THE INTERDISCIPLINARY ALLIANCE FOR CHILDREN (IAC)

RESPONSE

THE PRESIDENT'S PROPOSALS: 'NEXT STAGE' IN MEDIA ACCESS TO FAMILY COURTS

NOVEMBER 2014

Introduction

1 The Interdisciplinary Alliance for Children is an Alliance of some 22 organisations concerned with the rights and welfare of children in family proceedings.

2 Throughout its work in this field it has consistently stated that it is in favour of making the work of family courts more accessible to the public. However the Alliance is also of the view that there are better methods of improving public information about the work of family courts – and more reliable processes for addressing complaints about the work of professions and judges than trying to use the media. We are keen to explore alternative methods to meet both objectives which:

(a) will not subject already highly vulnerable children to a range of further risks to their health and wellbeing – risks which may well be lifelong;
(b) will not have a negative impact on the willingness of all children to discuss ill-treatment, and,
(c) respect the views of children and young people.

3 As stated in evidence to Parliament in 2009 and 2010, The Alliance does not support relaxation of rules or legislation which put children and young people at risk. Moreover we do not think the general public – and parents overall - would want changes which do not prioritise the protection of already vulnerable children – not least, in the light of recent and wide ranging criminal prosecution of adults for grooming and abuse of young people in the care system.

4 As identified by young people and professionals in this field, judgments and court documents contain information which, by 'jigsaw identification', can permit a child and family to be identified in their local community and across the whole of the internet.

Our position at 2010

5 In 2010 therefore and after very careful consideration, the Alliance opposed proposals in the (then) Part 2 of the 2010 Children and Families Bill (CSF Act, 2010) regarding relaxation of the rules on what could be published from cases (referred to as 'sensitive personal information'). Such information of itself, or when placed in the context of other information from a case, could enable a child/family to be identified.

6 Furthermore, the *enabling clauses* in that Act would have permitted government to introduce measures which would move the family jurisdiction in England further than any other similar jurisdiction so far as media access and reporting is concerned. The Alliance set out its concerns regarding proposals which were drafted without adequate consultation and without:

(a) an *independent* evaluation of the impact on children, courts and reporting following changes introduced in April 2009 permitting accredited media representatives to attend family hearings;

(b) an evaluation of the impact of the proposed further changes on children with regard to their safety, well-being and respect for their privacy;

(c) a thorough assessment of the impact on children regarding their ability and willingness to discuss parental ill-treatment with professionals, and to set out their wishes and feelings. Clinicians assessing children are required to inform them who may be in court to hear the evidence and who has access to the expert's report (Article 12, UNCRC). Research findings[1] indicated that young people would be unwilling to talk openly with clinicians and others once they are made aware that a reporter might be in court and have access to what they and others have said in a clinical setting;

(d) consideration of the implications for judicial decision making about children's care and safety, where a decision is based on limited/incomplete evidence from children;

(e) a detailed consideration of the delay and costs implications of a case-by-case assessment of any necessary reporting restrictions - and at a time when the government is seeking to reduce delay and costs in proceedings.

7 Those concerns are heightened by the experience of some children following a change to Family Procedure Rules in April 2009 permitting media attendance, for example:

- A young person subject to care proceedings and her family were identified following reporting national and local newspapers. Details of her mother's mental illness, its impact on her care and her childhood and schooling problems enabled the young person to be identified in their local community. This caused enormous distress, family members could not leave the home; the young person was devastated by coverage. She said had she known about potential press coverage she would have remained silent: intimate details about her childhood and ill-treatment remain available on the Internet - forever.

- A young person refused to repeat allegations of sexual abuse when informed of the possibility of a reporter in court.

Impact on clinical assessments: the risks

8 Talking to children about ill-treatment or disputes between two parents is fraught with difficulties. As stated in 2010, clinicians said that when media access is explained to children they will withhold vital information – young people confirm that view and as one child psychiatrist argued, "...*younger children will not understand, and may not realise that saying less might be safer".*

At 2010 – what was needed?

9 In 2010 the Alliance concluded[2] that these issues were too important to be the subject of rushed and ill-thought-out provisions and that the changes envisaged in Stage 2 of the Act (media access to expert reports and relaxation of rules on publishing 'sensitive personal information') required a proper public consultation process and Parliamentary scrutiny. It argued that no changes should be made before an *independent* evaluation of the decision to

[1] Brophy J (2010) The Views of children and Young People regarding media access to family courts. Office of the Commissioner for Children, England (March)
http://www.childrenscommissioner.gov.uk/content/publications/content_397

[2] http://alc.org.uk/uploads/IAC_-_Parliamentary_Briefing_Paper_-_Part_2_CSF_Bill_%28b%29.pdf

permit press access to hearings (April 2009) and of the provisions of Stage 1 of the Bill[3]. It also stated that The Joint Committee on Human Rights should scrutinise Part 2 of the Bill[4].

Repeal of Part 2 of the CSF Act 2010

10 In the event the provisions of Part 2 of the CSF Act were repealed: most contributors agreed they were unworkable, most agreed they should be subject to a proper consultation and scrutiny by Parliament.

The views of young people – 2010

11 In 2010 a national study commissioned by the Office of the Commissioner for Children in England[5] explored issues of media access and reporting of cases concerning children in public and private law proceedings with 51 young people. Findings demonstrated:

(a) almost all young people were opposed to the decision to permit reporters into family hearings;

(b) almost all said that once children were informed a reporter might be in court they would be unwilling or less willing to talk to a clinician about ill-treatment or parental disputes about their care – or indeed their own wishes and feelings;

(c) most said that the detail about them in court documents, if published, would permit identification of families;

(d) they did not trust the media to publish truthful information; they argued the media would 'cherry pick' bits of information to create headlines; some were doubtful – some cynical - about an educational function for the media.

(e) young people reported a fear 'exposure' of painful details of their family life; they are afraid that personal, painful information will get out permitted them to be identified; it will shared in social media, remaining there indefinitely. They said children would be shamed and bullied;

(f) they were also unconvinced about the capacity of law and other adults to protect them. They said parents in proceedings are not best placed to decided this issue on a child's behalf; the court should therefore protect their privacy.

The views of young people – 2014

12 Following a failure of Government to follow through a commitment to further explore the views of children and young people in proceedings on the issues outlined in Part 2 of the CSFA 2010 - and following repeal of Part 2 along with some safeguards it contained for families, a consultation with young people was commissioned by NYAS and the ALC (*Safeguarding, Privacy and Respect for Children and Young People and the Next Steps in Media Access to Family Courts,* 2014)[6].

---

[3] By which we mean an academic evaluation commissioned from outside of Government to avoid any concerns about a conflict of interests.

[4] See note 2 above.

[5] See note 1 above.

[6] In–depth qualitative work with 11 young people, 16–25 years, almost all had experience of proceedings; see http://www.alc.org.uk/news_and_press/news_items/nyas_alc_report_media_access_to_family_courts_next_steps_views_of_children

13 Like the young people in the 2010 study, young people consulted in 2014 – almost all of whom had experience of proceedings - remain opposed to changes in the decision to permit the media to attend most hearings; they were also opposed to media access to court documents and to relaxation in the rules relating to what might be published from cases. As identified above (paragraph 4) judgments and court documents contain information which, by 'jigsaw identification', can permit the children and families to be identified in their local communities and across the whole of the internet.Young people said those who experience proceedings have a right to privacy and to be safeguarding during and after proceedings: that was the job of family courts.

14 Young people also said that once told the media will be in court and have access to medical reports, young people will be unwilling to engage further in the legal process – and will not be willing to discuss ill-treatment further with clinicians or indeed other professionals. It is a point of ongoing concern to children's charities, clinicians and legal and welfare representatives that this issue has not been subject to further and proper investigation: clarification of children's rights to be heard on this issue and in the context of their rights under Article 12 of the UNCRC would be helpful.

15 Young people said children look to family judges to protect them: they said that judges must know that parents in crisis are often not able to put their children's interests first. Parents may thus talk to the press without regard to any long term impact on a child/young person but once a story is 'out there' transferred to social media, it will remain in the public domain for the reminder of a child's life. Young people point out the real dangers for already vulnerable young people in terms of their immediate and longer term mental health, development and emotional well being.

16 In the light of the substantive changes proposed by the 'Next Steps' document and loss of the protections agreed by Parliament in 2010 under Part 2 of the CSF Act 2010, the 2014 report (*Safeguarding, Privacy and Respect for Young People*) concluded:

(a) The issues should be subject to a proper public consultation (not simply advertised in the legal arena) in which the issues for all children and parents are clearly stated and the views and concerns of young people to date fully explained to the general public.

(b) There should be an *independent* review of the change of Rules at 2009 and proper Parliamentary scrutiny of any further proposed changes - as recommended by the Justice Committee (it recommended the Ministry of Justice should begin afresh) and as accepted by Government in its response to the Select Committee Report[7].

(c) It is only at that stage that a meaningful child impact assessment can be delivered.

17 Although much has been said about public confidence in family courts it has come from a relatively limited number of sources: recent survey evidence from the Ministry of Justice for example demonstrated that public trust in family court judges is higher than its opponents have suggested[8]. This is not to argue there is no room for improvement or that other avenues

[7] Justice Committee, Sixth Report of Session 2010-12: Operation of the Family Courts**,** Para 281; Government Response to Justice Committee's Sixth Report of Session 2010-12: Operation of the Family Courts, Paragraphs 73 – 75.

[8] See Summerfield A and Freeman L (2014) Public experiences of and attitudes towards the family justice system. Analytical Summary, MoJ. In a survey with an example of private law proceedings some 67% of respondents trusted the judge to make the right decision. Compared with general surveys about confidence in

should not be explored. Rather, that there *is* time for a proper consideration of the rights, welfare and future of vulnerable children and thus the best mechanisms to achieve any changes required while prioritising their rights and welfare.

18 Moreover, there is little evidence of the views of those members of the public who have been involved in proceedings. It is trite to suggest that where children have been removed from parents because of ill-treatment, some parents would not be critical of the system. But it would also be naïve to suggest that mistakes are not made. As we argued in 2010, much more could and should be done to explain to the public how the family justice system works and existing safeguards to ensure fairness between parties.

19 In addition, as young people and others argue, mechanisms through which complaints could properly be addressed, for example, by an independent agency, require consideration. The Alliance does not think that exercise could – or should be done by the media; it is not a gatekeeper or appropriate watchdog. While recent developments - not least the behaviour of aspects of the British press leading to the Leveson Inquiry, indicate public confidence in the press is at an all time low, that is not a new or novel issue. As suggested by researchers and professional bodies and young people themselves, the appropriate way forward for this debate is to explore a fully independent family court inspectorate.

The Practice Direction which took effect from 3 February 2014

20 One of the problems in commenting on this issue is the lack of systematic research on the impact of publication of written judgments on parents and children and other adult parties. Responses are bound to be anecdotal and an absence of responses does not mean the system is working well. Young people in both the 2010 study and the 2014 consultation expressed concerns about case details that should be excluded from publications in order for them to feel safe, and to protect their immediate and long term privacy. Those details were listed and reflect protections provided to families in other common law jurisdictions (e.g. Federal Family Court of Australia, Family Law Act 1975).

21 Young people identify how (for print media and judgments) failure to anonymise their details sufficiently can result in jigsaw identification of children and families in their local communities and worldwide via the web and thus, put both at risk. As demonstrated in the example above (Paragraph 6), it is not enough to exclude a child's names; other details lead to their identification. An ad hoc perusal of recent judgments indicate that details which young people say will enable them to be identified in their local communities (e.g. geographical location, details of ill-treatment, parent's health problems, local authority) are not excluded from judgments published on Bailii[9].

22 Publication of judgments relating to children who have been sexually abused requires detailed attention. As young people in the consultation point out, ill-treated children are rendered vulnerable to further abuse by predatory adults: they are especially vulnerable through 'jigsaw identification' to enable grooming, further sexual abuse and exploitation. The ability of predatory males to track down young people should not be underestimated.

23 With regard to risks to a child/young person of learning case details from judgments later in their life, it is much too early to look at that issue. Moreover, we question what has happened

---

public bodies/people, this survey indicates the importance of targeted informed and specific respondent groups for meaningful information.

[9] British and Irish Legal Information Institute (BAILII) - www.bailii.org/

to the MoJ proposals to produce a 'Later Life Judgment' specifically for children subject to proceedings.

24 Our previous Briefing Paper (2010) argued that the primary objective of Rules and legislation in this field should be to safeguard children and young people and protect their privacy. Evidence from young people discussing social media and its impact on their lives demonstrates that this duty should apply during but also following completion of proceedings as young people attempt to rebuild their lives, self esteem and confidence in friendship groups, schools and wider communities. They need to know that intimate painful details of their life and ill-treatment by parents/others will not be available on the internet, open to anyone – including HR departments - as they search for jobs, apply for courses and bank accounts etc.

Impact on local authorities and other professionals

25 In the absence of an undertaking in 2010 to monitor developments following the change of rules we regret an apparent reliance on anecdotal comments on this field regarding the impact on professionals. In our view that is a wholly inadequate way to proceed. As young people point out, they are frequently not given sufficient information from professionals: we are not aware of any coherent published policy on whether and when to tell young people that the media may be in court, or that a judgment will be published – or that they should have an opportunity to see it before publication.

Any change in level and quality of news and reporting about family justice system

26 It is the responsibility of government to commission independent research to monitor and evaluate the degree and quality of reporting – otherwise the system is dependent in the views of the press/media itself – and professional who happen to be involved in cases reported – responding to this consultation. We respectfully suggest that that is simply not sufficient 'evidence' on which to move forward in this complex and contested field. We are, for example, aware of reports which, although inaccurate, were left unchallenged – because professionals felt that better protected the privacy and thus identity of the child. This is not an appropriate way to proceed. While there will be examples of reporting which it is felt reflect well proceedings – that cannot be considered representative of reporting generally.

Disclosure to the media of certain documents

(a) Documents prepared by advocates – including case summaries, position statements, skeleton arguments, and threshold and fact-finding documents

27 Those members of the Alliance with firsthand experience of documents indicate they have concerns about the purpose of this proposal: it will not, for example, meet the stated aim of facilitating the media's understanding of the case or of performing a 'watchdog' role. Moreover, disclosure of these documents to the press may result in anodyne documents with substantive issues then played out during hearings: we think that is unacceptable – for children and for parents.

28 Moreover, documents are dynamic; they contain unsubstantiated information which may well change as case progresses. At any stage in a case they may simply be a 'snapshot' and the views expressed therein subject to change/modification as proceedings progress and evidence is gathered. For example, a parent's position statement at the beginning of proceedings may be very different to that filed for an Issues Resolution Hearing: the latter resulting from the work of courts and others in narrowing down issues and factors on which the court may ultimately have to determine.

29 Research evidence demonstrates that initial statements filed both by applicants and parents can change and that independent assessments of parenting can change the 'direction of travel' for local authorities. If parents are told the media will have access to their statements; this may well impact on their willingness to file early – thus impeding both proceedings and the work of other professionals.

30 The purpose of these documents is to assist the court and parties, not to provide a succinct overview of the case at any one point and for an external reader. We think that the duty of advocates must remain that of acting in their client's best interests. In the case of a young person and where a document will be released to the media, professionals will be duty bound to first discuss the content with the young person. This will place enormous pressure on those representing children (guardians and child care advocates). It may also result in young people withdrawing their evidence.

31 With regard to children in private law proceedings we think the position is especially dangerous; they are without independent representation in the face of a parent seeking media exposure using case summaries as a mechanism to engage media support – regardless of the wishes of their children. As young people identify, parents in proceedings cannot be relied upon to place their child's interests, rights and welfare above their own concerns in this regard. Courts would have little control over litigants in person (LiPs), such parents are without advice as to what to include or omit in the way of detail – or with regard to potential ramifications for children. Practices would have to be subject to anonymisation by the court – and to an agreed 'universal' standard. There are examples of parents placing information on UTube – along with photographs of children, picked up and reproduced by local press.

(b) Some expert reports

32 We do not think the media should have access to medical reports in children cases. As young people identify, this undermines their rights to privacy in relation to medical health issues (physical and psychological/mental health and wellbeing). As indicated by young people and by clinicians in paediatrics and child and family psychiatry, this proposal will impact on the willingness of children to further share intimate, highly personal and frequently painful experiences and views with doctors. Child protection is a public health issue.

33 As indicated above, when told this can happen young people say children will 'disengage' with the process: they will be unable/unwilling to share their experiences, and their wishes and feelings – they will feel protective of the privacy of siblings and wider family members – and will simply 'vote with their feet'. This will result in the loss of key information from children, it will undermine the value of certain clinical expertise and support on which courts and other professionals rely and may preclude or limit clinicians in being able to advise the court on treatment and services a child requires.

34 We therefore hope that the views of children and young people on media access to court documents in *Safeguarding, Privacy and Respect* – and previous research and consultation exercises – and the views of clinicians as to their ethical duties to children in this regard, will be given significant weight in any further discussion about whether a pilot might be appropriate. We would also suggest that a proper public consultation should predate any pilot and in which the public are made fully aware of what is proposed regarding media access to medical reports.

35 While we have yet to see proposals as to how the media will use information from medical reports and other court documents (and whether the rules on publication of information from cases will be relaxed) it would be helpful to have some clarity on how proposals for the release of such information to the media meet the requirements of accuracy and processing

of information within the terms of the Data Protection Act 1998, as well as appropriate risk management. Parties to the proceedings, and any other person (including individual legal representatives, judges, and journalists) handling such information are potentially liable to the imposition of a monetary penalty by the Information Commissioner, for any breaches of data protection. Such penalties can be substantial, and potential liability could significantly affect, for instance, premiums charged for professional indemnity insurance[10] .

Should access to documents be confined to members of the accredited media who actually attend court or any member of the accredited media entitled to attend – whether or not they attend the hearing?

36 As per our previous evidence, we think that this issue should not be addressed until the public and Parliament has had a real opportunity to understand and address the principle of media access to court documents. We think a step in the democratic process has been missed and that the public should have an opportunity to hear the views and concerns of young people and others before moving forward on this issue.

Family court hearings in public

37 The President does not set out the case for public hearings. We agree with the statement of a previous Lord Chancellor – '*what matters is the information that comes out of the family court, not the people who go in*'. Equally we do not know whether there is a real public demand for this change or an understanding of the issues, risks and the views of those who have been through the process.

38 Young people point out that family courts are private: they do not want hearings to be a source of prurient interest, entertainment or an alternative to reality television. Young people point out that their circumstances and future care are not in front of family judges by choice; they are opposed to public hearings, these should not be reduced to a spectator sport or reality TV, they concern real lives of real children.

39 It is thus not possible to identify what type of case might be appropriate for public viewing: indeed young people were unanimous in their opposition to this suggestion. We would point out that in both the 2010 study and the 2014 consultation, young people said that before admitting the press – and by definition any member of the public, the judge should first ascertain the views of children and young people (or their representatives). While that would work for public law cases, in private law children are not separately represented; with increases in LiPs young people remind policy makers and Parliament that there is no one there to speak for them. Parents are not a reliable source of information as to whether children consent to the media or others being in court.

Summary

40 The Alliance remains in favour of increasing information about the work of family court proceedings and specifically how due process works and how fairness is addressed and maintained, it also recognises – as do young people – the need for an independent mechanism to assess complaints. We do not however accept that the media is able or best placed to undertake those tasks – indeed we think that may lead to more problems than it solves.

41 Our previous Briefing argued that the primary objective of Rules and legislation in this field should be to safeguard children and young people and protect their privacy. Young people

[10] See: *http://ico.org.uk/for_organisations/data_protection/~/media/documents/library/Data_Protection/Practical_application/how-we-deal-with-complaints-and-concerns-a-guide-for-data-controllers.pdf)*

point out that in the face of the commercial imperatives of the media, the risks and dangers of social media – and lifelong implications for them of details placed there, they look to family judges to safeguard them, and protect their privacy during but also following completion of proceedings.

42 Young people state this issue has enormous implications for the welfare and safety of children and their willingness to trust and engage with professionals in the face of ill-treatment and the trauma of substantial parental disagreements and violence. Along with Government (responding to the report of the Justice Committee) they argue that further and proper consultation is required. This consultation should include young people who had been through proceedings.[11]

43 We appreciate this area has become highly contested in some quarters and understand the challenges faced by the President of the Family Division. We hope that the evidence herein is helpful to him in taking time to further explore the right path for children and the Family Division; we do not think they are irreconcilable, indeed we think the former will enhance the reputation of the latter and we will continue to do our best to assist him in that endeavour.

Adoption UK
Aire Centre - Human Rights, Family Law and European Convention on Human Rights
Association of Lawyers for Children (ALC)
British Association of Adoption and Fostering (BAAF)
British Association of Social Workers (BASW)
Catholic Children's Society (Westminster)
Children's Rights Alliance for England (CRAE)
Children's Society, The
Coram Voice (formerly, Voice for the Child in Care)
Grandparents Association, The
Great Ormond Street Hospital for Children, NHS Trust (GOS)
Law Society – Children and Family Sub-Committees
Margaret de Jong, Consultant Child and Adolescent Psychiatrist, Specialty Lead DCAMH, Service Lead, Parenting and Child Service, Great Ormond Street
National Association of Probation Officers (NAPO) Family Court Section
National Children's Bureau (NCB)
National Society for the Prevention of Cruelty to Children (NSPCC)
National Youth Advocacy Service (NYAS)
Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers (NAGALRO)
Royal College of Paediatrics and Child Health
Together Trust, The
Who Cares? Trust, The
Women's Aid Federation – England

[11] See note 6 above - Government Response to Justice Committee's Sixth Report of Session 2010-12: Operation of the Family Courts, Paragraphs 73 – 75.