

“Newspapers exaggerate things to create headlines, they cherry pick to make it more interesting to the readers and they add things on...”

She continued: “...the general public don’t have enough information to understand why [children are in care] but to give [reporters] actual court reports [to read] that’s really out of order - but some general information would help a lot because you have a lot of young people tarnished with the same brush...”

“And concluded: “Better general information would be a massive eye opener but at the same time, for the child’s sake, they [politicians, judges others] need to stop and think – what if that was happening in their own family? There has to be a better way.”

Female, 16 years

Another respondent said,

“No, because others at school will joke about it and [the children] will be embarrassed.”

Male, 11 years

Some felt information from judgments should be used as a basis for other types of information for children:

“[Judgments] should only be used for information, for example, in doing leaflets to help other children...[otherwise] a reporter will make it up, pick bits from the judgment, sensationalise bits...”

Male, 11 years

Two young people made a distinction between reporters in courts and the need to inform the public about family proceedings. Neither agreed with the decision to permit reporters into family court hearings. Both saw a need for the public to gain a better understanding about how decisions are made. Both said a general perception of children in long-term foster care was that they were there because they are bad/naughty children. Both felt this misinformation should be addressed but neither thought that it could be achieved through press attendance and reporting of cases:

“There should be awareness of what happens in family courts but it has to be really general information...”

Male, 17 years

The other young person argued:

“It’s general information [that’s needed] ...it makes people outside know that the child [taken into care] – it’s not their fault. A lot of children taken into care are seen as trouble makers...the outside world may stop and think and have a more open mind...”

She continued:

“...the general public don’t have enough information to understand why [children are in care] but to give [reporters] actual court reports [to read] that’s really out of order - but some general information would help a lot because you have a lot of young people tarnished with the same brush...”

She concluded:

“Better general information would be a massive eye opener but at the same time, for the child’s sake, they [politicians, judges others] need to stop and think – ‘what if that was happening in their own family?’ There has to be a better way.”

- Almost all children and young people in the private law sample (91%) said no information from the sample judgment should be published. Their reasons were that the information was ‘private’, it should not be read by people outside of the case, reporting in newspapers or radio and television will cause further anxiety to children already upset and frightened, other children will be able to identify them and they would be bullied:

“I don’t see why a reporter should be in any family court. This case seems like a normal family [breakdown] and it’s affecting the children quite a bit. There’s no reason why a reporter wants to be there or thinks it’s acceptable to share [this information] with the general public. It’s peoples’ lives.”

Male, 15 years

“There’s nothing [in this case] that’s unusual or which would educate the public. Why would the public need to know that two kids are living with their mum?”

Female, 17 years

- In the public law group, some respondents (48%) thought it might be helpful for the general public to know about some of the judge’s comments. Almost all these young people again singled out positive statements by the judge about the children: their needs and lack of ‘fault’, what children saw as a ‘defence’ of their position, for example, one young respondent went through the judgment – rechecked – and selected the following comments:

“...they [the children] were not at fault or to blame for their removal from their mother”

“...they needed better care and some stability in their lives...”

“...It was not their fault that they didn’t go to school.”

Male, 11 years

- A small number thought it might be useful to publish something if, for example, a murderer or a paedophile was involved in a case then it might be important for the public to have that kind of information.²⁴
- A majority of young people (67%) thought that it might be helpful for people to know that a social worker had not moved quickly enough to protect the children in this case. Some respondents however disagreed; they argued this information should not be published because there might be reasons why the social worker did not or could not act quicker. For example, one argued:

“A lot of people look down on social workers but at the time they can’t see what’s going on – and nor can other people”

Female, 16 years

²⁴ One young person said at first she felt everything should be published: she argued ‘the family courts are unknown, you hear what happens in them less, and it’s so secretive causing speculation which doesn’t help.’ (Female, 16 years). However when the judgment was examined in detail, she did not think the intimate details of children and parents’ problems should be published – ‘not in-depth level’ but enough to allow ‘an understanding of what’s going on’.

6.9 Would a newspaper story about what a judge had said in coming to a decision, help a parent accept the court's decision?

- Most young people in the private law group (63%) did not think a newspaper story about what the judge had said would influence a parent: most were cynical about the power of newspapers to change parents with entrenched views. Others were not sure or felt parental acceptance of a decision would depend on other factors.
- Children and young people in the public law group were divided: 44% said it might, 44% thought it would not make any difference. For example,

“There are other ways to do that – she could read the [judges’ reasons] in private.”
Female, 16 years

“No it won’t help her - and it’s not fair on the little people.”
Female, 13 years

“No, the judge should explain it himself.”
Female, 16 years

“No – the lawyer and social worker should tell her and explain things.”
Male, 16 years

6.10 What information about children and parents do children and young people think newspapers could report?

Almost all children and young people said newspapers should not be permitted to publish the following information:

- The area in which children live/lived (all those in the public law sample, 96% of those in the private law sample)
- The school and clubs they attend (all those in the public law sample, 92% of those in the private law group)
- Information about other family members (82% and 91% respectively);
- Problems children experienced at school (78% and 88% respectively)
- Information about religion²⁵ (78% and 86% respectively)
- Any harm children had suffered (78% and 87% respectively)
- Information about their parents’ problems (71% and 96% respectively)
- Information about the conditions in their home (67% and 86%)
- The location of the court hearing the case (57% and 67% respectively).

In discussing the location of the court some respondents said people should know about their family court – where is it and what it does, but this should not be through the publication of personal information based on cases rather:

“...general information, nothing else...not personal stuff that gives clues about [children and parents].”
Female, 14 years

²⁵ Almost all respondents were White British. However comments by many young people indicated they were aware that if information about a family’s religion was published it would assist/allow for the identification of children in some communities where they might be perceived as bringing shame/disgrace on families and thus victimised.

6.10 Key findings

What kinds of information from cases do young people think could be published

- Most children and young people would not want reporters in court to hear detail of a parent's failings. Most (59%) would feel upset/angry if this information was published, many (42%) said children would be embarrassed and ashamed.
- Children will be afraid details would allow them to be identified, resulting in teasing and bullying at school (26%); some (19%) would be fearful for their mother as a result of press coverage.
- Children also said mothers would be angry and upset, and feel guilty and ashamed reading this detail in a newspaper story.

Private Law cases – parents' disputes over children

- Children would be distressed to read details of their parents' disputes in a newspaper. Many would be upset (39%) and angry (22%), most (61%) would also be embarrassed and ashamed.
- Just over half (52%) said children would be afraid the details would allow parents to be identified and thus children. Children fear they would then be bullied.

Should reporters be permitted to read reports from social workers, children's guardians and family court advisers?

- Overall most children and young people were strongly opposed to the suggestion that reporters might read welfare reports. Opposition was highest in the private law group (96% of children and young people rejected this).
- The children and young people thought this would be a breach of confidentiality to children; information contained in reports was private and should only be read by those involved in the case.
- Indications are this was not simply an issue of what information might then be published but also a rejection of any need or right to read private documents about intimate details of children's and adults' lives.

Should newspapers be permitted to publish the name of social workers, children's guardians and doctors?

- Most children and young people (70%) rejected this suggestion. With regard to whether there might be a 'public education/interest' in publishing names of professionals, a large majority in both groups were adamant: newspapers are not the vehicle to achieve this – there are other ways to educate people.

What information from a sample judgment did children think could be published in a newspaper story?

- Most children and young people (79%) thought the children involved in a sample case would not be happy for any of the information contained in the judgement to be reported in a newspaper (91% in the private law group, 52% in the public law group).
- In the public law group, a third said children and young people might be happy for information repeating positive statements made by the judge (e.g. children tried to help their mother, it was not their fault they were removed or had not attended school) the 'good bits' about them, but nothing further.

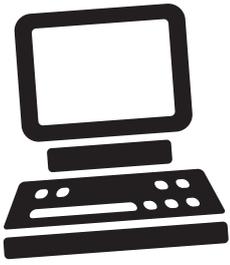
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Is there some information in the judgment that children and young people think would be helpful for the general public to know?

- Most children (and 91% in the private law group) did not think information would be helpful to the public and many were doubtful and some cynical about any public education role on the part of newspapers.
- Some 48% in the public law group thought it might be helpful for the general public to know specific information about children: that it was not their fault they were in care, or had not attended school etc. but that was the extent of agreement to the use of information.
- Children and young people said newspapers exaggerate things to create headlines and select bits of information to make stories more interesting than they actually are – and some thought newspapers also added things on.
- Young people were aware of debates about a need for more information about family courts, but they mostly rejected the notion that newspapers would or could do this.



7. Newspapers and the Internet

A major concern among adults in this field has been about the accuracy, reliability and balance of newspaper reporting of proceedings. We therefore addressed this issue with children and young people.

7.1 Do young people read newspapers and do they trust newspapers to tell the truth?

- Almost all children and young people (86%) said they sometimes read newspapers. However, a majority (63%) do not trust newspapers to tell the truth (79% of the private law sample and 46% of the public law group said this). The remainder thought they sometimes told the truth: 'they usually get the football results right', or they 'give part of the facts', or 'picked bits' of information:

"...They exaggerate things to make bold headlines... No I don't trust them to tell the truth - they'd lie to get a story printed."

Male, 12 years

"It's their business to sell newspapers – it's their business to sell and make money."

Female, 15 years

7.2 The Internet

- Almost all children and young people (89% of the public law group and all those in the private law group) said children involved in family court proceedings will be worried that information from newspapers about their case will be placed on internet social networking sites.
- Almost all respondents said children in cases will be fearful that very private, painful, humiliating, embarrassing and shameful information about their care and family life will be placed on social networking sites. Children said anyone can download information from newspapers and post it on the internet. It will then be available forever – to be 'googled', downloaded, added to blog sites and circulated by text and email at any time throughout a person's life.

"It's a big worry to young people – it's the way we socialise so it's another way of destroying young people's social life..."²⁶

Female 15 years

"You would be very worried because people will make fun of you."

Male 15 years

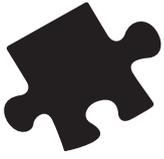
"I know situations where people have been bullied because of what's been put on Facebook."

Female 17 years

²⁶ This young person gave an example of a young person arrested but later released without charge; details were reported and then placed on the Internet. This respondent concluded '...and there they will stay – and he hadn't done anything'.

7.3 Key findings

- Most children and young people read newspapers at some point but most do not trust newspapers to tell the truth.
- The major criticism of newspapers relate to partial reporting, 'picking bits' of information, sensationalising beyond the content to generate interest, 'cherry picking' bits of information, and adding information.
- Against notions that papers would undertaken a education role on behalf of the family justice system, young people posed the need to sell papers and increase circulation figures as a primary focus.
- Most did not think newspapers could educate the public about family courts and should not do that from case details, rather that had to come from other sources.
- Major fears exist about information from newspapers being transferred to the internet where they may remain indefinitely.



8. How do children and young people feel having been asked to talk in detail about these issues?

In concluding the interview we asked respondents two further questions. First, how they felt having had an opportunity to talk about press access to family courts in the context of a 'real' case and sample judgment. Most said they welcomed an opportunity to discuss these issues, some asked why they had not been asked before, others said:

"I really enjoyed the exercise."

"Am very glad to discuss - I feel fantastic."

"I'm really glad I came."

"I am pleased we are being consulted."

"It's important you talk to children."

"I'm glad to talk if it helps other children or for someone else to give information to help the judge make decisions."

"I'm glad we came – parents should talk to children about this too."

"I feel really lucky to be able to talk about it because I'm not just talking for myself; I'm talking for all people in care or coming into care – on their behalf."

"I feel good. I've been able to express my opinion."

"Quite good...newspapers can ruin young people's lives. Once a newspaper's written on a young person and it is released on the Internet; it's not just the short-term effects – being bullied - it stays with them forever. Children are in court because their life is [already] being affected but it isn't their fault."



9. Final messages for professionals, parents, judges, magistrates and policy makers

Finally, respondents were asked if they would like to add any further comments about the issues discussed or if they had any further views or messages they felt adults needed to know and understand about the views of young people on this issue. Did they have a final message for courts and policy makers? Most young people (69%) had further messages for judges or magistrates and policy makers, and for parents. These fell into four key groups: inform, consult, and protect children - and try 'walking in my shoes'. They said:

- Ask us: Judges, professionals and parents should ask for our views and act on our concerns.
- Inform us: how can we make informed choices in this area if we are not informed about issues and at a point at which it can make a difference.
- All children's lives are precious: we are not there by choice, place our interests first.
- Protect us: we look to the court – to the judge - to protect us: 'he's the boss, it's his court, he should look after us.' Protect us from the gaze of the press seeking private and painful details.
- Politicians and courts should see things from the child's position:

"Yes [I have a message], a child's life is precious, you know, they've yet to blossom and it's being ruined at that point, in the judge's room, it's being ruined a lot and to let more people know about your private life...they have their whole future ahead of them and your child [hood] years are really hard to get through with anything like this. I think they should just take a step back and realise the impact that they [reporters] are going to have on the child's life."

Female, 16 years

"Only that they [press] shouldn't be allowed in court. It affects kids later on in life. If they are my age, it would be with them for ever and you would probably still hear about it if you were younger [baby or toddler] at the time."

Female, 16 years



10. Conclusions

1 Context and framework

- The aim of this study was to ascertain the views of a sample of children and young people regarding media access to family courts and to assist policy makers and others in considering press attendance and reporting on children cases.
- The study is unique in exploring the views of children and young people. It provides a context in which participants can express their views by using 'real' cases (vignettes) to explore the issues. This 'real life' methodology allows participants to focus on real situations in proceedings concerning children in a more complex, reflective and discursive manner.
- It moves beyond opinion survey methods allowing space for conditional responses, reasons and justifications for views, caveats, and additional views. It thus provides a more in-depth and sophisticated approach to understanding the views and likely responses of children and young people in this complex field.
- The context for this work is, firstly changes to the family procedure rules (April 2009) permitting reporters to attend family court hearings (unless otherwise directed by the judge) and ongoing concerns and debates about media attendance. Secondly, proposals in Part 2 of the CSF Bill further relaxing the rules, for example, on what information might be published from cases.
- Thirdly, how these issues relate to Article of the 12 the UNCRC (which sets out the rights of children to be heard and to be enabled to participate in all decisions and proceedings that concern them) and General Comment No.12 (2009), which sets out the conditions underscoring Article 12.
- General Comment 12 sets out the conditions necessary to enable a child to freely express her or his views (without pressure, manipulation or undue influence), in an environment, which take account of the child's individual and social situation, and where the child feels respected and secure when expressing his or her opinions. The General Comment also notes the child has a right to be informed about matters, options and possible decisions to be taken and their consequences. And a child cannot be heard effectively where the environment is intimidating, hostile or insensitive.
- Thus the right to information is essential, because it is the precondition of the child's clarified decisions (General Comment No.12 (2009) The Right of the Child to Be Heard (CRC/C/GC/12 para 25).

2 Reporters in court

- Almost all children (79% in public law sample and 91% in the private law group) were opposed to the decision to permit reporters into family court hearings.
- The major reason for this was that children and young people said court hearings address issues that are 'private'. They are about events that are painful, embarrassing and often humiliating for children, and the overwhelming majority said this detail was not the business of newspapers or the general public.

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3 Children's safety and welfare

- Findings indicate substantial problems are likely to arise for children and young people and indeed clinicians and thus family courts with serious implications for children's safety and welfare.
- Where children and young people are unable/unwilling to talk about what has happened to them, family judges may be faced with making difficult and often life changing decisions about a child in the absence of, or with incomplete, 'sanitised' or changed evidence from children and limited/no information from clinicians about their wishes and feelings.
- These findings – coupled with children's views about what information from cases they think could be reported (see below) require careful consideration and further consultation before further changes to law and practice are made.

4 Ethical integrity

- Children and young people said clinicians must inform young people about press access to hearings at the start of an interview and before any substantive issues are addressed. This will enable young people to make an informed choice about whether/how to proceed; they said any other approach would be unethical and a betrayal of children's trust.
- Findings show that children and young people and expert witnesses in child mental health and development are in agreement: both start from the position that young people have to be told that a reporter may be in court to hear the evidence.
- A decision 'not to tell' children and young people may arguably be a breach of Article 12 of the UNCRC, while telling children a reporter might be in court – as children in this study indicate – will prevent many from feeling able to express their views freely and without pressure about decisions that will affect them – also arguably a breach of Article 12.
- Children and young people expect other professions - social workers, guardians and family court reporters - to take responsibility for telling them a reporter may be in court and to tell them as early as possible. The implications of this for the work of social workers, requires consideration. And it is perhaps an especially difficult where professionals themselves have concerns about press attendance, reporting and disclosure of information.
- Informing young people of press attendance may also affect their willingness to trust and talk further with social workers, resulting in incomplete assessments.
- Telling children and young people about media attendance is not 'optional' – even if not telling (thus keeping it a 'secret' amongst adults) was practically achievable. It presumes young people do not search for information on the Internet or contact children's help lines – or talk to each other.

5 Publishing information about cases and from judgments

- Children and young people felt much of the information about children (their age, schools, out of school interests and activities religion, etc.) and about the content of proceedings (allegations, evidence and future proposals) by its very nature, would allow for the identification of families. Indications are they have different views to some adults regarding what information could or should be published.
- They appear unconvinced that formal rules prohibiting publication of identifying information will automatically protect them. They did not trust reporters and felt information would get out, allowing them to be identified, shamed and bullied.
- Publication of information relating to the content of cases - what might be called the 'substance' of a case and the notion that some/all of this could be published - without endangering children - was also called into question.
- For example, allegations about failures of parenting resulting from mental health problems, descriptions of chaotic homes and details of neglect – all common features in care cases - were nevertheless details most children and young people would not want reported in newspapers.
- Equally, in private law proceedings details of the behaviour of parents and the impact of protracted disputes about children was information most children do not want reported in newspapers.
- Most children questioned about a sample judgment said they would not be happy for any information in the judgment to be reported in newspapers (79% - and 91% the private law sample).
- A minority of children in the public law group (33%) felt some information could be published. Without exception these children selected information vindicating children of any blame or responsibility for the events leading to care proceedings: they wanted it known that they were not 'bad' or 'naughty', children and had done their best in awful circumstances.
- With regard to any information in the judgment that it might be helpful for the general public to know, most children (and 91% in the private law group) said 'no', and some were doubtful/cynical of a public education role on the part of newspapers.
- In the public law group 48% selected some statements for public consumption – again regarding lack of fault/blame on children for the decision to place them in care. That was the extent of information young people felt it might helpful for the general public to read about.

6 Views about children's rights to privacy

- The views of young people regarding their privacy and the implications for their safety (notwithstanding rights to a private life under Article 8 of the ECHR) is rather different to that articulated by some adults and policy makers.

- Young people said judges or magistrates should seek the views of relevant children before deciding whether to admit the press to a hearing.
- This view - coupled with children's rights to be heard in any judicial and administrative proceedings under Article 12 of the UN Convention on the Rights of the Child and the conditions necessary to realise those rights - indicate welfare and legal representatives must seek their views in preparation for a hearing.
- Objections to parents talking to the press were strongest in the private law group: 92% said parents should not be permitted to talk to the press during proceedings (even though children could not be identified in any reporting). Once proceedings were completed, 45% said parents should still not be permitted to talk to the press, others wanted to attach further conditions including prior agreement of the child/ young person.
- While public law cases were ongoing, 37% said parents should not be permitted to talk to the press. Once cases were complete, 37% felt parents should still not be permitted to talk to the press; 41% felt parents should, provided children were not identified and with further conditions.
- Almost all young people (96%) said where children are capable of expressing an opinion parents should seek their permission before talking to the press.

7 Children and young people's views about the press

- There is little trust of the press not to sensationalise information, or construct bold headlines that do not reflect the content of cases, and children and young people think the press will 'cherry pick' bits of information. They are mostly doubtful that the press will print a truthful story and are doubtful - some cynical - about an educational function.
- Children fear 'exposure'; they are afraid that personal, painful and humiliating information will 'get out' and they will be embarrassed, ashamed and bullied at school, in neighbourhoods and communities. This expectation does not only apply to children in rural communities and is particularly relevant for those from ethnic minority communities. They also appear unconvinced about the capacity of laws and adults to protect them.
- Almost all respondents said children in family cases would be fearful that very private, painful, embarrassing, shameful and humiliating information about their care and parents will be placed on social networking sites. Anyone can download information from newspapers and post it on the Internet. It will then be available forever – to be 'googled', downloaded, added to blog sites and circulated by text and email at any time throughout a person's life.

8 Educating the public

- Some children and young people did see a role for public education about family courts and for dispelling myths that children involved in care proceedings and those in long-term foster care are somehow 'at fault'. However, they did not on the whole think these issues could or should be addressed by reporting from real cases, where the focus was on details that might put children at risk.

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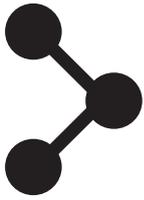
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9 Naming social workers, children's guardians, family court advisers and doctors in newspaper stories, and allowing reporters to read their reports

- Contrary to recent proposals and practices in naming some professionals, most young people said newspapers should not be permitted to print the names of professionals – unless they agreed. As to whether there might be a public interest element to this proposal, most rejected that view – they said there were other ways to achieve this.
- Respondents were strongly opposed to the suggestion that reporters might be permitted to read welfare and clinical reports for courts (96% in the private law group). Children and young people said this was a breach of children's confidentiality, as reports were private and meant only for those involved in the case.

Certain caveats apply but data indicate a key aspect of media access to family courts has remained unexplored. This is the view of children and young people and their concerns about privacy and safety and thus the practical impact of media access to family courts on their ability and willingness to participate (whatever the position regarding Article 12 rights (UNCRC) or indeed Article 8 (ECHR) is established to be – see MacDonald 2010; Mole 2009). In those circumstances and in situations that indicate many children already feel vulnerable and powerless, it is not perhaps surprising to learn that they may 'vote with their feet, 'play safe, and say nothing'. That position needs careful and more detailed consideration in the contexts of changes in this complex field.



11. Methods

1 The focus and framework for the study

The aim of this study was to ascertain the views of a sample of children and young people to various aspects of media access to family courts. It is a unique study in focus and design with regard to work with vulnerable children and young people.

The context for the work was three-fold and this is set out above in the introduction.

2 Timeframe for the study

The study was conducted in a very short time, because of the need to produce information relevant to debates around provisions in Part 2 – Family Proceedings, Children, Schools and Families Bill. The initial timeframe was five months, extended to seven. The plan was to undertake eight weeks of fieldwork and to then re-access the numbers. Despite delays data was collected until mid December, an interim report produced on the 17 January 2010 along with further fieldwork.

3 Ethical Issues

The approach to children and young people for research purposes is the subject of extensive ethical guidance from ethics committees within professional associations and other ethical committees; this is especially so with regard to ‘hard to reach’ groups, such as those involved in the criminal or civil justice system. The invitation to participate usually comes via a third party and informed consent is required before contact details can be passed on to researchers. That was the case for this study.

Ethical approval for the public law sample was sought in the first instance from the Association of Directors of Children’s Services (ADCS) Research Group. The application for approval from this Association sets out the aims of the study, the subject areas to be covered, the purpose of the study, the methods to be used, and the research ethics (informed consent, anonymity and confidentiality) along with precautions and support for dealing with vulnerable children.

The study was also submitted for scrutiny and clearance to the University of Oxford Central University Research Ethics Committee (CURIC). This procedure covers ethical considerations, holding, storage and access to data and what will happen to the data on completion of the project. It also addressed benefits (direct or indirect), what risks which may be involved for participants, and procedures for dealing with these, and for raising concerns and complaints.²⁷

5 Sample size

A longer-term aim in this field would be for a study based on a larger sample, stratified by sex, ethnic group, age, and by experience of proceedings and with a control group. However this project aimed for a sample of about 80 children and young people (60 in public law, 20 in private law cases) with experience of proceedings in the previous 12-18 months (this latter requirement was extended and in the final month of fieldwork the time constraint was removed).

²⁷ In addition to protocols set out in the application and cleared with the Oxford Ethics Committee and the ADSS, researchers are also subject to the ethical principles and guidelines of their professional bodies (SLSA, BPS, BSA) and subject to Enhanced Criminal Records Bureau (CRB) clearance.

It was accepted at the outset, given the challenge set by the timetable, that final numbers would be dictated by the speed with which we could complete the hurdles set by access, ethical and consent issues and the willingness of local authorities to assist us in identifying children and young people that fitted the selection criteria.

The final sample size was in fact 51 respondents,²⁸ 27 in the public law group and 24 in the private law group.²⁹

6 Age, gender and ethnic group

The age range for participants was initially set at 10 – 18 years; this was extended to assist gate-keepers to recruit within the timescale. The final age range was 9 - 23 years, but the vast majority of respondents (88%) were aged between 11 and 17 years. There are however more females than males in this sample (58% are female, 41% male) and respondents are almost entirely White British (96%). Therefore caveats apply; whilst these unique findings provide some important insights, there is a need for further work, especially with children and young people from minority ethnic communities.

7 Geographical location

Some 23 local authorities were contacted.³⁰ The sample of 51 children and young people was drawn from 16 local authority areas/counties, with participants from the North, North East, North West, the Midlands, North London and South London.

8 Access and consent arrangements

For the public law sample, Directors of Children's Services were contacted to seek agreement to participate to agree the process for contacting relevant children and young people.³¹ We aimed to clear the questions and processes for obtaining individual consent with each authority, and if necessary work with managers and then the relevant social worker for the child or young person.

With regard to the private law sample, the project worked with an advocacy service and a youth consulting agency to obtain a sample of children and young people. At the advocacy service a caseworker or advocate was provided with a 'script' for contacting parents/carers of children identified as meeting the criteria and potentially relevant to the study. Explanatory letters then went to parents and children, if they expressed an initial interest in taking part calls were made a few days later to ask whether contact details could be released to the researchers.

²⁸ Several interviews were cancelled during December due to severe weather conditions across England. Some were re-arranged in January despite further bad weather but others could not be undertaken before a decision to bring fieldwork to an end.

²⁹ Because of the time scale and the complex recruitment process, this sample contains five young people who may not have experienced proceedings. They were members of youth groups to which the study was presented during the recruitment process, they were very keen to participate turning up on the day thus we included them in the group interviews. Comments indicated some of these young people had experience of family breakdown if not legal proceedings; responses were very similar to those with experience. A larger study in which these would comprise a 'control' group should explore this relationship further.

³⁰ Liverpool City, Wirral and St Helens, Manchester City, Stockport, Northallerton, York, Leeds, Nottingham, Birmingham, Leicester, Oxford, Bristol, Inner London (London Boroughs of Newham, Tower Hamlets, Islington, Camden, Kensington and Chelsea, Hammersmith and Fulham, Hertfordshire, Norfolk, Suffolk, Essex

³¹ In addition to the ADSS research approval process, some local authorities also have their own procedure for considering proposals; given the time frame specified for this that might explain some of the failures to respond.

In both sample groups, we were dependent on 'gate-keepers' – they had the final say in selecting which children and young people they would approach in consultation with the project coordinator. They also handled the initial consent issues with adults (parents, foster carers, participation officers, youth workers, and social workers). There are strengths and weakness to this procedure. It does mean that the final sample is not random.

9 Methodology

The study employed quantitative and qualitative methods. It faced a number of methodological hurdles common to research with young people where there are issues of risk and vulnerability.

While we wanted to interview children and young people with experience of family proceedings it was not our intention to focus on their specific case. Rather, a vignette exercise with a supporting schedule was designed to explore issues and views in general. This method – used extensively in social research – provides a mechanism for talking about situations, which if based on personal experience might be upsetting or cause distress.

A vignette is usually a constructed story or situation around which a set of questions is posed. Questions based on the vignette are one or two steps removed from personal experience, but related to issues on which a respondent may be expected to have views (in this context for example, questions such as, 'how do you think the young person [at this point] or in [this situation] might feel?' 'What do you think they would like to happen next', what do you think they might say, etc).

For this study two vignettes were constructed, a public law case concerning a boy aged 11 years and a girl aged 13 years, and a private law case concerned a boy aged 10 years and a girl aged 12 years.

In each case, a vignette was designed to reflect a series of junctures in the court process:

- 1 Each started with some information about a family prior to an application to a family court ('The Story').
- 2 This was followed by court proceedings, and an appointment for the children with a doctor (an expert witness undertaking an assessment to assist the court in deciding what is best for them);
- 3 This was followed by a court hearing;
- 4 An extract from the final judgment in each case is then discussed.

Each stage was presented by an illustration, supported with a short explanatory text read by the interviewer, this was followed by a series of questions about what was happening in the vignette and how the young person in the vignette might feel at a specific point, what they would like to happen next, what their views and concerns might be and why, and what they might say, and whether and how the press attendance at a hearing might affect what they would be willing to say.

The vignette exercise and questions were developed in consultation with a clinical psychologist and systemic family therapist and a consultant in child and adolescent psychiatrist. Both clinicians have extensive experience working with vulnerable children in the family justice system and have research backgrounds; both also sat on the Advisory Group.

In addition, support in developing tools for working with young people was provided by a consultant and senior researcher with a background in social work and extensive research experience interviewing young witnesses in the criminal justice.

Questions about policy and practice were introduced at relevant stages in each case, for example, with regard to the 'substance' of the case and parent's behaviour and treatment of children, whether some of that information might be reported (without identifying the child or young person), how children or young people might feel about that and whether they perceived a public interest in publishing some information. Questions also addressed the naming of experts, social worker and others in newspaper reports, whether reporters should have access to reports in cases, whether parents should be permitted to talk to the press during and after proceedings, whether the judge should ask for the views of young people when considering whether to admit a member of the press.

At the final hearing and in relation to a sample judgment, participants were asked what information within a judgement they thought children would be happy to see published and whether any information might be helpful to the general public.

At the beginning of the interview and at relevant questions/stages in the vignette exercise respondents were reminded that children and parents should not be identified in any newspaper coverage of a case.

Responses were initially open ended, with pre-coded boxes to enable the interviewer to code responses as the interview progressed (these also allowed for identifying responses which fell outside of the coding framework). Some questions allowed for multiple codes and if necessary, some prompting.

Most interviews were one-to-one, but in the private law sample some small group interviews (of between three and five participants) were undertaken. Two interviewers usually undertook these interviews; individual schedules were completed for each participant. Questions were asked of each young person in the group, differences of view or emphasis explored and cross- checked with participants.

Quantitative information was entered onto a database using the Statistical Package for the Social Sciences (SPSS) and frequency tables for each question were produced. Qualitative information was analysed by question and for each stage of the vignette. Analytical fields were constructed and responses were analysed within and across groups representing the two types of proceedings (private and public law).

Given the above detail certain caveats apply to the study. We cannot generalise all the views and experiences described here to all children in proceedings, for example, the views of children from minority groups are absent. The study does however allow for the generation of qualitative hypotheses with regard to key issues concerning children at the heart of debates about media access to family courts.

It provides information from children and young people, which is more robust than questionnaire/opinion survey data. Views were located in 'real' cases – real problems and complex options, choices. In essence, the methodology enables children and young people to articulate a more sophisticated and reflective approach to press access to family courts – in the light of their concerns and experiences. It thus provides a more reliable basis from which to address policy and provides assistance for parents and professionals concerned with the protection, safety and empowerment of highly vulnerable children and young people.

11 MILLION

The views of children and young people
regarding media access to family courts

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