



# Association of **Lawyers for Children**

Promoting justice for children and young people

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The Association of Lawyers for Children (hereafter “ALC”) is a national association of lawyers working in the field of children law. It has close to 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years’ experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office.

The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- ii. lobbying against the diminution of such mechanisms;
- iii. campaigning and advocating on against any form of discrimination which may affect children within the family justice system
- iv. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
- v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people;
- vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vii. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes this opportunity to provide its views in respect of this consultation.

## **ALC Response to the President's Transparency Review**

### **Introduction**

1. The ALC welcomes the opportunity to respond to the President's Transparency Review. The ALC is a national association of lawyers working primarily in the area of public child care law. It has over 1000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Associate members include legal practitioners, students and academics, Children's Guardians, social workers and other professionals such as medical experts.
2. The ALC exists to promote access to justice for children and young people within the legal system in England and Wales in the following ways:
  - a. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
  - b. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the welfare, health and development of children;
  - c. providing a forum for the exchange of information and views involving the development of the law in relation to children and young people;
  - d. a reference point for members of the profession, Governmental organisations and pressure groups interested in children law and practice.
3. The ALC position on the issue of transparency in Family Court proceedings has previously been set out in our response to draft Practice Guidance on transparency and a subsequent response to proposals for amendments to Civil Procedure Rules<sup>1</sup>. In addition, the ALC has supported and funded, together with NYAS, research into the views of young people in relation to media access to and reporting of Family Court cases and in relation to publication of judgments from Family Court Proceedings and the development of guidance for Judges to assist with anonymisation and the avoidance of the identification of children in published judgments<sup>2</sup>. The messages

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<sup>1</sup> ALC (2014) A response to Transparency – The Next Steps: a consultation paper from the President of the Family Division and ALC (2015) A response of the ALC to the proposal for the amendment to CPR Practice Direction 52C <https://www.alc.org.uk/publications/responses/?page=2>

<sup>2</sup> Brophy J et al (2014) Safeguarding, privacy and respect for children and young people and the next steps in media access to family courts; Brophy et al (2015) A review of anonymised judgments on Bailii: Children, privacy and 'jigsaw' identification; Brophy J (2016) Anonymisation and avoidance of the identification of children: Judicial guidance <https://www.alc.org.uk/publications/>

from this research and the guidance developed from it was subsequently endorsed by the President in practice guidance issued in December 2018<sup>3</sup>.

4. More recently the ALC responded to the consultation on the President's draft guidance on reporting in the family courts<sup>4</sup>. In formulating its position on the issue of transparency, the ALC has drawn on the direct experience of its members, research into the views of children and young people and research which has considered international approaches to transparency in family court proceedings.
5. Our main concern is that during and after court proceedings children's interests are properly safeguarded and the primary objective of the court rules, legislation and associated practice directions and guidance in this field should be to safeguard children and young people, promote their welfare and protect their privacy.
6. We welcome this wider review of transparency in the Family Court, originally proposed in the *View from the President's Chambers* (May 2019). In our previous responses we have called for a proper consideration of all the issues, which we feel has been lacking to date. We hope, despite the overshadowing of the review by the impact of Covid 19 on Court hearings, that it will, as promised in the May 2019 *View* and as a result of the extended period for the review, take account of all available evidence, including international evidence, on the issue of transparency.
7. The framing of this review indicates that the focus is on access to hearings in the Family Court by journalists and members of the public and the reporting of information related to those proceedings. It also invites comments on the existing Practice Guidance. The announcement of the review specified that it would be helpful to have answers to the following questions:
  - Is the line currently drawn correctly between, on the one hand, the need for **confidentiality** for the parties and children whose personal information may be the subject of proceedings in the Family Court, and, on the other hand, the need for the public to have **confidence** in the work that these courts undertake on behalf of the State and society?
  - If not, what steps should be taken to achieve either greater openness or increased confidentiality?
8. We canvassed the views of ALC members by posting the review questions in a survey monkey questionnaire on the ALC website on 18 February 2020 with a closing date of

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<sup>3</sup> <https://www.judiciary.uk/publications/practice-guidance-family-court-anonymisation-guidance/>

<sup>4</sup> ALC (2019) [http://alc.org.uk/uploads/ALC\\_Response\\_to\\_Presidents\\_Draft\\_Guidance\\_on\\_RRO\\_\(1\).pdf](http://alc.org.uk/uploads/ALC_Response_to_Presidents_Draft_Guidance_on_RRO_(1).pdf)

20 March. We had a limited response to the survey (45 members responded) but we are satisfied that although this is a small number of our members the results are an accurate reflection of the balance of different views among our members. The survey responses indicated:

- 29 of the 45 members thought the line was correctly drawn between privacy and confidentiality and the need for the public to have confidence in the work of the courts.
  - 16 of the 45 thought that the line was not correctly drawn and of those 16, 8 thought there should be greater privacy and 8 thought there should be more transparency.
  - 24 respondents are in favour of having legal bloggers and 21 are opposed to them.
9. The respondents who felt that there should be greater privacy than there is at the moment were particularly concerned about misleading reports that had appeared in the Press, which were variously described as one-sided, hard to challenge, and unhelpful. Concerns were also expressed about the identification of children and the consequences of that for the child, and there was concern too that the current level of transparency created risks that experts would be unwilling to give evidence. These are all issues which have been raised by the ALC in previous responses to consultations on transparency.
10. The majority of respondents made proposals for improving transparency and these responses came from those who thought the current line between transparency and confidentiality was correctly drawn, as well as from those who were in favour of greater transparency. This remainder of this response focuses on these suggestions.

### **Journalists/legal bloggers and reporting**

11. We recognise that whatever the outcome of this review, it is likely that journalists and legal bloggers will continue to sit in on hearings in the Family Court and we suggest that ensuring confidentiality and privacy is maintained, while at the same time ensuring the current rules in relation to transparency are complied with, requires much greater attention to training on this issue for the judiciary, lawyers and Cafcass guardians. This would increase the confidence among the judiciary, lawyers and Cafcass in dealing with applications to attend hearings and to report on them. We recommend that the Judicial College prioritises developing and delivering training on how to respond to media interest. In relation to lawyers and Cafcass the ALC would be willing to provide training, or to work with other organisations to ensure that training is regularly available.

12. The training should include the current law, procedure and guidance, as well as providing examples of best practice and opportunities to consider how to respond to requests from journalists and legal bloggers, what steps to take to ensure privacy and confidentiality are maintained and how to assist journalists to portray an accurate picture of the case, as well as how to resist such an application where appropriate.
13. We note that it is becoming more common in High Court cases for press releases to be issued at the same time as judgments are published, or when reporting restrictions have been lifted and/or for the High Court to put out summaries of cases to help journalists interpret the judgment and pick up on the relevant issues. We believe that it is important that this sort of practice is followed in all courts when there is media interest in case. The provision of a press release and/or a summary of the key points of a case are ways in which those working within the Family Courts can help ensure that what is reported is accurate.

### **Judgments**

14. Issues in relation to the publication of judgments and the potential 'jigsaw' identification of children have been considered in detail in previous responses<sup>5</sup> and research<sup>6</sup>. We note that practice here remains inconsistent and so these issues remain of concern. It is also the case that there remains wide variation in the approach of Judges to publication of their judgments. It is our view that there is a strong argument for a presumption in favour of all judgments being available, not least because this would illustrate the range of cases considered, the ordinary nature of many of them, and provide examples of good as well as poor practice. If this were to happen then there would need to be improved support to the judiciary to ensure that judgments can be prepared for publication on BAILII. Currently children's solicitors are frequently asked to ensure that the necessary parts of the judgment have been redacted because Judges argue that they have insufficient time to do this. The reality is that everyone in the Family Justice System is working under pressure so a presumption in favour of publishing all judgments would need to come with proposals for additional support or resources and training to ensure this can be done without the identification of the child or children concerned. Where keeping the identity of the child or family confidential was likely to be difficult because of the circumstances of the particular case, then possible remedies for that could be a delay in publishing the judgment or alternatively replacing the judgment with a case summary, giving the key details of the issues and the decision.

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<sup>5</sup> ALC 2014 and 2015 *ibid*

<sup>6</sup> Brophy J 2104, 2015, 2016 *ibid*

15. Other points made in relation to judgments included suggestions for a review of the protocol for disclosure in linked crime and care cases and for a system to hold judgments ready to go onto BAILII once criminal proceedings had been completed.

### **Good and bad practice should be open to public scrutiny**

16. People see judgments which demonstrate poor practice in local authorities but there is no follow through, and it is unusual to learn if there were subsequent practice changes as a result of that judgment, meaning the public and other interested parties predominantly hear of only negative practice in the Family Court. Some local authorities carry out reviews following very critical judgments, but practice is variable. One possibility is for there to be discussions about cases within Designated Family Justice areas, under the auspices of the Local Family Justice Board. Such discussions could cover cases which have been reported and contain examples of poor practice (by a local authority, CAFCASS, experts or the Judiciary) and also cases, reported or unreported, where there has been particularly good practice. It would need to be clear that these discussions would be to learn from past mistakes and how to avoid them in future and to identify good practice and ways of extending that. The discussions should not be used as forums for blame but as opportunities to improve practice across the Family Justice System. Such discussions could identify any training that might be needed and could also lead to jointly agreed action plans for addressing any identified problems. These discussions and the agreed actions arising from them should involve the Judiciary, local authorities, CAFCASS, HMCTS staff, and legal practitioners. Local arrangements should be made for ensuring that the voice of children, young people and their families are heard, something we discuss in more detail in a later section of this response. Developing forums for discussion of local practice- good and bad- within the framework of Local Family Justice Boards would be taking forward a recommendation of the *Care Crisis Review*<sup>7</sup>.

17. Judgments highlighting good practice and positive outcomes would help to provide balance and raise confidence in the Family Court.

### **Other pressures on the Family Justice System need exposure**

18. An argument by some members in favour of the current approach to transparency and by others in support of wider reporting of cases was that it was important that the general public were made aware of how years of austerity had reduced the ability of

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<sup>7</sup> FRG (2018) Care Crisis Review: Options for Change <https://www.frg.org.uk/involving-families/reforming-law-and-practice/care-crisis-review>

local authorities to provide adequate services for children and families and how this impacted decisions made within care proceedings. The Care Crisis Review has highlighted the concerns of all working within the Family Justice System in respect of the impact of austerity on the vulnerable. Others thought that the greater transparency should also shine a light on the lack of resources within court systems themselves and the impact this could have on the management of proceedings. There were also comments about the importance of the Judiciary recognising the limits of local authorities' ability to ensure access to services and the impact of austerity on health and mental health provision, treatment services and access to housing. While reports of cases and judgments can shine a light on the impact of these issues in individual cases, we acknowledge that shining a light on the overall impact of this factors is something that should be addressed through research. We note that the Nuffield Family Justice Observatory has a role to play here in making research and data available to the Family Justice System and in identifying topics that would benefit from research or from a review of existing evidence.

### **Greater clarity about the work of Family Courts**

19. There was general agreement that more should be done to make the public aware of the work of Family Courts and how they operate. Suggestions were made of holding more open days for different groups – children, parents, members of the public and also for providing more information on how the system operates, who does what, what the processes are as well as providing information about the law on court process for specific applications. There have been examples of innovative approaches to opening up the workings of the Family Court through a drama involving a real judge working with actors to portray a typical care case, followed by an opportunity for discussion with the audience<sup>8</sup> and through the use of mock proceedings carried out by professionals in front of children<sup>9</sup> either at the end of a guided tour of the court or via a 3D video, made available to Cafcass and local authorities for use with children. These are isolated examples and it would be helpful if there could be a consistent approach across Designated Family Areas and across England and Wales as a whole to providing easily accessible information about the working of the Family Court.

### **The voice of children and young people and their families**

20. We supported research<sup>10</sup> into the views of children and young people into widening the opportunities for reporting cases in the Family Court and we believe it is likely that this report remains an accurate reflection of the views of children and young people today. We feel strongly that an important element of transparency in the Family Court

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<sup>8</sup> <https://www.communitycare.co.uk/2019/12/13/judges-interactive-drama-shines-compassionate-light-closed-world-family-court/>

<sup>9</sup> <https://www.nuffieldfjo.org.uk/resource/childrens-access-to-court-project-video>

<sup>10</sup> Brophy J (2014) *ibid*

is ensuring that children and young people and their legal advisers continue to have the opportunity to be consulted about and heard in relation to reporting of cases involving them. Another important element of transparency is making sure children, and also their parents and adult family members, have opportunities to find out about the workings of the Family Court, to be involved in training of Judges, lawyers and Cafcass guardians, and have opportunities to be involved in discussions about local practice. Examples here are the Family Justice Young People's Board <sup>11</sup>, and the Parents' and Kinship Carers' panels supported by Family Rights Group all national groups. More could be done to identify resources and potential organisations who would be in a position to support local groups or panels of children and, separately, of parents and lessons could be learnt from those local authorities with active children and young people in care groups or panels.

**The ALC are very grateful to Mary Ryan for her valuable work on this response.**

**Dated 11 May 2020**

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<sup>11</sup> <https://www.cafcass.gov.uk/family-justice-young-peoples-board/>