dca

Department for Constitutional Affairs

Justice, rights and democracy

Confidence *and* confidentiality

Improving transparency and privacy in family courts

Response to Consultation

Code Number CP(R) 11/06

22 March 2007

HER MAJESTY'S COURTS SERVICE

hmcs

Confidence *and* confidentiality
Improving transparency and privacy in family courts

Presented to Parliament
by the Secretary of State for Constitutional Affairs and
Lord-Chancellor by Command of Her Majesty

March 2007

Cm 7036 £18.00

Contents

Foreword

Foreword by Lord Falconer, Lord Chancellor and Secretary of State for Constitutional Affairs, and Harriet Harman QC MP, Minister of State, Department for Constitutional Affairs

When we consulted last summer about the openness of family courts and how it could be improved, we were clear that any proposals to make the courts more open should not be at the expense of the privacy of those people involved in family proceedings. In particular, we were clear that children should be protected.

Many of the proposals were welcomed, such as making the rules consistent across the different family courts; and providing better information for people who had been involved in proceedings as a child. In fact, making the court process more open was viewed positively.

This response paper contains a detailed analysis of what people have told us, not only to the formal consultation but also through stakeholder events and discussion forums. One of the reasons for using a variety of approaches was to encourage people to contribute and ensure the voices of children and young people were heard and listened to. After all, they are usually at the centre of family proceedings, and reluctantly so in almost all cases.

We have considered what people have said very carefully and will reflect on the responses received before bringing forward our proposals.

Rt Hon Charlie Falconer
Secretary of State for
Constitutional Affairs
and Lord Chancellor

Rt Hon Harriet Harman QC MP
Minister of State
Department for
Constitutional Affairs

Introduction

This document is the post-consultation report for the consultation paper, Confidence and confidentiality: Improving transparency and privacy in family courts.

It will cover:

- the background to the report;
- a summary of the responses to the report;
- a detailed response to the specific questions raised in the report; and
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Mr Misto Miah Chowdhury** at the address below:

Family Justice Division
Department for Constitutional Affairs
Post Point 9A, 4th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

Telephone: **020 7210 2673**

Fax: **020 7210 8681**

Email: **family.consultation@hmcourts-service.gsi.gov.uk**

This report is also available on the Department's website at: www.dca.gov.uk

Background

The consultation paper 'Confidence and confidentiality: Improving transparency and privacy in family courts' was published on 11 July 2006. It invited comments on the case for opening up family courts to the media and others, in order to make them more transparent while improving the privacy of those involved in family court proceedings.

Specifically, the consultation invited comments on proposals to:

- **Make attendance and reporting restrictions consistent across family courts**
- **Allow the media to attend proceedings as of right, with judicial discretion to exclude and to place restrictions on reporting of evidence where appropriate**
- **Allow attendance by others on application to the court, or on the court's own motion**
- **Introduce reporting restrictions so that people involved in family proceedings (adults and children) remain anonymous, with judicial discretion to increase or relax restrictions, as the case requires**
- **Make adoption proceedings a special case, so that the process after a placement order is made remains private**

We also asked for views about:

- **Whether MPs, Inspectors and lead members should be able to attend family proceedings as of right; and**
- **The provision of later life information for adults who had been involved in proceedings as children**

The consultation closed on 30 October 2006 and this report summarises the responses, including how the consultation process influenced the further development of the policy.

As part of the consultation, we also arranged a number of different events and activities and invited stakeholders to talk to us directly.

A list of respondents to the formal consultation is at Annex A.

Summary of responses

Broad findings/themes

This paper includes the summaries of responses to the consultation paper and discussions of views expressed at stakeholder events and in online discussion forums for adults, and children and young people.

The events and the forums were held throughout the consultation period and gave people the opportunity to discuss and debate the proposals. While there was some congruence, themes and topics which emerged from stakeholder conversations differed from those which arose in formal responses to the consultation paper. The summary of the key stakeholder events highlights issues that may be particular to certain groups of people, such as medical experts and children and young people and which may not have formed part of a formal consultation response.

It is possible to pick out, however, some general themes which emerged throughout the consultation, including from the formal consultation responses. These include: 'information'; 'openness'; the 'interests of children' and; the practical implications of the proposals.

Information

One area which received wide support, from both the responses to the consultation paper itself and from stakeholders throughout the consultation, was increasing the amount of information available on how the family justice system works. Also popular was making this and other information available to those involved in proceedings. There was particularly strong support for the proposal on later life information, that is retaining information for adults about the family proceedings in which they had been involved as children. Children, young people and adults agreed that later life information should be available and that this could take a variety of forms, such as a transcript or summary of the judgment.

Openness and attendance

Another consistent theme was support for more openness but concerns about the related practicalities. There was some debate on what "openness" in family courts actually means and how it might be pursued. In particular, the potential effects of increased openness on children and vulnerable adults were considered.

The consultation proposed that one way to increase openness of family courts might be to allow more people to attend proceedings, than are able to at present. Specifically, we proposed that the media should be able to attend family courts as of right and invited opinions on whether MPs, HMICA and CSCI Inspectors and Lead Members of local authority children's services should be allowed into family

courts as of right, subject to judicial discretion to exclude. We also asked whether "others" should be able to attend family courts and, if so, whether that attendance should be as of right or by application to the court. There was considerable support for others to be able to attend on application and subject to the discretion of the court.

"All non parties wishing to attend a family court should apply to the court for permission to do, which should only be refused upon reasonable grounds."

Grimsby and Scunthorpe Family Proceedings Court

One of the proposals which provoked most debate during the consultation was that of the media attending courts as proxy for the public. This topic arises throughout this paper.

Child-focused

The need to ensure that the family courts continue to operate in a child-focused way was consistently highlighted by, among others, the voluntary sector, legal and public organisations representing children and young people, and young people themselves. They all emphasised that any changes to the family court system must primarily take into consideration the needs, interests and welfare of children involved in proceedings.

"It is the welfare of children and young people that the family justice system exists to prioritise and protect. We forget this at our peril."

Association of Lawyers for Children

Particular concerns emerged throughout the consultation about making family courts more open to others, especially the press.

"It is not in the best interests of children, who are the subjects of litigation between their parents or in care proceedings, that intensely private matters should be laid bare to the public at large; nor is it in the public interest. Children of whatever age are, we believe, entitled to as much privacy as possible from intrusion by the media and the public during their formative years."

President and the High Court Judges of the Family Division

"The main concern amongst the children and young people (whom we consulted) was an increased worry and upset caused by opening up the courts in a process that they all identified as an already upsetting experience."

Oldham Metropolitan Borough Council

Reporting and anonymity

A number of stakeholders were concerned about protecting anonymity in family courts opened up to the media and/or others. In their view, even with extra reporting restrictions and stricter penalties for breaching those restrictions, the anonymity of parties involved in proceedings would be difficult to maintain.

At present breaches of the rules of confidentiality are dealt with as contempt of court. It is our experience that breaches, especially disclosure of court reports, in informal publications and on the internet, are not uncommon and rarely punished. Our view is that penalties do deter responsible media representatives, but only them.

Council of Circuit Judges

There were also mixed views about what the media should and should not report. Certainly children and young people seemed concerned to keep the details of their family lives private (see "what children and young people said"), not least through maintaining the anonymity of those involved in family proceedings.

"It is important that getting the consent of all those involved in proceedings where there is any consideration of lifting reporting restrictions includes the consent of children."

National Youth Advocacy Service

For "open justice" and in the public interest, there was strong support from some that the media should be able to attend as of right:

"I am in favour of giving the media – and in practice this means the Press – access to family proceedings, provided that there are clear ground rules about what they can and cannot report."

"There needs to be an ongoing dialogue between the higher judiciary, the press and the media generally about family justice and how it is administered. We – that is the specialist judiciary and practitioners – have nothing to fear from public scrutiny: indeed we should welcome it."

"The Consultation Paper is part of a public debate, and in my view, the final word should be left to Parliament."

Lord Justice Wall

"The justice system should hold to certain universal principles, of which open justice is a fundamental one. There is nothing intrinsic to the nature of family court proceedings which should justify a general departure from this principle – other courts (criminal and civil) require parties to proceedings to be identified save in exceptional cases; other court processes sometimes require the public giving of evidence which may comprise personal or distressing private information."

Newspaper Society

Others questioned whether the media would be able or appropriate to fulfil a public scrutiny role:

"The consultation paper makes the case for permitting media attendance as a proxy for the public, and to provide a measure of public accountability and scrutiny. It is important to highlight that there are other ways of achieving this outcome.

The document also makes reference to the experience of models that have been adopted in other countries. Although these models seem to be successful, their success might be attributed to the media in these countries not being as intrusive or sensationalist as the media in the UK."

Welsh Assembly Government

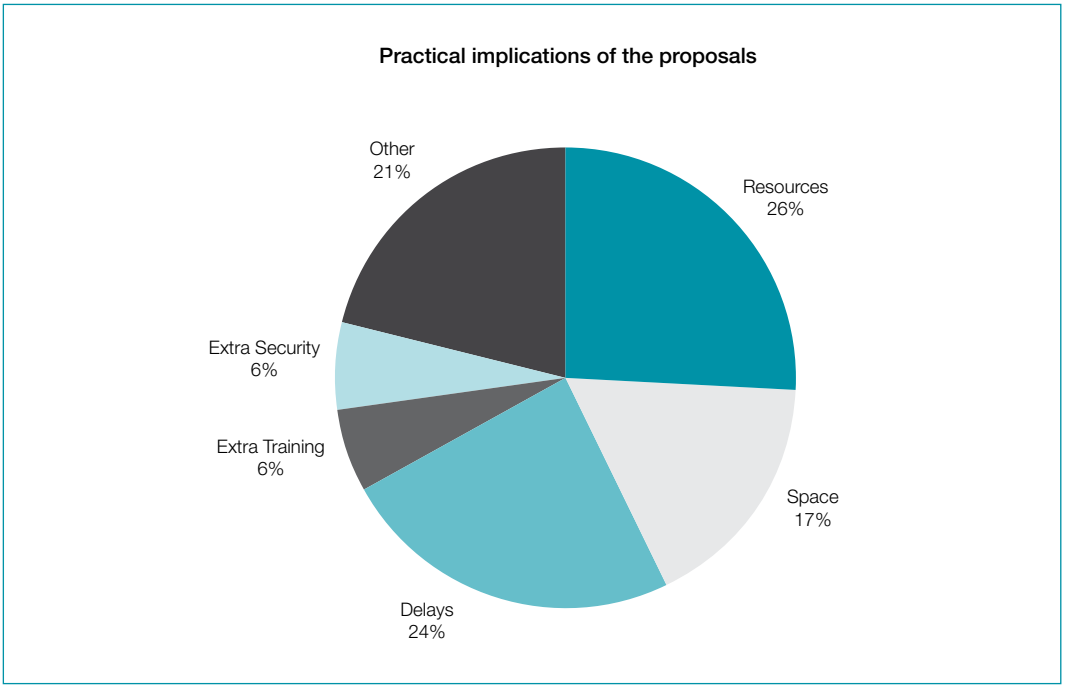
Practical implications

Stakeholders discussed possible practical implications of the proposals, were they to be implemented. Although there were a variety of responses, the majority focused on cost implications, possible delays to proceedings, security issues and lack of physical space in family courts.

"We have to ensure that judges are able to make decisions in the best interests of children. We must be careful to ensure that by seeking to promote accountability, we don't compromise the willingness of parties to litigate, and/or the ability of witnesses (expert and lay) to come to court and assist the judges by giving evidence in a manner and context which yields the most reliable information… I am concerned that proceedings do not become more cumbersome, or prolonged, by reason of applications to include or exclude the media or public. Delay is already a scourge of the family justice system. We do not want to add to the costs or the uncertainties of litigation."

Stephen Cobb QC

Practical implications of the proposals



About a quarter of the possible practical implications listed by respondents focused around related resource and cost issues. Anonymising judgments, extra administration and court staff and the already scarce resources in the courts service at present were referred to. Another quarter discussed the problem of delays that might be caused by, for example, the extra time needed to process applications to attend court. Concerns about (limited) space in courtrooms, judge's chambers and waiting areas were also frequently listed.

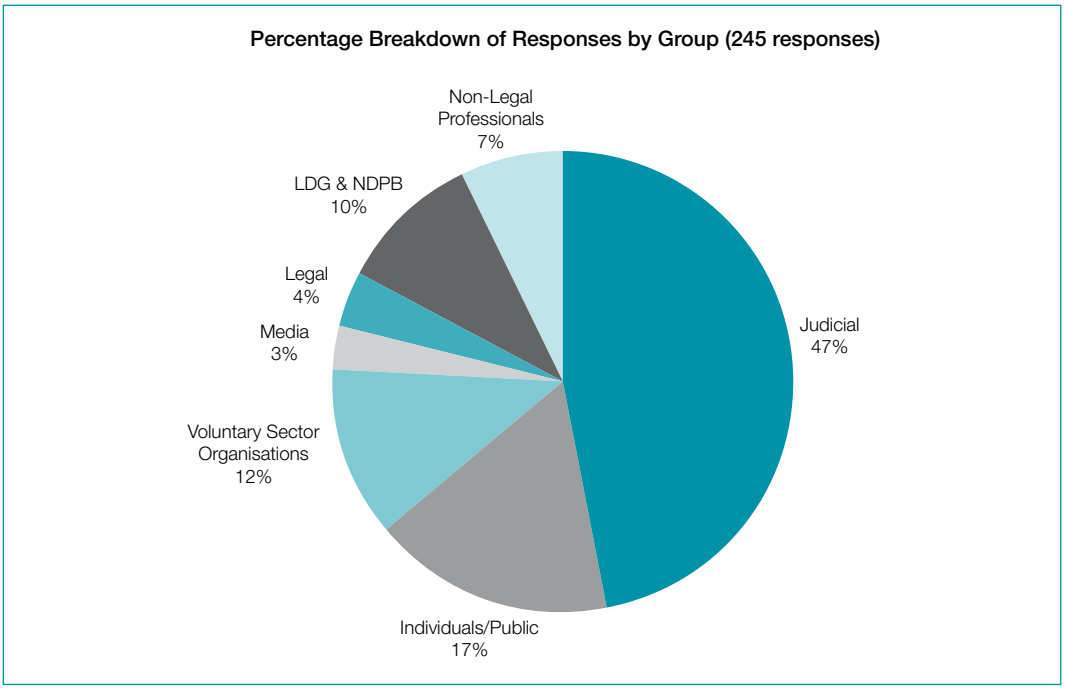
"The County Courts only have one or at most two security officers, usually based on the ground floor public entrance. There is no-one to maintain security in Court apart from a Clerk usually sitting with a Circuit Judge, but also covering other duties. There is no-one at all with a DJ (District Judge). If tempers rise between the parties and their supporters, there is no-one to stop it, and a real risk that the Judge will be involved. This is a risk now, but easier to control with only the two parties in Court or the DJ's room. With more people the risk is higher."

His Honour Judge Charles Elly

Overall breakdown of responses by group

A total of **245 responses** to the consultation paper were received. Of these, the smallest number of responses (**7**) were from the **media**, just 3% of all responses. **115** responses from the **judiciary** (individuals and representative bodies) made up nearly half of all responses, at 47%. **41** responses from **individuals (the public)** made up nearly a fifth of all responses and **30** from **voluntary sector organisations** constituted 12% of all responses. There were **28** responses from **legal and non-legal individuals and organisations**, including those from medical, academic and other professional sectors. Making up nearly 10% of all responses were the **24** from **local and devolved governments and non-departmental public bodies** (LDG & NDPB). We are very grateful to all those who took the time to respond.

Percentage breakdown of responses by group



How responses were analysed

The sections below explain how the consultation responses were analysed, including how and why they were grouped, how they were recorded and how they were interpreted and analysed.

Groupings and analysis of responses

Every response to the consultation was counted once. 61 magistrates from one family proceedings court (fpc) each submitted an identical response to the consultation. For those areas of the consultation on which these responses commented, the results were heavily skewed due to their inclusion. If these responses are counted as one response, then the total number of responses is 185 and those from judicial groups and individuals still make up the largest group, at 55 responses, 30% of the total. Therefore, wherever appropriate, two sets of figures are provided in the paper, one counting every response once and the second treating the 61 magistrates' responses as one response in total. This has been done not to discount their responses but rather to highlight the effect of their inclusion on the judicial responses as a group and on all the responses when looked at as a whole.

The respondents were grouped as follows:

- **Individuals/Public**

Members of the public and professionals responding in a private capacity

- **Judicial**

Individual judges and magistrates, judicial representative bodies, family justice councils

- **Legal**

Individual practitioners and legal representative bodies

- **Media**

Professional and representative organisations

- **Local and Devolved Governments & Non-Departmental Public Bodies (LDG & NDPB)**

Local governments, the Welsh Assembly, HM Inspectorate of Court Administration, Children and Family Court Advisory and Support Service etc

- **Non-Legal Professionals**

Academics, medical representative organisations, individual medical professionals, trades unions, other interested organisations

- **Voluntary Sector Organisations (VSO)**

VSO representing adults, VSO representing children and young people, "other" VSO

Where markedly different views are expressed within groupings, they are highlighted and discussed. In general, the most wide-ranging and contrasting views came from the voluntary sector organisations (VSO) and the judicial groups. "Other" voluntary sector organisations and VSO representing children and young people tended to have quite different views to VSO representing adults (typically parents) and sometimes from each other. Contrasting opinions also came from the judicial sub-groups.

Analysis of findings

This paper gives general information on the responses to each question and highlights unexpected aspects or those of statistical significance or of particular interest in some other way.

All comments, for example on the practical aspects of possible implementation, have been recorded, coded and analysed.

Court attendance by others

The consultation paper gave respondents the opportunity to say whether they felt others should be able to attend family courts. If they did, they could then list who should be able to attend and whether these people should be able to attend as of right or need to apply. There was very strong support for the proposal to allow others to attend, with only the "individual magistrates" subgroup not in favour. Perhaps not surprisingly, a wide variety of persons were listed by respondents. Each "type" of person was counted and recorded and included in a wider group. For example, "siblings" and "spouses" were included as "close/immediate family".

Court attendance by MPs, Inspectors and Lead Members

The consultation paper also asked whether MPs, Inspectors and Lead Members should be able to attend family courts as of right. The nature of the responses to this part of the consultation were somewhat unexpected: many respondents replying "yes" or "no" added that only one or two of these groups should be allowed in as of right and the others should have to apply to attend. As a result, the responses were analysed as if the question had asked: a) "Do you think MPs should be able to attend as of right?"; b) "Do you think HMICA and CSCI Inspectors should be able to attend as of right?"; c) "Do you think Lead Members for local authority Children's Services should be able to attend as of right?" The responses to this proposal are shown in Annex B.

Responses to specific questions

For each consultation question, there is a chart representing the "yes" or "no" response by group and the overall response. It should be noted that not every respondent answered every question in the consultation paper or answered questions directly. The charts included in this paper only show those responses giving a definitive answer to the particular question. It should also be noted that the charts showing the breakdown of responses for each proposal show percentages rather than actual numbers of responses.

Responses to specific questions

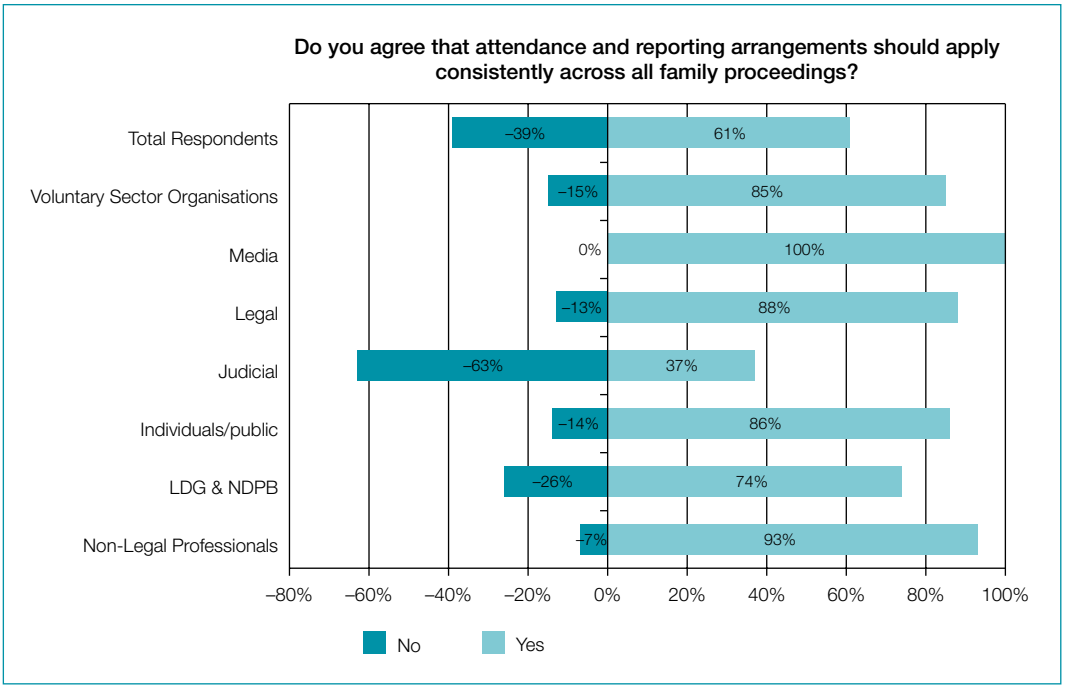
1. Make attendance and reporting restrictions consistent across family courts

- We asked whether people agreed that attendance and reporting arrangements should apply consistently across all family proceedings

220 respondents (90% of the 245 total respondents) **expressed an opinion** about this question. Of those:

61% of respondents agreed that attendance and reporting arrangements should apply consistently across all family proceedings.

The breakdown of responses is shown below.



Most respondents were **strongly in favour** of making attendance and reporting restrictions consistent across all family proceedings, with a large majority in nearly each subgroup agreeing that they should be consistent.

"It would be difficult to justify different arrangements, based simply on the existence of different venues for family proceedings…we can see no justification for the present inconsistent arrangements between different courts, especially since proceedings can be transferred between the different courts."

Crown Prosecution Service

In fact, it was only the responses from individual magistrates which strongly disagreed with this proposal – a finding which was heavily influenced by 61 identical responses from one family proceedings court (FPC), which all disagreed: "the system is as it is for good and valid reason". If the 61 responses are counted as one response, then 82% rather than 37% of judicial respondents agreed that arrangements should apply consistently and **84% of the 160 respondents** who expressed an opinion about this question (86% of the 185 total respondents) **agreed with these proposals**.

So, while there was strong support for consistency in terms of attendance and reporting restrictions across family courts, there were interesting differences in opinion as to which restrictions should be consistent. For example, whether respondents felt that all proceedings should be totally private, or whether they felt that all family courts should match the current arrangements of the High Court.

"The current complicated and inconsistent arrangements are confusing and illogical. It is does not make sense that under the current arrangements, the press can attend children's cases in family proceedings courts and then the press is excluded if the same case is transferred to a county court or higher court. We would therefore support the move to a consistent system. We do not however support the view that the media should be allowed as of right to attend all proceedings."

National Society for the Prevention of Cruelty to Children

"Family hearings should be in private unless the court orders otherwise."

Law Society of England and Wales

"All judges should have the same powers as the High Court to have the discretion to allow the media and other parties into the court and to name parties. This would therefore mean that the Magistrates' Court would have to be brought in line with the county courts and not the other way around."

Resolution

"The current restrictions on both attendance and reporting should be lifted across all family proceedings and replaced by a consistent rule that the courts should be open to the press, *without* automatic reporting restrictions."

Society of Editors

2. Allow the media to attend proceedings as of right, with judicial discretion to exclude and to place restrictions on reporting of evidence where appropriate

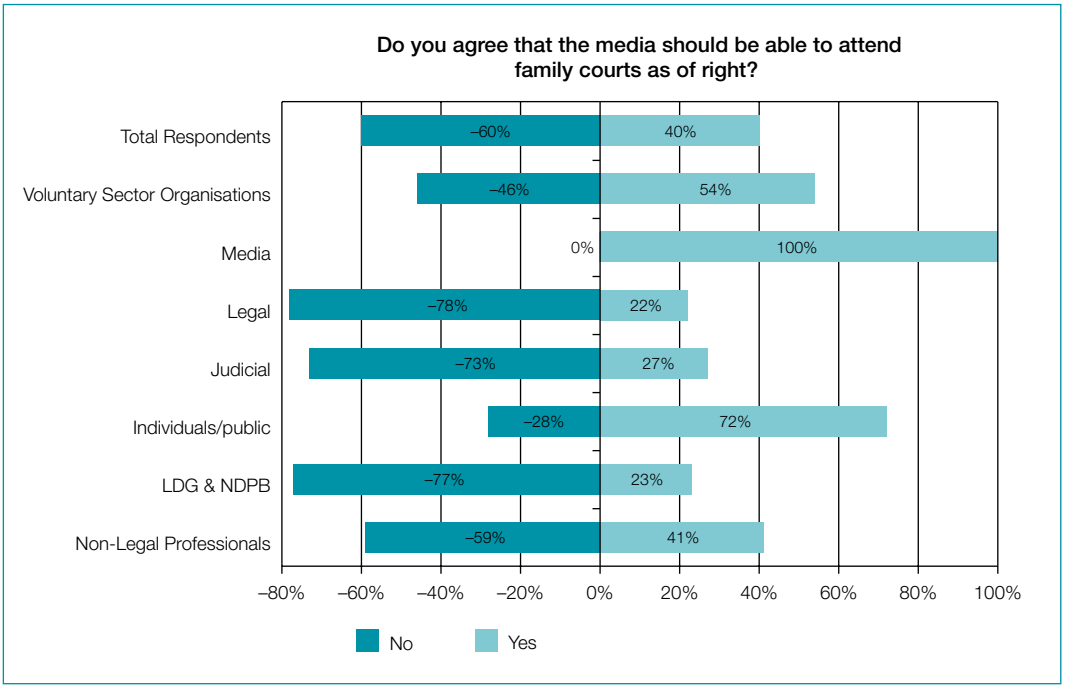
- We sought views on whether the media should be able to attend family courts as of right; whether the court should be able to exclude the media from family courts if appropriate; and whether exclusion should depend on the type of family proceedings.

232 respondents (95% of the 245 total respondents) **expressed an opinion** about whether the media should be able to attend family courts as of right. Of those:

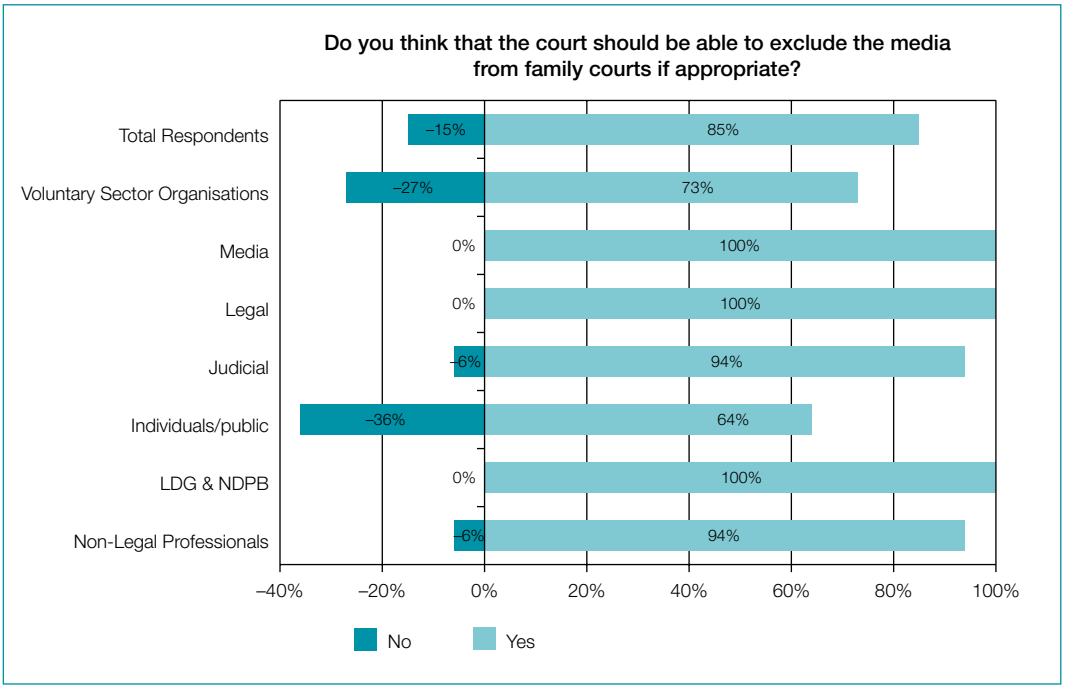
40% agreed that the media should be able to attend as of right, while 60% did not.

However, if the 61 identical responses from one FPC are counted as 1 response, then **54% of the 174 respondents** who expressed an opinion **agreed** that the media should be able to attend as of right.

The breakdown of responses is shown below.



There were very mixed responses to these proposals, often with groups strongly in favour or strongly not in favour of the proposal to allow the media into family courts as of right. However, there was broad and strong agreement that, if the media were allowed to attend family courts as of right, there **should be judicial discretion to exclude**.



In general, the proposal to allow the media in to family courts as of right generated the most debate. A handful of respondents felt that the media should never be allowed in at all – that all family proceedings should be held in private. Conversely, just a handful of respondents felt that the media should be able to attend all family proceedings as of right, with no restrictions on that access. As the above charts demonstrate however, even those who supported a presumption of media attendance in family courts, thought that the judiciary should retain discretion to exclude them if appropriate. Whether that discretion should only be used in exceptional circumstances, or whether the judiciary should have a wide discretion to exclude, varied between responses but most respondents did see that as an important caveat to media attendance.

"Opening the door of the court should only be done by and at the discretion of the judge on application. It is for consideration whether the grounds on which the discretion is to be exercised should be expressly stated. We are of the view that the discretion should not be limited so as to provide for all the considerations which might properly influence the decision."

Law Society of England and Wales

"Any decision taken by the court to exclude media should be taken alongside the parties themselves. Parties to the case and children subject to the proceedings should be able to initiate this process by asking the judge to include or exclude the media from all or part of the proceedings according to their own wishes".

Refuge

"The "proxy" role the DCA is hoping that the media will assume would be utterly comprised if there were to be automatic exclusion from whole categories of cases or parts of cases. It is essential that the principle of open justice in family proceedings is clear and uncompromised.

Channel 4

"There may be rare circumstances where it is justified to exclude reporters but this should be very much the exception. In such cases it would be worth considering whether the number of reporters could be restricted as opposed to complete exclusion."

ITN

A majority of responses from the **public (28 out of 39)** and two thirds of **voluntary sector organisations for adults (10 out of 15)** agreed with the proposal and **all media respondents** were **in favour** of allowing the media into family courts as of right.

"We fully support the proposal that the media should be allowed to attend ALL family courts as of right… The principle of a general presumption of openness must be established if public confidence and accountability is to be achieved. The role of the media as representative of the public, particularly in relation to attendance at court proceedings, is well established and understood."

Newspaper Society

Overall, **only 27%** of judicial respondents felt that the media should be able to attend as of right. However, of the subgroups only "individual magistrates" and "judiciary" did not agree. Again, the results were skewed for the individual magistrates group by the inclusion of 61 identical responses, which all disagreed. If these are counted as one response, then, taken as a whole, the majority of judicial respondents **(58%)** were in **favour** of the media being able to attend as of right and only the **judiciary** sub-group did not agree **(67% did not agree)**.

However, the Association of District Judges and the Council of Circuit Judges, representing the judiciary in the county courts where most of the family work is done, did not agree that the media should be able to attend family courts as of right. Both supported this view with a number of reasons, including: no public interest to be served; parties' human rights might be breached; the "media" are difficult to define.

"Permission should be sought from the judge. Family proceedings are private between the parties and the automatic right to be present would have a detrimental effect on parties and their witnesses. To allow otherwise we believe may be a breach of their rights under Article 8 of the Human Rights Act 1998."

Association of District Judges

"(We have) concerns about the assumption that the media will work on behalf, and for the benefit, of the public alone. Allowing the media access to family courts proceedings would give the public greater awareness of the complexities involved in making difficult decisions about a child's care and welfare. However, the media also inevitably has a function to find news that will increase readership and sell newspapers and magazines. Any plans for opening up the courts must address this conflict of interest to ensure the courts are open to scrutiny in a manner which keeps the child's welfare and protection paramount."

National Children's Bureau

All other groups did not agree that the media should be able to attend family courts as of right. Responses from **legal** groups and individuals and LDG & NDPB **strongly disagreed** with the proposal: **nearly 80%** of those that expressed an opinion from these groups disagreed with this proposal. Many of those who disagreed with this proposal emphasised that allowing media access to family courts as of right may be contrary to the interests and welfare of children.

"Placing the interests of children and young people at the centre of the debate requires us immediately to consider the practical effects on a child's well being of increased publicity in relation to the proceedings concerning them."

Association of Lawyers for Children

"In deciding any case concerning the upbringing of a child the court must make the child's welfare the paramount consideration – and this will not always by any means coincide with justice between adult parties whether secret or not. It is hard to see how children will benefit from media access. On the contrary we think that media access will create risks to children's welfare which cannot entirely be avoided."

Luton and Bedfordshire Family Justice Council

"In order to have a good understanding of a case it is necessary to be able to follow its progress through the courts and have access to much of the paperwork – not simply to sit in and report on the final judgment. We do not feel that the press will have sufficient resources to devote to gaining an adequate understanding of a case… By and large, their reports will not increase public understanding of how the family courts operate or increase public confidence that the decisions made are sound."

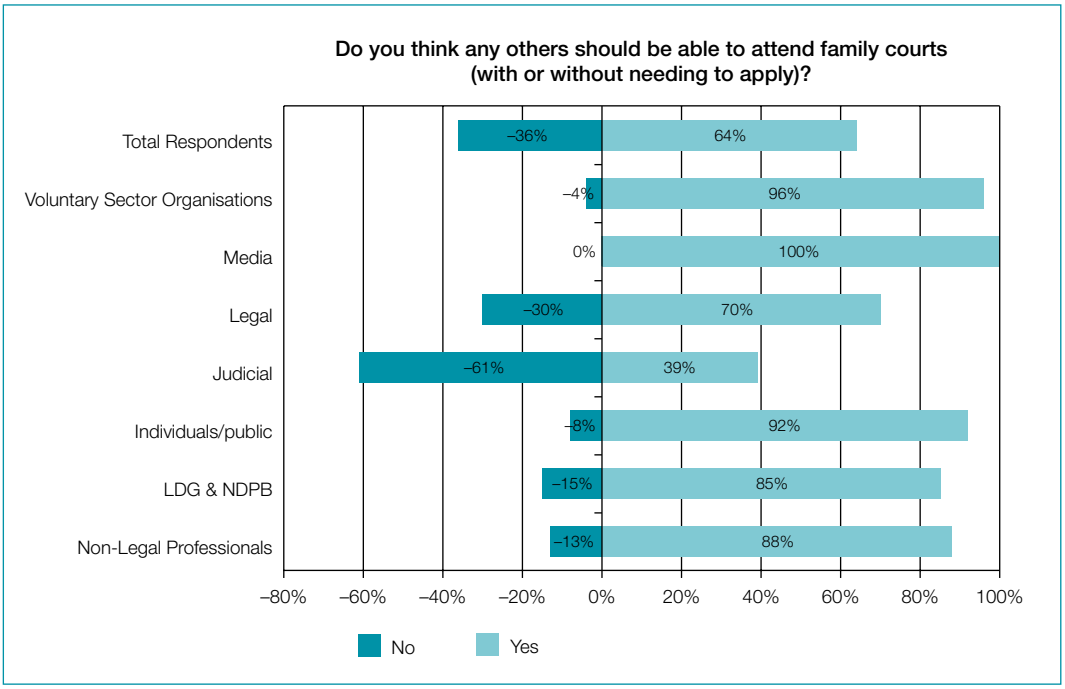
One Parent Families

3. Allow attendance by others on application to the court, or on the court's own motion

223 respondents (91% of the 245 total respondents) **expressed an opinion** about this question. Of those:

64% agreed that others should be able to attend family courts, either on application, or on the court's own motion.

The breakdown of responses is shown below.



Most respondents were **in favour** of this proposal. However, the 61 identical responses from one FPC (nearly a third of all of those who responded to this question), all disagreed with this proposal. If these were treated as one response, then 84% of judicial responses to this proposal would be in favour, rather than 39%. Of the legal group respondents, neither the Family Law Bar Association nor the Law Reform Committee of the Bar Council agreed that others should be able to attend family courts.

A wide variety of persons were listed by respondents, including relatives and friends, professional, lay and religious supporters, researchers and students, the public and anyone with a genuine interest in attending.

"A close relative, a church elder, or person exercising pastoral care."

Christian Brethren Fellowship

"Those who have a close and particular interest in the proceedings and their outcome should be able to attend but they would need to apply."

Legal Services Commission

"(We recommend) that there is a presumption that a professional who has provided support to one of the parties, such as a domestic violence worker or refuge staff member, should be admitted to the court (where they are not, for whatever reason, making an application as a McKenzie friend). We strongly oppose the use of admittance by application system being used to deny women the support they need in the courtroom."

Rights of Women

"The general public should not be allowed access as of right or even be given a presumption of attendance… Thought should be given to providing a power for certain categories of person to be able to apply to the court for permission to attend restricted hearings. Examples may include: academics undertaking relevant research, friends and family members and those training to practice in the field of family law."

Liberty

In total, the most popular category listed was **"Family" (105)**. **"Observers" (91)** was also popular and within this category, researchers, students and trainees were the most frequently named, followed by those with a genuine interest in attending. **"Close friends" (37)** was the third most popular category. Whether respondents felt that others should be able to attend as of right or whether they need to apply to attend did vary between groups. In general, individuals/the public and individual legal respondents were more in favour of others attending family courts as of right. The majority of other respondents felt that anyone else wishing to attend family courts should have to apply.

Please see **Annex B** for 'Chart 1 – Do you think any others should be able to attend family courts (with or without needing to apply)? If so, whom?'

While there was support from all groups for this proposal to allow others to attend, there were also **concerns** about allowing others in to family courts, for a variety of reasons.

"As the consultation paper states each case will be different and must be approached on its individual facts. The presence of, say, a grandmother or a neighbour could, in different contexts, be wholly supportive or extremely destructive. The Council recognises that particular care may be required in cases involving members of some BME communities, where concepts of shame and honour, the powerful influence of extended family members and the involvement of local community and religious leaders may all be relevant factors to be taken into consideration."

Family Justice Council

"An overriding concern within our response to this consultation is how much more vulnerable parties, witnesses and court staff will be if other people are allowed to attend family court proceedings. The sensitivity of such proceedings cannot be emphasised too much. The nature of the evidence presented, including matters of child abuse and domestic violence, is the most important factor mitigating against the involvement of other people."

National Association of Probation Workers

"As domestic violence is rooted in a power imbalance within an intimate or family relationship, the perpetrator will take opportunities to perpetuate that imbalance. Access may be granted to members of the public who by association and visibility will be able to exert pressure on a victim of domestic violence."

Women's Aid

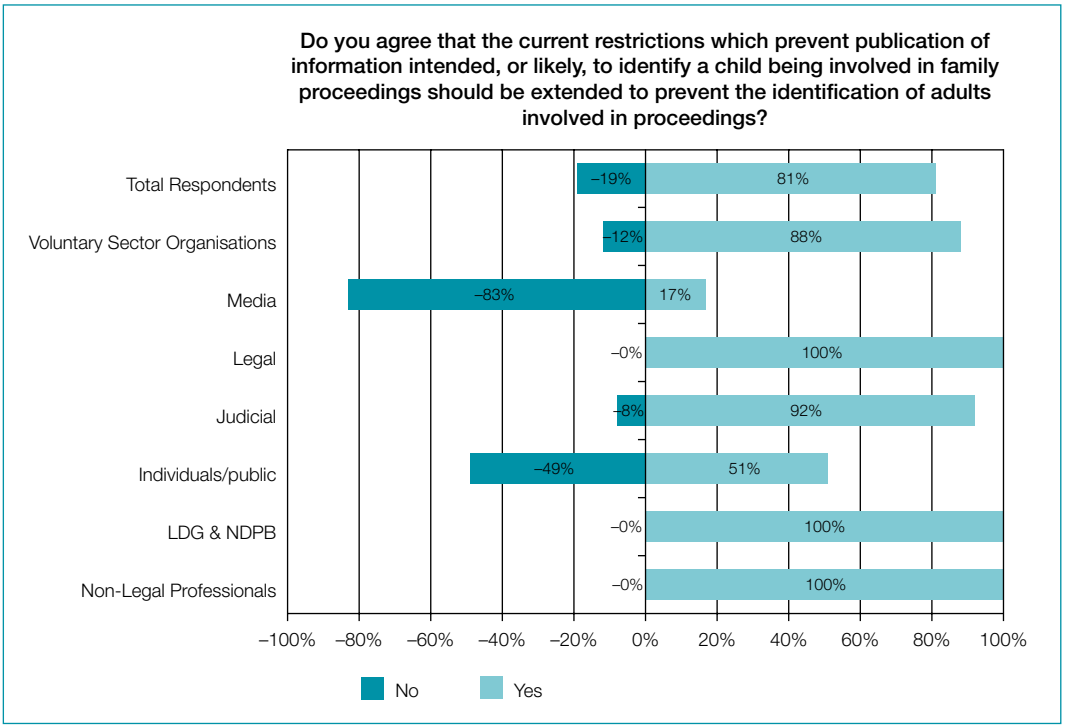
4. Introduce reporting restrictions so that people involved in family proceedings (adults and children) remain anonymous, with judicial discretion to increase or relax restrictions, as the case requires

- We asked if people agreed that the current restrictions which prevent publication of information to identify a child involved in family proceedings should be extended to prevent the identification of adults involved in proceedings.

159 respondents (65% of the total 245 respondents) **expressed an opinion** about this question. Of those:

81% agreed that the current restrictions which prevent publication of information to identify a child involved in family proceedings should be extended to prevent the identification of adults involved in proceedings.

The breakdown of responses is shown below.



Overall, the **responses agreed strongly** that the current restrictions which prevent the publication of information to identify a child involved in family proceedings **should be extended** to prevent the identification of adults involved in proceedings.

Judicial, voluntary sector, legal, non-legal, and LDG & NDPB respondents were **strongly in favour** of this proposal.

> **"Clearly there must be restrictions on reporting to provide for the anonymity of a child and of any adults involved in family proceedings where their identification may lead to the identification of a child. Discretion should always be vested in the court to increase or relax those restrictions as appropriate to accommodate the best interests of a child or, where it is deemed proper by the court, of adult parties to proceedings where no child is involved."**
>
> **Dame Margaret Booth D.B.E.**

Just over half of responses from members of the **public** were **in favour** of this proposal and nearly all **media** respondents **(83%) disagreed**. Nevertheless, there was broad consensus that the court should have the power to increase or relax restrictions, as the case requires.

"On balance, the NUJ believes that whilst the courts should normally consider anonymity, it should not be automatic and there may well be times when it is refused. We believe the best way to handle this issue is for it to be open to any party to seek confidentiality and for the court to consider granting this in the normal course of events unless a good case is made to the contrary. We believe the media should have the right to make such a case in the public interest."

National Union of Journalists

A blanket ban on reporting and the power to introduce additional reporting restrictions to ensure the anonymity of those involved in family proceedings failed to receive strong support. Voluntary sector organisations for children and young people, "other" voluntary sector organisations, representative judicial groups and legal respondents were not convinced that, together, the ban and the extended restrictions would be sufficient to ensure parties' anonymity.

"An anonymised account of the issues in a case may not be recognisable to the public in general but to a next-door neighbour the identity of the family may be plain from the barest of details. In such cases it is not difficult to see how, notwithstanding measures aimed at preserving anonymity, children and families will be identified, potentially with the consequences outlined above. The difficulty is that the closer to home publicity comes the less effective are measures intended to ensure anonymity."

Association of Lawyers for Children

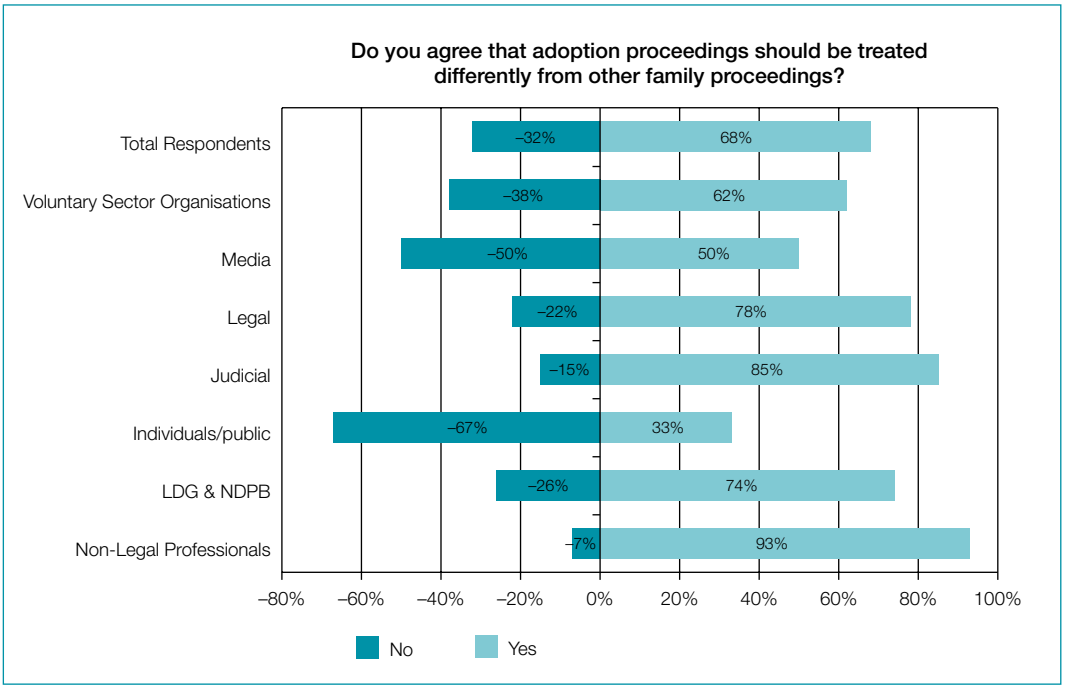
5. Make adoption proceedings a special case, so that the process after a placement order is made remains private

- We asked whether people agreed that adoption proceedings should be treated differently from other family proceedings; and whether, once a placement order has been made, the remainder of the adoption proceedings should be in private.

152 respondents (62% of the total 245 respondents) **expressed an opinion** about whether adoption proceedings should be treated differently from other family proceedings. Of those:

103 (68%) agreed that adoption proceedings should be treated differently from other family proceedings.

The breakdown of responses is shown below.



146 respondents (60% of the total 245 respondents) **expressed an opinion** on whether, once a placement order has been made, the remainder of the adoption proceedings should be in private. Of those:

113 (77%) agreed that they should be held in private, once a placement order has been made.

In general, there was broad agreement from all groups for the proposals that adopting proceedings should be treated differently from other family proceedings, apart from individual and media respondents, although two-thirds of individual/public respondents disagreed (24 out of 36). **Nearly half (17 out of 35)** of individual respondents **did not agree** that, once a placement order has been made, the adoption proceedings should be in private.

"There are two parts to adoption proceedings – up until placement order and after placement order. Consequently, applicants should apply to attend both parts separately. However, if there are objections to an application from the biological family, foster family or the judge then the request to attend should be denied."

James Austen Williams

"Adoption proceedings need to be as transparent as other proceedings as this is the area where public confidence in the process is at its lowest ebb."

Trevor Jones

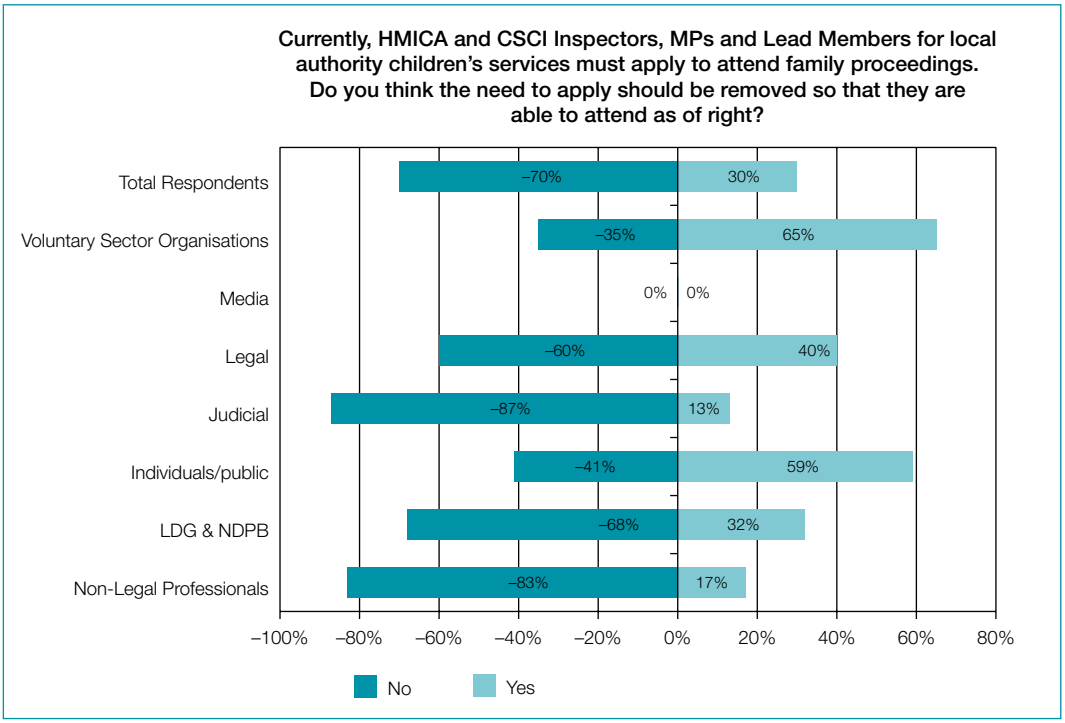
Of the legal group respondents, the Law Reform Committee of the Bar Council and the Law Society did not agree that adoption proceedings should be a special case. Their view was that all family court proceedings should be in private, unless the judge grants permission for others to attend, on a case-by-case basis.

However, there was **very strong support** for this proposal from **non-legal professional** respondents, with 14 out of 15 **(93%)** of those who expressed an opinion agreeing. Of those who expressed an opinion, **LDG & NDPB (74%), legal (78%)** and **VSO (68%)** respondents were all **in favour** of making adoption a special case.

6. Whether MPs, Inspectors and Lead Members should be able to attend as of right.

There was some support for all of these groups to be allowed into family proceedings, though the support was not consistent across groups. Some people thought that only one or two of the groups should be allowed in. Views were also divided on whether they should be allowed in as of right, or by application. There were no media responses to this part of the consultation.

The breakdown of responses follows. Please see **Annex B** for 'Chart 2 – Whether MPs, Lead Members or Inspectors should be able to attend family courts as of right or whether they need to apply to attend?'



Individual respondents and **voluntary sector organisations for adults** were **in favour** of allowing MPs, Inspectors and Lead Members into family courts **as of right**. Legal respondents in roughly equal numbers thought that MPs, Inspectors and Lead Members should have to apply to attend family courts or attend family courts as of right.

"If courts are given the option of refusing the attendance of inspectors or other legitimate democratic representatives then this makes a mockery of the very principle of opening courts."

Stephen Irvine

"This is an essential way in which the court process can be scrutinised by those with specific responsibilities. They should be able to attend as of right, both announced and unannounced, in order to obtain the balance between a more in depth understanding and also a snapshot of the day."

Voice of the child in care

For **VSO for children and young people** however, **3 out of 5** respondents felt that **MPs** should **have to apply** to attend court, equal numbers felt that Lead Members should attend as of right or need to apply but **5 out of 6** respondents believed that **Inspectors** should be able to attend **as of right**.

"Only inspectors should be granted access as of right to increase accountability of the courts and inspection process should be transparent with regard to confidentiality and safety. Inspectors should all be regularly and effectively trained in the dynamics of domestic violence.

Different concerns arise for access by MP's and Lead members whose presence could affect vulnerable adults should a political agenda be identified."

Women's Aid

Overall, **judicial, LDG & NDPB and non-legal professional** respondents **did not agree** that MPs, Inspectors and Lead Members should be able to attend family courts as of right.

"We do not believe that adequate quality control would be achieved by and Inspector sitting beside a judge and just seeing the same viewpoint. It needs linear examination of those cases that still have to come to court. This requires considerable extra resources and cannot be flinched. But there is a wealth of experience from comparable fields that the mere opening-up of the system will enable professionals to improve the focus of their work… Open justice is the most inexpensive method of quality control."

Families Need Fathers

7. The provision of later life information for adults who had been involved in proceedings as children

All groups responded positively to the provision of later life information for adults who had been involved in proceedings as children. However, a number of responses raised the practicalities of implementation, such as resource considerations and the sensitive nature of the information itself.

"Who will provide the money for the transcript when funds are already at breaking point for the Courts Service, Local Authority and public funding? Who will anonymise the judgment as appropriate? Who will provide the support necessary before access is given to often sensitive and sometimes distressing material?"

Suffolk Family Justice Council

"Considerable thought should be given to whether or not the 'adult' may require counselling regarding the detail that they may discover and the effect that such a discovery may have on them. The current practice in the FPC is for the Magistrates to read the court's adoption file before giving leave to disclose the information contained to the adopted adult."

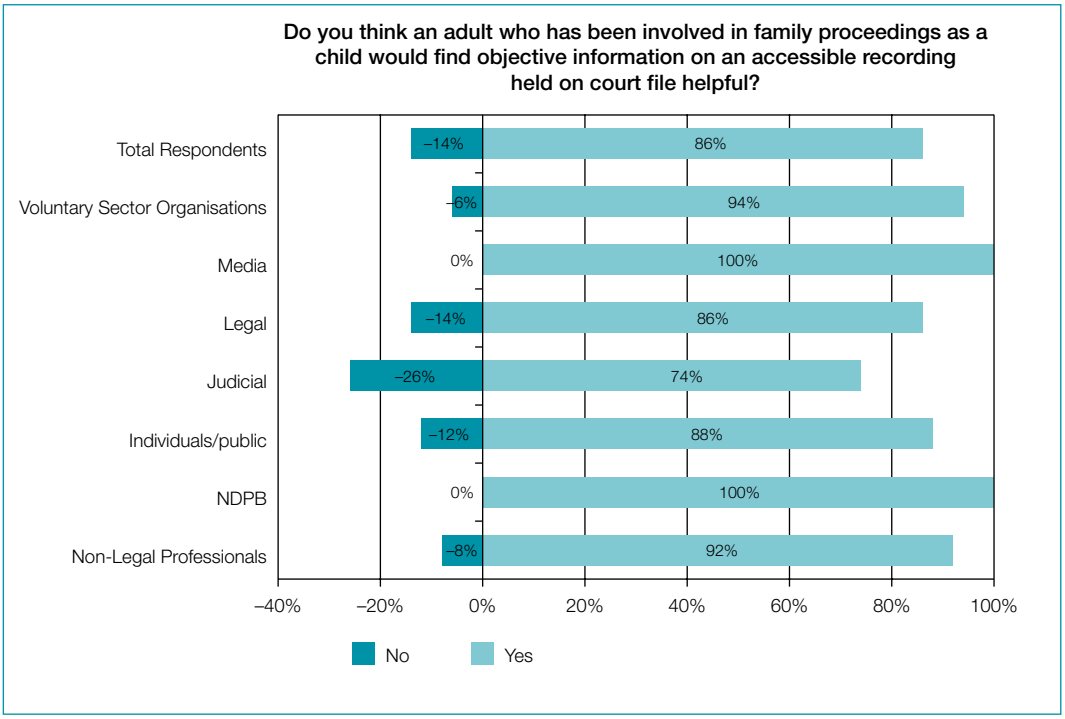
Magistrates Association

The breakdown of responses follows.

We asked whether the following types of information would be helpful, and respondents were able to agree or disagree with all of the following:

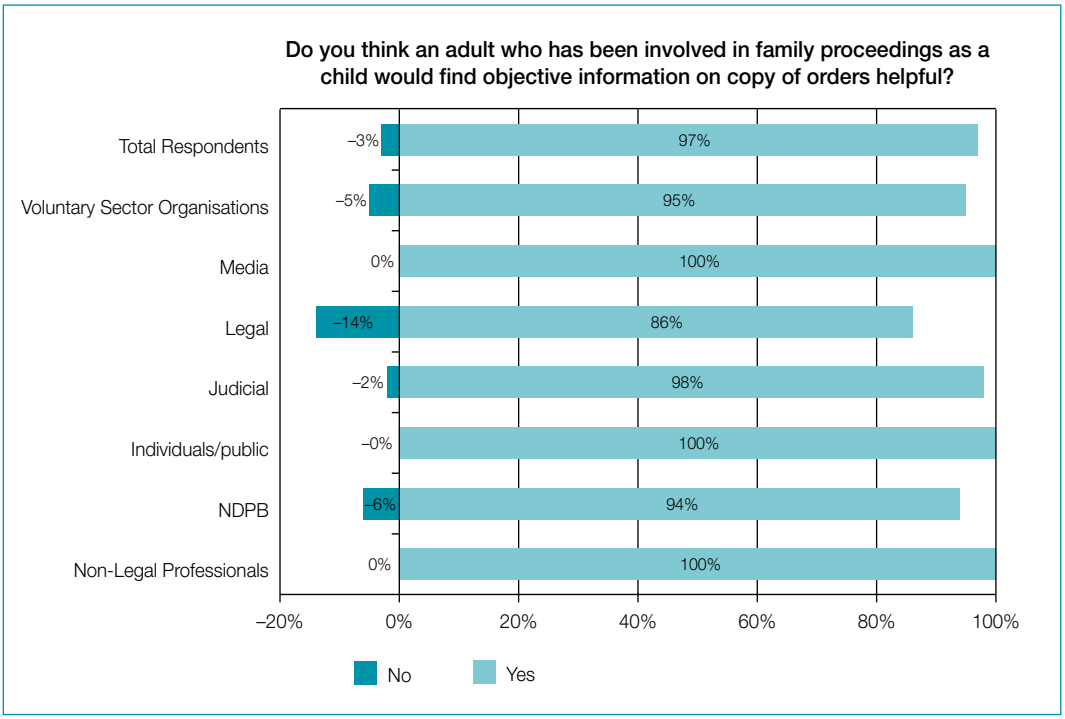
Accessible recording held on court file

- Of the 124 respondents (51% of the total 245 respondents) who expressed an opinion, **86% agreed** that an accessible recording held on court file would be helpful.



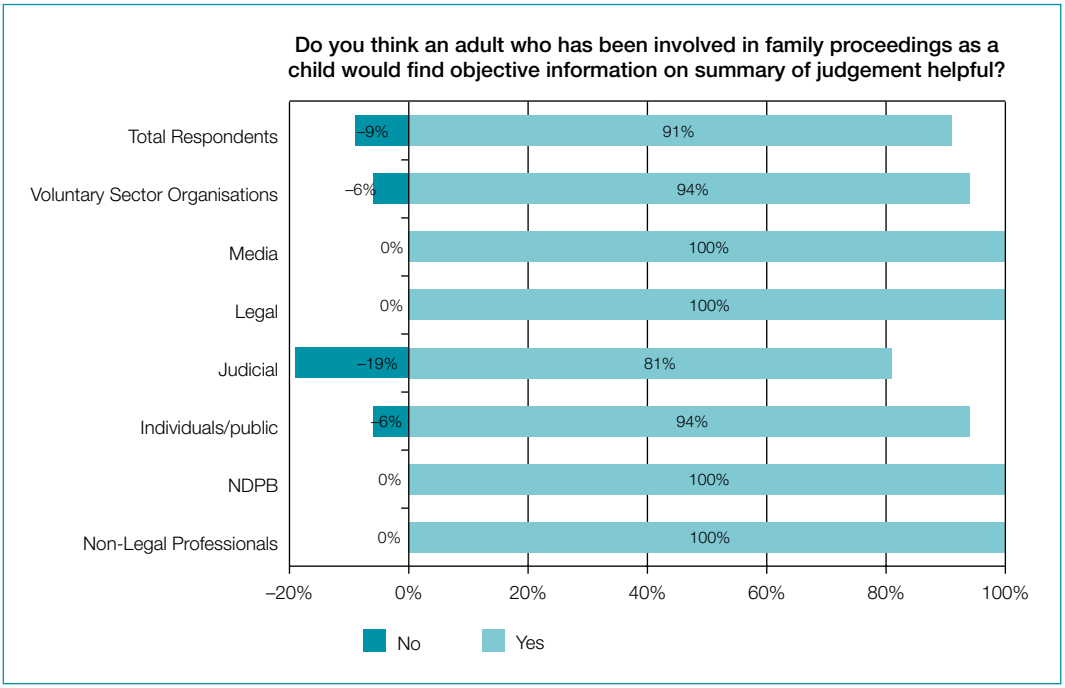
A copy of orders

- Of the 137 respondents (56% of the total 245 respondents) who expressed an opinion, **97% agreed** that a copy of orders would be helpful.



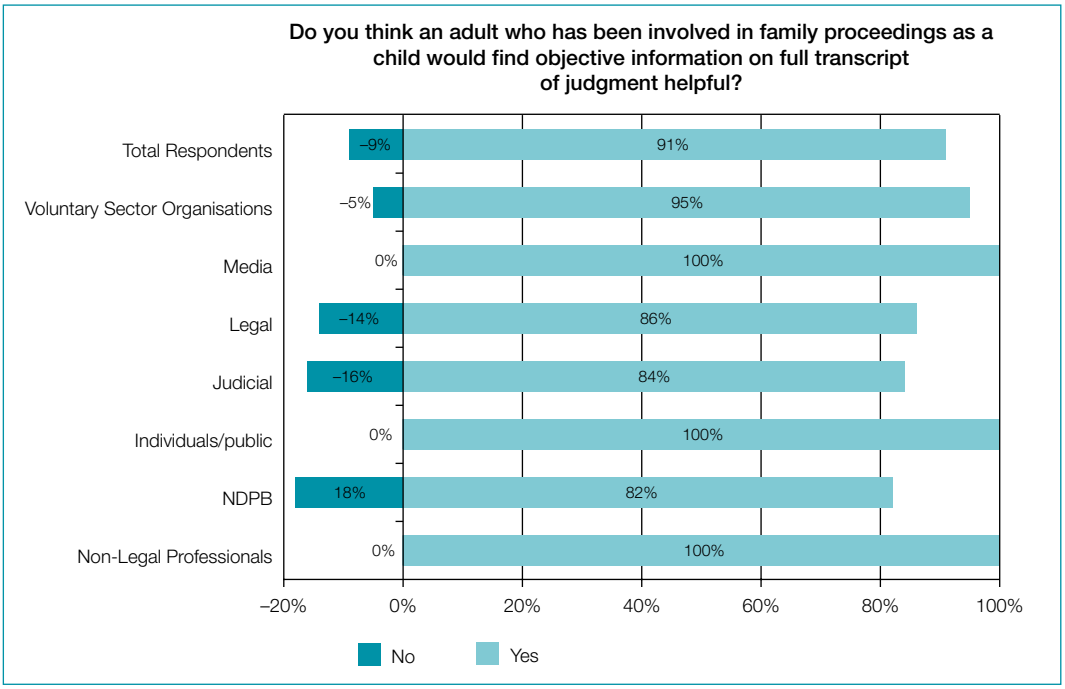
Summary of judgment

- Of the 128 respondents (52% of the total 245 respondents) who expressed an opinion, **91% agreed** that a summary of judgment would be helpful.



Full transcript of judgment

- Of the 136 respondents (56% of the total 245 respondents) who expressed an opinion, **91% agreed** that a full transcript of judgment would be helpful.



There were variations in view within respondent groups. A Later Life Working Group has been set up to look at this specific area and will be making recommendations on the provision of Later Life information.

Talking to people

Before and during the consultation period, we held and participated in a number of events with a range of stakeholders. Some of these are discussed in detail in this response paper.

The key stakeholder event on 12 October 2006 gave the opportunity for a variety of interested professionals and organisations to debate and discuss the consultation proposals. A question and answer session was held with a panel of expert speakers representing a range of perspectives. Harriet Harman QC MP, Minister for Family Justice, also took part. A joint event organised by the DCA and the National Family and Parenting Institute[1] (NFPI) on 5 October 2006 brought a number of voluntary sector organisations together for a discussion session with Harriet Harman.

We were particularly keen to consult with children and young people. Please see "What children and young people said" for information about ways in which we did this.

We also worked with the Hansard Society to pilot two online discussion forums, one for adults and one for children and young people. These were widely advertised and allowed people to comment and debate the themes of the consultation at a time convenient to them.

1 Now called The Family and Parenting Institute.

What adults said

A day of perspectives: Stakeholder Event for the consultation on "Confidence and Confidentiality. Improving Transparency and Privacy in Family Courts"

This all-day event took place on Thursday 12th October 2006 at the Cabinet War Rooms, London. It was chaired by Mavis Maclean CBE, Joint Director of the Oxford Centre for Family Law and Policy. The fifty attendees were a cross section of key stakeholders including the press, judiciary, legal profession, a range of voluntary sector organisations and local and central government officials.

About the day

In addition to a keynote speech delivered by Harriet Harman QC MP, Minister for Family Justice, the event centred around seven speeches from prominent figures, speaking from a range of perspectives. Four discussion sessions were held on the day, which provided an opportunity for all the attendees to ask questions and raise issues. A wide range of points were debated and discussed. The day ended with the showing of a DVD produced by CAFCASS to capture the views of their children and young people's panel. It showed a number of workshops with children and young people, together with a number of video diaries. Presentation of the DVD ensured that children had the 'last word' on the day. It also complemented many of the points raised earlier in the day by Dr. Bren Neale, and brought some new insights to the day's discussions, directly from children and young people themselves.

Overall, this event received positive feedback from the attendees, with particular emphases on the quality and balance of the speakers and the discussions which followed.

Summary of discussions

All discussions took place under the Chatham House Rules.

Introduction

A key aim of the event was to air and discuss a range of perspectives on proposals for improving the openness of family courts. The key speakers and Harriet Harman, raised a variety of interesting and often controversial points. These were debated further by the attendees in the four discussion sessions and in breaks throughout the day.

There was consensus that, in general, greater openness of family courts was a positive goal. There was also consensus that consistency across the system was highly desirable. Presently, the inconsistency throughout the system is very confusing, in terms of procedures, rules and practice. However, there were many conflicting views and debates about how greater openness could be achieved. There was significant agreement that allowing the media in to family proceedings would be damaging to those involved, particularly children.

Aims of proposals

The separate but related aims of increasing the quality of the family justice system and of improving confidence in it were identified and discussed. It was suggested that opening up family courts to the press may not achieve this. Experience elsewhere shows that more inspection, peer review and research has proved to be effective in improving quality in other organisational settings. There were a number of concerns that allowing the media into the family courts could actually damage confidence in the system, as the press would be likely to report only the most sensational cases. Related to both aims was the view that the government needed to be more realistic about the resources required to pursue its aims and implement its proposals on confidence and confidentiality.

Discussion following Harriet Harman's Keynote Speech – points raised

Points were raised about how children's voices can be heard. Particular comments related to listening to children in mediation and how disabled and vulnerable children's voices may be heard. It was suggested that there are many different ways to make a child's voice heard and an example was given of a case where a photograph of a six-month-old child was shown in court.

It was questioned whether the proposals would make it easier for people to speak about wrongdoing.

Perspectives

The perspective of women and children who are victims and witnesses of domestic and sexual violence

- **Nicola Harwin CBE, Chief Executive of Women's Aid Federation England**

Central issues from the speech

The central concern was over the safety of victims and witnesses. Although increased transparency in the system is to be supported, allowing the press and/or others in may threaten anonymity and be intimidating to victims of domestic

violence. Therefore, access is something to be resisted strongly, at least for the time-being.

Points raised in discussion

A point was made that you should be able to challenge a decision on the basis of how facts were or were not considered, not just on the basis of due process of the law.

There was some support for making the media lose its reporting rights if they breached anonymity.

A Father's perspective

- **John Baker, Chairman of Families Need Fathers**

Central issues from the speech

In general the proposals are supported but they do not go far enough. Public scrutiny of the system and public records of proceedings are essential if the system is to be reformed and work better. Openness should be assumed but the judge should still be able to exercise discretion to exclude people.

Points raised in discussion

It was suggested that there is often bias towards mothers within the family justice system and there were concerns that this bias would also be apparent in press reporting of cases from the family courts.

Some of the group supported the assertion in the speech: "If anyone is less accountable than the family courts it's the press".

A Media perspective

- **John Sweeney, Current Affairs Reporter, BBC**

Central Issues from the Speech

The proposals do not go far enough, not least because anonymity should not be protected. For the system to be truly accountable, it must be truly open. Everything to do with the family courts must be made public and open, so that the government as well at the press and others can be held to account for their actions.

Points raised in discussion

Media access to the family courts was debated throughout the day and proved to be one of the most complex and contentious topics.

There was broad agreement from those representing the media that the consultation proposals do not go far enough. It was felt that, in an open and democratic society, the freedom of the press in relation to the courts should not be restricted.

While it was noted that there are always "good" and "bad" press, some felt that there are always going to be disadvantages to openness, for example adversely affecting someone's professional or personal life. This was seen as a necessary evil. Increasing openness and transparency relies largely on allowing the media full access to the family courts.

Others felt strongly that allowing the press access to the family courts would have a potentially damaging effect and, rather than improving understanding of the family justice system, would actually make things worse.

Despite proposals aiming to ensure continued anonymity for those directly involved in family court proceedings, some felt that this would make no difference to what the press would actually report – the facts never get in the way of a good story.

It was argued that there is no evidence that the press behave responsibly; there have been cases in the past, where information has been reported in so much detail that it has been possible for the child or family to be identified.

While all are committed to developing accountability and confidentiality, it was argued that allowing the press into family courts is not necessarily the way to do it.

There was a definite concern from some about the way in which "confidence" is understood to be based on allowing the press access to court, when some of that lack of confidence actually comes though "lazy" reporting, particularly about bias and especially about bias against fathers.

The point was made that press and public do not, in fact, need to know the very private details of a child's life. We should therefore have a principle of "need to know" if others are going to be allowed access to the family courts.

In terms of maintaining confidentiality, it was suggested that the media could be allowed in to court just for the judgments and not for the hearings. This would limit any potential breaches of confidentiality.

Does current anonymisation of those involved in family court cases impede justice, for example by preventing a parent from protesting their innocence in the public domain, after an adverse decision in care proceedings?

Strict anonymity rules were seen by some as unnecessary press censorship. However, while there was agreement that a "one-size-fits-all" approach to anonymity is both undesirable and unjustifiable, many were concerned that strict anonymity for those involved in family court proceedings should remain.

With openness comes responsibility. This means that rather than seeing press access to family courts as a reflection of a truly open society, what is needed is being open at the collective level and preserving privacy at the individual level.

A Practitioner's perspective

- **Stephen Cobb QC**

Central issues from the speech

There is an urgent need for greater transparency, not least to restore public confidence in the system. Yet allowing press access to family courts before the point of judgment is unlikely to achieve this, as the media is likely to be concerned to report only the most salacious cases.

Care cases can be very long and very complicated and the public and the press, if allowed in to proceedings, might not be able to understand or learn much from them. Some interested parties should be allowed access but not the general public.

Points raised in discussion

Much of the information submitted in family proceedings is written down and for the media to be able to report responsibly and accurately, they would need to read all the many papers involved. There were questions over whether the press should have access to these papers and whether this would be realistic.

The potential problems of understanding cases do not necessarily negate the proposal to allow media access to family courts.

More clarity and information about the actual details of the proposed changes was requested.

A Judge's perspective

- **Her Honour Judge Isobel Plumstead**

Central issues from the speech

People do not recognise how local most cases are. However you seek to anonymise a case, the people involved can often easily be identified by their local community. Disagreed with the idea that decisions made in courts are secretive and not currently scrutinised appropriately.

Points raised in discussion

Closely related to the issue of freedom of the press were discussions over whether there should be a distinction between different sections of the media.

Strong doubts about the tabloid press having access to family courts were voiced across the group, because potential sensationalisation, lack of accountability, bias and uneven reporting were feared.

Some felt that the consultation proposals should only be concerned with professional and academic press and not with the tabloid press.

On the other hand, many disagreed with the concept of having one set of rules for the tabloid press and another set for others, for reasons both of openness and press freedom and for simplicity and legitimacy.

Suggestions regarding in what ways "responsible reporting" could be ensured:

A similar approach in the family courts to s.39 (of the Children and Young Person's Act 1933) might work well in terms of restricting what the media can report. However, one potential problem is that there are currently a few thousand s.39 cases per year but with over 100,000[2] children involved in private law cases per year, so the sheer volume of cases would be extremely problematic.

As with other court proceedings, reporting restrictions could be left to the judge's discretion on a case-by-case basis.

Media accreditation

Some suggested that a system of accreditation could be implemented, to ensure responsible reporting of the family courts.

The current system in New Zealand was discussed, where media organisations need to be accredited in order to be able to attend family court hearings. This apparently places freelance journalists at a disadvantage. Accreditation guidance is published there by the Ministry of Justice and the Newspaper Publisher Association.

On the other hand, a system distinguishing between "accredited" journalists and others might be viewed as censorship by the back door.

An Expert's perspective

- **Dr Danya Glaser, Consultant Child and Adult Psychiatrist**

Central issues from the speech

Grave concern that opening up the family courts could lead to fundamental changes in the doctor-patient relationship, currently bound by medical ethics of confidentiality.

Maintaining anonymity and confidentiality is paramount.

Points raised in discussion

If the proposals were implemented, an expert talking to a family member may have to inform her/him that information from that consultation might be used in court.

[2] HHJ Isobel Plumstead.

If the press were party to medical information discussed in the court, then the traditionally confidential relationship between practitioner and patient would necessarily be damaged. This, therefore, would be an issue needing serious consideration.

Anonymisation of non-family participants in the court process was understood to be problematic on occasion, particularly as a possible obstacle to accountability. For example, there was suggestion that public authorities and expert witnesses under criticism should not always remain anonymous but should come under wider and more open scrutiny.

Caution is necessary, particularly with identifying experts, as identification might deter some from appearing in court. Some hoped that the CMO report (subsequently published on 30 October 2006) would go some way to help safeguard against this disincentive.

On suggestion for lessening any potential problems was to implement proposals in stages, over time. That way, any problems encountered could be dealt with incrementally and future issues better anticipated.

Children's Perspectives

- **Dr Bren Neale, Reader in Child and Family Research, University of Leeds**

Central issues from the speech

Young people's perspectives must be taken seriously. Children do want to talk but they want to talk to people that they know and trust and in ways and situations in which they feel comfortable. Every child is different and, accordingly, children have mixed views on the proposals to open up the family courts.

A national, longitudinal evaluation of the family courts is essential to improve transparency and public accountability.

Points raised in discussion

There is widespread disillusionment with the media. The press were seen as primarily money-driven and would only report on a case if they thought that it would make them a profit.

It was suggested that private and public law issues were different in terms of confidentiality because people do not choose to go to court in public law cases but do in private law cases. The implication of this was that confidentiality was, perhaps, more important to maintain in public law cases, directly because people do not choose to attend.

That said, children almost universally do not choose to go to court in either public or private law cases.

If people seek professional help, this should not somehow make them less deserving of confidentiality.

Later Life Judgments

The issue of whether children and young people should be able to find out about their cases when they are adults was discussed and there was a consensus that this should happen and some suggestions about how adults could receive this information.

Some ethical considerations were highlighted. The sensitivity of the information means that it should perhaps not just be handed out to people. Somebody may need to go through it with them, such as a CAFCASS officer.

It was suggested that the judge could leave a file for when the child reaches 18 years old, detailing how and why a particular judgment was made.

On the other hand, some of the group made the point that judges do not have training in this area or secretarial skills, so the logistics of this proposal would need further consideration.

There was wide support from the group for giving children this information as they grew older and levels of understanding increased, ahead of any information they would have as adults.

It was mentioned that, although it should be routine for children to be told about their cases, this does not always happen, particularly in private law cases.

Although the information cannot be provided in the same way to children as it is to adults, it should be provided nonetheless.

However, to inform people when they are children and/or adults is likely to be expensive, so there are resource issues that would need to be considered.

Summary of key points

There were shared aspirations for greater transparency and openness; for consistency throughout the family justice system; and for increased quality and improved confidence in the system.

Nevertheless, no one was satisfied with the consultation's proposals. Some felt that the proposals did not go far enough in terms of openness and access to the courts. Others felt that there would be no benefit in allowing press and public access, for reasons including safety of the participants; greater understanding of cases; and potential breaches of anonymity and confidentiality.

Openness of Family Courts: A discussion with the Rt. Hon. Harriet Harman QC MP, Minister for Family Justice

This was a joint DCA and National Family and Parenting Institute (NFPI) event, held on 5th October 2006 at the Commonwealth Club, London. It was chaired by Mary MacLeod, Chief Executive of the NFPI, and attended by 29 representatives from a variety of voluntary sector organisations. A key aim of the event was to discuss the proposals with a cross-section of key voluntary sector organisations.

The event began with a short speech by Harriet Harman QC MP, Minister for Family Justice, followed by a wide-ranging discussion of the issues.

Summary of discussions

All discussions took place under Chatham House Rules.

Introduction

This event was held to provide an opportunity for the consultation proposals to be discussed by voluntary sector organisations working with families, for the Minister to hear directly their views and to answer their questions.

A wide variety of issues were identified. Particular debates focused on proposals to allow the media access to family courts; how and in what ways children could or should be more involved in family court proceedings; anonymity, privacy and accountability; confidence in the family justice system; and preventative measures to reduce the numbers pursuing cases through the family courts.

Anonymity and privacy

How the proposals for opening up the family courts whilst retaining confidentiality and privacy might work in practice was discussed. Many agreed that there would still need to be very strict rules on anonymity, and this is particularly important for improving confidence in the system.

There were particular concerns on how effective reporting restrictions would be if the family courts were opened up to the press. Some were very concerned that case details reported in the media would allow those involved in proceedings to be identified and particular fears were voiced on safeguarding children.

Access and accountability

Several points were made on allowing others into the family courts.

Public

A small number of people felt that making the courts public could help to restore confidence in the court system, believing that if the courts were public, then judges and parents may behave better and more responsibly. On the other hand, while the focus should be on openness, there might be a need to set some quality control and exclude people from the court if necessary.

Press

Some felt that the press should be allowed access to family courts, in order to increase the accountability and responsibility of those involved in proceedings. It might be easier to make the press adhere to certain rules than it would the public. Parents could be consulted on whether they wished to have media presence.

It was argued, though, that press access is not the same as public access and that it would be difficult to imagine any parents who would like the press to attend the family courts. Some were very concerned about what would happen in worst case scenarios with people's private lives affected through regular reporting; the results of this could be frightening.

Inspectors

One way of increasing the accountability of the judiciary might be to allow social service inspectors into the courts. That social services inspectors should have unrestricted access to the courts received wide support from the group. Currently inspectors are allowed into other parts of the system, such as prisons, yet they have to ask permission to sit in the family court. In order to have proper accountability, the inspectors need to have a thematic look at the process and not just look at one part of the system. Having inspectors in the family courts might make people work better, although they would not be able to inspect the judges' decisions as the judiciary have to be completely independent.

Others

Others felt that it would be helpful to allow different people and representatives into the family courts who had an interest in the case. Due to the current confidentiality rules, it was suggested that there is a lack of continuity which can disrupt proceedings. For example, if a MacKenzie friend becomes involved, the lawyer then steps away from the case. One way of avoiding the adversarial climate would be to allow the wider family/religious/other supporters into the courtroom.

Talking with children

There was some agreement within the group that children involved in family court proceedings should be consulted more often. Children's views should be taken seriously by those involved in the court process. A number of points raised about this.

A media presence in court could be intimidating for a child. Strangers in the court could worry and heighten children's fears of their families' private affairs being reported. How much say a child would have in decisions on press access was an important issue that needed to be addressed further.

Some suggested that children are not spoken to by the judge enough and, highlighting difficulties in communication within the system, that many children actually do not know how to reach a judge or put their views across.

Some had concerns about children saying what they think will receive approval in the presence of adults rather than expressing what they really want. Some possible ways to make the process more "child-friendly" were suggested, such as giving evidence by video link or holding cases privately if thought necessary by the judge.

Giving information to children

If the judge does not speak directly to a child, it is often left to parents or other adults to explain what is going on. This can be troubling and alienating if the information conveyed is inaccurate, confusing or incomplete.

When told about the judgment of a case, people working with the child, such as foster carers, would also need support and information, so that they can help the child understand what is happening. The child's carers need to understand why the courts felt a particular decision was essential.

If giving information directly to children, when a report is required, a judge could make the order on video and that could then be made available to the child. CAFCASS reports should also be available in a way that a child could understand.

Access and support for parents and guardians

Just as with children, parents and guardians have needs which need to be identified and addressed.

It was suggested that foster carers need to have access to the family court and must be well-informed about the proceedings, so that they can attend with the assumption that they will be helpful.

Parents who are in custody are not always able to attend the family courts. In criminal proceedings, there is a public interest in them attending but this may not be the case in family court proceedings. If parents who are in custody are allowed to attend family courts, this may be important for their rehabilitation – if they have continued involvement in their children's lives this may enhance their parenting skills on release.

Disabled parents may have specific needs to be considered in relation to divorce/separation and child protection. These should be addressed at the same time as the needs of the child.

Training

Professionals are trained to deal with the law but may not be qualified in dealing with children and/or parents.

The court staff could be given training to meet national occupational standards for the work they are doing with parents.

Voluntary sector organisations could offer training to children and adults.

The judiciary may need specific communication training to help them to put everyone else in the court at ease.

Discussion forum for adults

Forum Screenshot

For the first time, the DCA ran two on-line discussion forums during the consultation period for both adults and young people. The DCA-funded forums were jointly piloted by the Hansard Society as part of an electronic-participation initiative that forms part of a project called Digital Dialogues. Further information can be found at http://www.digitaldialogues.org.uk. The adult's forum ran from 11 July to 30 October 2006 and the children and young people's forum from 1 September to 30 October 2006.

The forum asked open-ended questions in order to stimulate discussion, so it is not possible to quantify the responses but a summary of some of the key themes follows. The Hansard Society are evaluating the project and will publish their results.

The discussion forum was divided into the following areas:

- Media Attendance
- Other Attendees
- Protecting Privacy
- Providing Information for Children
- MPs, Lead Members and Inspectors Attendance

- Adoption Cases
- Practical Considerations

About who used the forum[3]

Participant profile

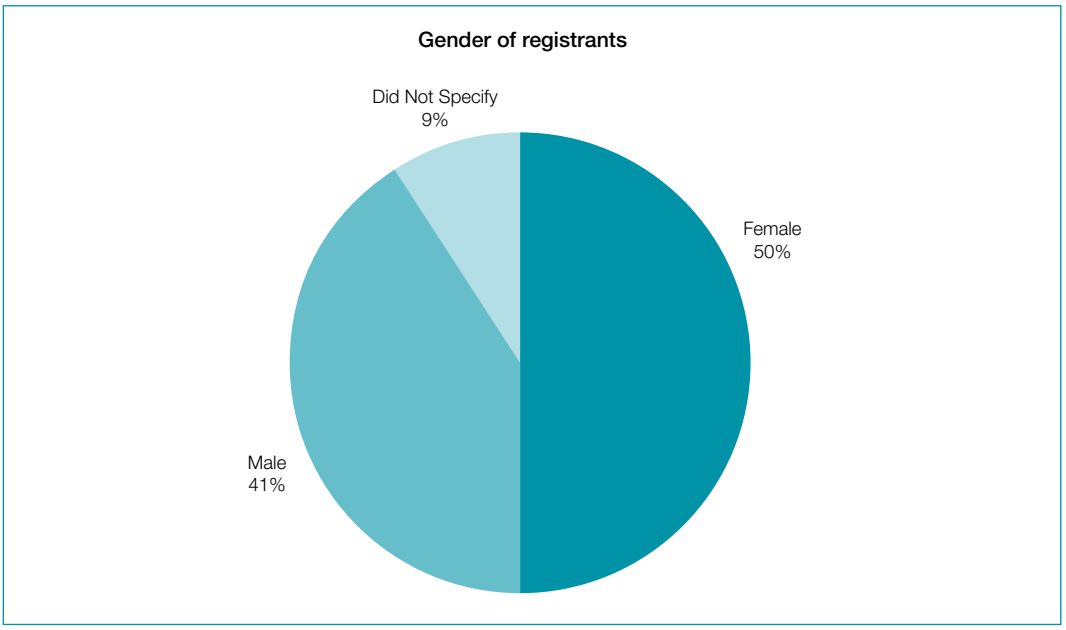
178 people registered on the forum and made a total of **172 comments**. Of those:

68% classed themselves as members of the **public**.

27% had a **professional or campaigning interest**.

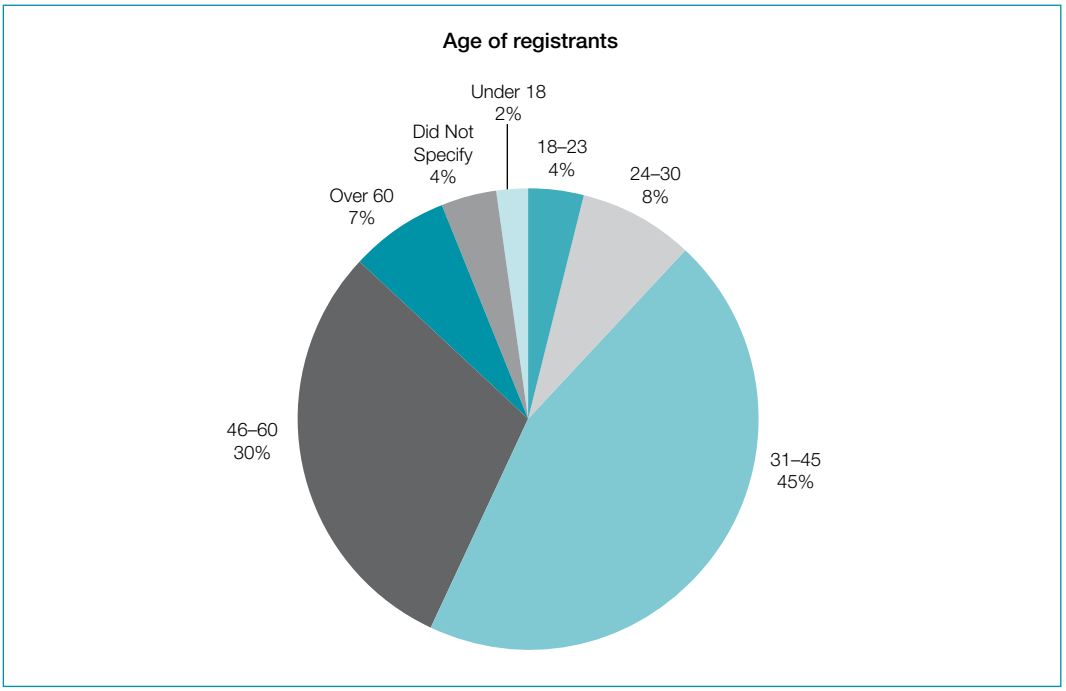
5% did not specify.

Gender of registrants

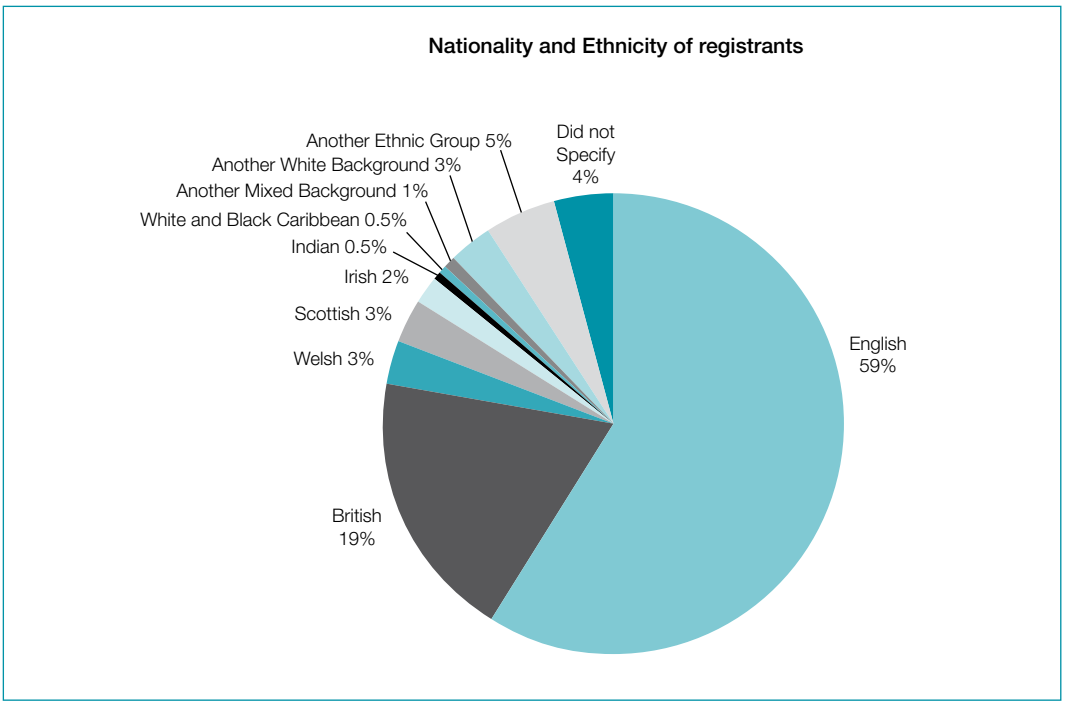


[3] Statistics provided by the Hansard Society.

Age of Registrants



Nationality and Ethnicity of registrants



What they said

Media attendance

A total of 18 comments were posted, of which 12 supported the press attending family courts as of right, and 3 comments did not. The remaining 3 comments focused on areas not related to the question. Points raised included: limiting control of the media; excluding the media as they would only be interested in cases likely to sell papers and; preventing publication of the name, address and school of the child, but that everything else should be able to be published.

"The family court should be open to the media with the same view as a normal court proceeding, to ensure a fair hearing. At the moment, the exclusion of the media and the secrecy of the court allows one man/ woman, the right to decide the future of a child, without the scrutiny of the media as a moral watchdog.

We all know the media can and does bring about change in the judicial system and it is time for change now. A lot of good fathers have been wrongly kept from their children because of willingness of the court to write them out of their children's lives, without little evidence or comeback, and now the law has changed and some very bad father's are being allowed to have contact with their children afters years of physical and mental abuse. Something has to change. If the media can bring this about so much the better."

Posted by atlantica on 18/08/2006 – 21:28

"I think the media should be allowed into every family court even if they are given guidelines on how to report, at least then families will be treated fairly and will be able to have a friend or other family member with them, instead of all the secrecy. When they know the public may judge them, less families will be torn apart."

Posted by graque on 20/07/2006 – 22:26

"I don't think a media presence would benefit family proceedings or act as some form of regulator to ensure justice to children is served. What about all the criminal cases where there has been a miscarriage of justice, the media were present too!

I think it potentially may take away from individuals and children's rights to privacy. Someone quoted high profile cases – is it fair for those children to have to deal with the difficulties of parental separation but the whole world being privy to it as well and discussing it? Does this not further add to the distress?"

Posted by Rebecca on 16/09/2006 – 23:19

Other people attending family proceedings

A total of 16 comments were posted of which 12 thought that others should be able to attend family proceedings and 4 did not. Concerns were raised about other people being able to attend domestic violence cases and making the victims feel more intimidated, and the number of people allowed from each side. Other suggestions for people who might attend were the child's independent advocate and any child who is over 10 and wanted to attend.

"The most important rule should be that anyone invited by someone who is a party to the case (especially a parent) should be allowed to attend as of right. This should apply whether that person is a relative, an advisor, a family friend or journalist!

Parents about to risk losing their children need all the support they can get!"

Posted by Ian Josephs on 02/08/2006-03:00

"Family & the public should be able to attend unless there is a very good reason why they shouldn't. Justice must be seen to be done. Professionals must be accountable for their actions."

Posted by hope on 12/072006 – 12:05

Adoption

A total of 17 comments were posted, of which 2 made comments about adoption targets, 5 comments raised issues about forced adoption and only 4 comments thought that adoption proceedings should be treated differently.

Protecting privacy

A total of 18 comments were posted, of which 7 thought expert witnesses, social workers and other professionals should be named. 6 commented that privacy should not be used always to protect identities of those involved, because they are public servants and accountable to the public. Two comments mentioned that parents and individuals should not be 'gagged' but should be allowed to tell their story to the press.

" Information which could identify children should be withheld."

"Anonymity should not be used to protect professionals."

"It should be in the best interest of the children only."

Posted by hope on 12/07/2006 – 12:22

"Whilst I agree that anonymity for the children and ergo the parents in order to preserve their privacy is a paramount feature – I do not believe that when care proceedings are finished and a parent/carer has proven that allegations are unsubstantiated that the anonymity for any part of the case should be allowed to remain in place should the parent/carers wish to "go public".

I also believe that if, during the course of a hearing it becomes apparent that either an expert or any other professional has given either misleading evidence or committed perjury, that they should legally have to forgo the right to have their identity preserved."

Posted by Penny Mellor on 11/07/2006 – 17:32

Practical considerations

A total of 22 comments were posted. A number of comments strayed away from the questions and discussed topics such as parental alienation syndrome, battered women syndrome and equal rights. Other comments suggested that the Perjury Act 1911 needs to be reviewed and brought into the 21st century. Delay and legal aid were also raised as was the need for extra specialist training for clerks, solicitors, judges and expert witnesses and investment into custom made courts rooms to accommodate a viewer's gallery.

MPs, Lead Members and Inspectors attendance

A total of 15 comments were posted, of which 9 thought that all the groups mentioned (MPs, Lead Members, Inspectors) should be able to attend. One comment thought that social services should not be allowed in, while another supported the idea of MPs being given the right to attend but not Inspectors. Other comments varied but a number of respondents thought that MP's should not have an automatic right to attend but that Inspectors should. Others thought that MPs should be allowed as they are more in touch with people's (constituents') issues.

"As a father who has unfortunately experienced the unjust family court, I would recommend to allow inspectors to see for themselves the unaccountable perjury taking place in the family court."

Posted by mackic on 07/08/2006 – 15:35

"Any professional attending the court in a capacity to monitor or inspect the court proceedings and practices should be able to attend without notice and without consent. Such free access to the courts for professional acting to report track and trace court activity should be normal practice, and the bar that prevent this today should be removed."

Posted by Dave on 12/07/2006 – 09:22

Providing information to children

A total of 17 comments were posted, of which 14 thought that it was a good idea to provide information to adults who had been involved in proceedings as children. Others thought that children should be allowed to view all information about them on reaching 16.

"Yes, these children should have access to support when they are given this information.

Bearing in mind that many of these children will already be receiving support following the trauma of losing a parent; providing this information to them or to professionals treating them may well be helpful and therapeutic, provided it is done sensitively.

There may even be an argument for providing the information before they are 18. It would be interesting to have professional views on this."

Posted by Forseti on 28/07/2006 – 15:26

"It depends on the type of family proceedings they were involved in, how unbiased the parent can be etc as to what information an adult was involved in, as a child. It also depends what that child was told at the time (if it was indeed told anything)."

Posted by Anne Palmer on 12/07/2006 – 09:23

General

A total of 49 comments were posted. A large number of comments were posted on the general area of the discussion forum and covered topics not connected directly to the consultation paper such as contact and residence, complaints about CAFCASS, Social Services, conduct of solicitors representing clients and comments on the judiciary.

What children and young people said

We were especially keen to consult with children and young people, in order to hear the views of these key stakeholders on the consultation proposals. We did this through a range of events, including:

- the Office of the Children's Rights Director annual conference, where we spoke individually to young people in care, and their carers
- the Family Justice Council (FJC), National Youth Advocacy Service (NYAS) and CAFCASS young people's panel

and

- a "mock hearing" organised by the Office of the Children's Commissioner

Over 200 children and young people have contributed to this consultation

Office of the Children's Rights Director – Annual Conference

This all-day event took place on Monday 16th October 2006 at the National Space Centre in Leicester. It was attended by around 298 children and young people and adult carers. The event was organised by staff from the Office of the Children's Rights Director and was attended by a number of organisations, including the DfES.

The event was open to all children and young people living away from home, or in care, or getting support from Children's Services, or who had recently left care.

About the Day

The theme of the conference was "So What?". This was an opportunity for children to give their views on how well previous big messages from children are being carried through for them. Children and young people also gave their views on key Articles of the UN Convention to feed into the government and UN on UK compliance with the Articles, and be reported to the Government as part of their assessment of care services in the United Kingdom.

The DCA designed child-friendly questionnaires to ask the children, young people and their carers what they thought about proposals in the consultation paper on opening up the family courts. Everyone was also given a card showing information about the on-line children's forum where they could post additional comments. Over 150 questionnaires were completed.

This exercise provided a snapshot of young people's initial reactions to the proposals. Unlike the other events aimed at children and young people, there were no extended discussions of the proposals (although they were able to ask questions about particular aspects they were unclear or unsure about).

Analysis of questionnaire responses

We asked what people thought about the media and other people being allowed to attend family courts. We made it clear that if we decide that the media were allowed in, they would not be able to identify any of the children or adults in the case.

Of **158 responses** received from the questionnaire. **104 of these responses** were from children and young people, with an **average age of 13** years.

Where there is no breakdown of analysis of adults and children and young people, this shows the response was consistent across all groups.

Q.1 Do you think that the media should be allowed into family courts?

- **Only 30%** of respondents felt that the media should be allowed into family courts.
- 30% of adults and 32% of children and young people agreed that the media should be allowed into family courts, although these opinions differed for younger and older people, with **41% of those 12 and under** agreeing and **only 28% of those 13 and over agreeing**.

Q.2 If the judge has the right to decide whether the media are allowed into family courts, should s/he consider any of the following factors:

- The **type of case** for example, if it's about where you live, who you see, divorce, money issues.

66% of children and young people agreed that, where the judge has the right to decide whether the media are allowed into family courts, they should consider the type of case. This compared to 90% for adults.

Whether the media should NOT be allowed in for part of the hearing e.g. when evidence is given, when judgment is given or should they be allowed in for the whole thing?

51% of children and young people felt that, where the judge has the right decide whether the media are allowed into family courts, they should consider whether the media should not be allowed in for part of the hearing. This compared to 70% of adults.

- Opinions differed depending on the age of the children and young people, **with 44% of those 12 and under** agreeing and **54% of those 13 and over agreeing**.

Some other reason:

The interests of the child?

72% of children and young people and **all adults agreed** with this.

The safety of people in the case?

86% felt that where the judge has the right decide whether the media are allowed into family courts they should consider the safety of people in the case.

82% of children and young people agreed that, where the judge has the right decide whether the media are allowed into family courts, they should consider the safety of people in the case.

Whether evidence is particularly sensitive or difficult?

63% of children and young people agreed that, where the judge has the right to decide whether the media are allowed into family courts, they should consider whether evidence is particularly sensitive or difficult, although these opinions differed from **69% of children 12 and under** agreeing and **60% of those 13 and over agreeing**. This compares to 97% of adults.

Whether confidential information is involved and others attending would damage that confidentiality?

70% of children and young people agreed that, where the judge has the right decide whether the media are allowed into family courts, they should consider whether confidential information is involved and others attending would damage that confidentiality. This compared to 93% of adults.

Q.3 Should the people in the case, or the child involved, have the right to make a decision on whether the press should be allowed to attend family courts?

- **78%** felt that the people in the case should have the right to make a decision on whether the press should be allowed to attend family courts.

Q.4 Should other people be allowed into court in family courts?

- **23% of adults** and **31% of children and young people** felt that other people should be allowed into court in family proceedings, although these opinions differed from **22% of children 12 and under** agreeing and **35% of those 13 and over agreeing**.

Q.4 If yes, who?

Of those who felt that other people should be allowed into family courts, the most popular responses were "friends" and "family" (including close and wider family) equally, then social workers and then "carers/guardians" and "parents". Other responses included: "persons of the child's choice", "children", "solicitors", and "anyone".

Q.5 If other people should be allowed into family courts, should they:

- Have to show they have an interest in the case before they are allowed in?

85% felt that other people should have an interest in the case before they are allowed into family courts.

- Have to have the consent of the people involved before they are allowed in?

87% felt that other people should have the consent of the people involved in a case before they are allowed into family courts.

Feedback from CAFCASS/FJC Young People's Panel on the "Confidence and Confidentiality: Improving Transparency and Privacy in Family Courts" Consultation Paper.

The panel met on 16 September 2006 in Birkenhead. Thirteen young people were brought together by NYAS to discuss the proposals to improve transparency in the family courts, as set out in the DCA's consultation paper.

The Group was set up in September 2005 when NYAS were asked by CAFCASS and the FJC to facilitate a young person's group. The objective of the group is to allow young people to be consulted on a range of issues involving CAFCASS and the FJC. The vision was to ensure that practice and policy within both organisations was child centred and reflected the feedback of this panel of young people as far as was possible.

Thirteen young people are currently active in the group, with ages ranging from 11 to 21. The group is made up of young people who have experienced either parental separation, private or public law proceedings or contact with Social Services. Some of the young people have worked with NYAS before, including some where NYAS have represented them as their guardian in proceedings, and others who have been involved with other NYAS consultations. Most of the Group are from the Merseyside area, and the remainder from North Wales.

The group meets every two months and topics are selected respectively by CAFCASS and FJC. To date the young people have also been consulted on CAFCASS Principles of Good Practice and CAFCASS Quality Standards. This Group has been working with the DCA policy team since January 2006, and have been involved from the early policy development stages. Their role has been recognised and mentioned in the consultation paper (see page 65, paragraph 15).

About the day

The group met to discuss proposals set out in the consultation paper. As a group, they had discussed the main issues at earlier meetings. The group discussions were lead by Kate Perry, the NYAS facilitator with support from Christine Smart from CAFCASS, District Judge Nicholas Crichton, a member of the FJC and Erika Maass, the lead policy official from DCA. The panel were asked to discuss a family court scenario developed by the Office of the Children's Commissioner (OCC) (and which was also used at the OCC/DCA event on 30 September). During smaller – group work, they were asked to discuss ideas which were then fed back to group. Those comments follow.

Feedback from CAFCASS/FJC Young People's Panel

1. How would you describe young people's experiences as *"court users"*?

- intimidating and very stressful
- young person under pressure as trying to keep all of the adults happy
- difficult to talk about your life publicly
- "At times, hearing things for the first time"
- "It's like when you go to a review and feel quite small whilst in it"
- get embarrassed and for this reason the young person should always have someone to support them so they don't feel alone
- a young person may be happy that the court is involved as this may change a situation they have felt unhappy about
- a young person may feel suicidal and they should be able to speak to the judge about how they are feeling
- young people should have a choice to speak to the judge and they need to be clear about this from the beginning. They also need to feel O.K. about not wanting to speak to the judge
- having a lot of people to talk to can be confusing and it would be good if just one person/professional took on this role. Preference is that this person is from CAFCASS

- CAFCASS should coordinate the support for young people in relation to information sharing of the process.
- it's easier for a young person to build trust with one adult as opposed to many
- when there are loads of people involved it can make some young people feel as if they can't open up and discuss what is important to them
- swapping of social workers is frustrating , it feels like a "waiting game" especially when they do not come back with any answers
- sometimes you hear information that you have never heard before
- because you don't understand what is happening it can be very frightening that's why it is important to explain what is happening to the young person
- it is really important that this is explained to a young person in a way that they understand
- if a young person doesn't understand they will not engage with the court process
- younger children need more support in understanding what is going on, this could maybe come from the judge but not the social worker
- "At times going to court can be a good thing as it is about changes you want to make in your life anyway. It may be to stop an abuse."

2. Do you think the media should have *the right* to be involved with court cases involving young people?

- the names of young people should never be mentioned
- even when names aren't reported young people living in rural areas may be easily identified
- the public should have a say in what is reported
- young people should have the right to choose between open (cases reported on) and closed (cases not reported) courts
- the press should be there but it's difficult to agree on what should and shouldn't be reported
- if the media were to report, then it would be good for the judge and an independent person to check it out first. This will ensure that the report is balanced and not just what a judge may want to convey
- protection should be there to make sure that parents and social workers don't give out any information also

3. Do you think the court should *invite* the press and *the court decides* on what the press report?

- an independent person should decide on what is reported, it shouldn't be up to a judge as the young person may feel that they don't trust the judge or get on with them
- the press could report the decision of the court and nothing else
- the judge should decide what is reported and make sure it is fair and balanced
- should be able to have a second judge that checks this at the request of a young person
- "You don't want to go to school and hear stuff about yourself"
- "It should be a privilege rather than a right"
- "Some young people may protest, but it maybe in their best interest. We need to fully explain the benefits of this to them"
- "If the process does not go right then there should be a good record of the process to rectify this"

4. What things do you think the press *should not report* about cases involving young people?

- the young person should always understand what might happen if information is reported
- concerned about adults accused of doing something but they are not guilty
- should never report any information that identifies a family
- if the young person disagreed, then the judge should consider this on behalf of the child and in the context of all the information available, then advise
- if there were a family group i.e. brothers and sisters and there were disagreements about what should be reported on, then young people should be fully involved in the discussion and should understand the reasons why a certain decision was made
- it was proposed that a panel considered this to ensure the right decision was made – the panel included the judge

5. Which people do you think should *have the right* to attend cases involving young people?

- the family and friends of the young person who are genuinely involved in the young person's life
- should always ask the young person concerned

- maybe foster carers but always ask the young person first if it would be O.K. to ask them to attend
- a panel should decide this
- if there are siblings it is sometimes difficult for a young person to speak up as they do not want to upset their brothers and sisters – that's why it is important that they are given the option to talk to the judge individually
- need to make sure that siblings, particularly those living apart are fully updated and nobody is more updated than another

6. Which people do you think *should ask the court* if they can come to the hearings when young people are involved?

- the young person should always decide who should be there – this would depend on their age and ability
- the public should not be in the court: "It's a family problem and it should remain at that". "Embarrassing for the family if outsiders come"
- specific exceptions are trainee judges, inspectors, civil servants and minister and such like
- law/social work students, trainee solicitors etc should be allowed in the court as long as they respect the confidentiality of the young person and the young person is consulted about this

7. When a young person is *being adopted* what information do you think the public should know about this?

- nothing, should respect that this is somebody's life!
- this would not help a young person who is trying to make a new start with a new family, it may make it harder for them to settle in and may make them feel like the odd one out
- observers, students etc they would be O.K to attend the hearings
- the young person should be consulted and this needs to be done at the right age, if the young person is older they will need more information
- young people should have the choice to receive sensitive/difficult information when they feel ready and have a choice to be told the "bad" stuff
- young people should have this difficult information from the start as it may hurt a young person more if they find out about it when they are older and some young people will already have picked up on things being difficult anyway
- this should apply to young people whose parents are divorcing
- an independent person could produce a report and make sure that certain information does not leave the court

- there should be an age limit when reporting in their adoption should be discussed with young person

8. What information do you think *an adult may need* when they have been involved with the courts as a young person?

- it is important that an impartial record of the hearing is saved for the young person so they can get this when they are older

Feedback on the following scenario involving Katrina and Jake:

Katrina is 15 years old and Jake is 5 years old.

They were living with their mum but she died as she was ill and didn't get any medical help.

When she died Jake went to live with a foster carer and Katrina moved in with neighbours.

When Katrina turned 16 she said that she wanted to look after Jake.

Social Services said that Jake was going to be adopted.

Katrina's carers gave her diary to Social Services without Katrina knowing. In the diary she talked about feeling angry with her mum and with her dad as he did not want them to live with him. Katrina also mentioned how she had been on the internet and chatted to older men and met up with some of them.

In court people said that because of what was in Katrina's diary she wouldn't be a good person to look after Jake or for him to see her.

The local press were interested in the court case involving Jake and Katrina. The reason for this was because Katrina's dad was a local DJ and a radio presenter.

Katrina and Jake's uncles also wanted to come to the court as they wanted to make sure the whole family knew what was happening to Katrina and Jake. The uncles and the family hadn't seen Katrina and Jake for a long time.

Feedback from the young people on the above:

- the foster carers should not have read Katrina's diary
- should have told Katrina that they had done this before they passed the diary to Social Services
- young people need to know in advance that information about their safety will be passed on
- the foster carers should have just passed the information on about Katrina not being safe rather than the whole diary

- the judge could have talked to Katrina on her own and in private about her diary
- Katrina being angry with her mum and dad is natural and normal this should not have been used against her
- she may be meeting older men to replace the lack of contact with her dad
- the judge should only have read the bits of her diary that talked about Katrina being at risk
- the facts should have been shared and not the feelings!
- her brother is her only family and they are taking this away from her
- Katrina needs to explore the long term stuff involved with her caring for Jake – may need to look at a compromise
- need to speak to Jake to see what he actually wants
- it's not right to cut Katrina out of Jake's life, Jake might feel very bitter about this when he is older
- most young people in Jake's situation would choose to live with their sister and not carers
- children don't get asked about what they want
- Katrina may not be aware of the dangers she is putting herself in
- Katrina should be given a second chance
- young people need more time to make decisions about their future and usually more time than adult imposed timescales
- the press should not be invited in on this case, it's obvious they don't care and it could make it worse for Katrina
- Katrina should be allowed to speak to her dad privately about what is going on
- the uncles should not be allowed into the court, why get involved now and not before?
- if the uncles were allowed into court it may make them want to get involved with Jake and Katrina's lives
- Jake may resent his carers
- it is important that Jake does not blame himself for the situation
- young people sometimes know what they want but the adults take ages to get it all sorted out
- adults expect young people to make important decisions very quickly and they take forever to respond to this!

Office of the Children's Commissioner for England Transparency Consultation Day

The Office of the Children's Commissioner held a transparency consultation day on 30th September 2006, in order to elicit children and young people's views. The day was co-branded with and part-funded by the DCA. The children and young people were presented with two case studies (see page 66 for one of these), one covering public law and one private law, in the form of a mock court hearing. Barristers from Chambers at 9, Gough Square gave their time to represent the parties and District Judge (Magistrates' Court) Nicholas Crichton served as the judge. An Islington social worker and a CAFCASS Children's Guardian also took part. A facilitator then held discussions with the children to assist them in expressing their views on the issues raised by the consultation. 32 children and young people aged 13-18 took part. After the mock hearings were acted out and discussion had taken place, the young people were asked to fill out questionnaires containing most of the questions set out in the consultation paper. The questionnaire responses are below.

Young people's views

The media

Admitting the media into family hearings

The 32 young people involved in the transparency consultation day were ambivalent in their answer to the question of whether the press should be allowed into family proceedings. While 15 answered that the press should be allowed to attend family proceedings, the young people qualified their response by such comments as 'only under certain circumstances' and 'only where the parties agreed'. 13 disagreed with admitting the press, 2 were unsure and 2 did not fill in the questionnaire. Of those who were opposed to the admission of the press, one suggested that the media should be represented by an official reporting body that could be trusted, rather than press representatives. All but one young person supported the idea of the judge being able to restrict access, either for the whole hearing or part of the hearing.

If yes, should the judge have the right to ask them to leave at certain times or be allowed to restrict their access in certain cases?

Of the 18 young people who answered this, 17 were in favour of the judge being allowed to restrict access.

If the judge has the right to decide, should he take any of the following factors into consideration?

The factors presented were the interests of the child; the safety of the parties and witnesses; where evidence is of a sexual, intimate or violent nature or where confidential information was involved. All 30 who answered the questionnaire agreed that the interests of the child and safety were relevant considerations, with 25 agreeing that the nature of the evidence should be taken into account.

Should the parties to the case or the child involved have the right to make a decision on whether the press should be allowed to attend?

This was an important issue for the young people taking part in the transparency day, who were asked how to balance the rights of freedom of the press against the rights of the child. 17 decided that the parties or the child should make a decision on admission of the press, while 12 disagreed but most commented that the parties and any child involved should be able to make their views known to the judge and that those views should be taken seriously.

This question reflected the tendency of the young people to focus very heavily on the impact of admitting the press on the individual child. At the same time, the group were well able to discuss the concept of press freedom. The biggest factor against admitting the press, was that journalists and the papers that they wrote for were seen as generally untrustworthy, if not downright sleazy, and could not be relied upon to report in a manner that would adequately protect children.

The public

Overall, the young people were not in favour of allowing members of the public into family hearings as a general rule, although they were happy to permit them to attend with the consent of the parties.

Should members of the public be allowed in?

The admission of the public elicited much less discussion. Only 4 believed that members of the general public should be allowed into family hearings, and even these answers were qualified by comments that the judge should be allowed discretion to refuse such entry. 23 agreed that members of the public should not be allowed in, but some of these were happy to allow the parties to agree to persons being admitted. Lastly, 3 young people gave ‘maybe’ answers to this question, stating that it would depend upon whether those admitted could be relied upon the keep information about the parties to themselves and not repeat the information outside the court room, and upon the family itself. Two young people did not answer questions about the public.

Should members of the public who can show that they have an interest in the case be allowed in?

17 young people were happy to allow this if the parties agreed, while 11 disagreed, and two 'maybes'. 24 believed that the parties should have to consent before a member of the public was allowed in.

Accessing Information

Discussions of the proposals were started through the use of a case example that was acted out, using a judge and counsel, as well as social workers and CAFCASS children's guardian. To start the discussion on access to information the case example was that of a young man now aged 18, who had been the subject of disputed contact and residence proceedings at a younger age, and now wanted to access the court record. The mother had mental health problems at the time of the hearing and had struggled with caring for the children, resulting in a degree of neglect. The father had a criminal record, and had behaved poorly towards the mother, and been less than helpful with the children. By the time that access to information was sought, the parents had resolved their difficulties and were able to co-operate in the care of their children.

The issue of access to information was one that the young people cared about deeply and on which they had strong views. All 32 answered the questionnaire provided on access to information.

The questions asked were to determine whether there should be access as a matter of right, or if not, what restrictions should be placed on the information. The young people considered this very carefully, and were more than able to realise that release of information could have an impact on both the person seeking access, and the family as a whole.

Following this, views were sought on what information should be available specifically for young people who were the subject of, or involved in, a court hearing.

Where a case is about a young person, should he or she be allowed to have access to the court records when they are 18 (ie an adult) if they want to?

Eight young people answered 'yes' to this question, while the remaining 24 answered 'yes, as a general rule, but each cases should be decided individually'. Nobody answered 'no', making the young people's views on the right to access information very clear.

If a young person should be allowed to have access once they reach the age of 18, what should they be allowed to see?

Three young people thought that access should be granted to all information contained in the court file, with a further 3 stating everything but with the exception of confidential medical records. However, where information was withheld, the child seeking access should be told what was being withheld, so that they could then ask the parent for details. A much bigger number of young people, 26, thought that just material that related to the person seeking access should be released.

Should a young person have access to reports on their parents?:

The majority of young people (25) answered that parents should be asked for their consent before their statements, medical or psychiatric reports are released. However 7 answered that there should be a right of access without parental consent, although three of these thought that parents should be informed that access was being sought.

Should a young person be able to see the CAFCASS officer's report or the Guardian's report?

There was overall agreement to this, though the young people differed as to the way in which it should be presented. While seven agreed that the report should simply be disclosed as written in all cases, 2 thought that a report written in a child friendly format should be provided, while 18 answered that a summary report should be presented. Five young people were against release of the report.

When asked whether they should be able to see these reports even when they were not the young person who was the subject of the proceedings, 2 answered 'yes' if a sibling was the subject of the report and they were involved in their care, with the rest answering 'no'.

Should there be a distinction between access to information in public law and private law cases?

The young people were asked a series of questions in the context of the two case examples that they had been given, in order to see whether they distinguished between public law care cases and private law cases. The majority, 23 young people, agreed that access to court files should differ according to whether the case involved public law or private law proceedings.

They were then asked whether access to certain records should depend upon whether the young person has been removed from the family, or the court has refused contact with one member of the family or should all young people seeking access to court files be treated the same? The young people were split on this, 17 answering that it should depend upon whether young person removed or contact with parent denied and 16 that all should be treated the same.

What information should be left on the file about the outcome of the hearing?

A number of closed questions were presented to the young people on this issue, but they were also asked for their own views. Young people were able to select more than one answer.

A clear majority of young people (24) thought that the judge should record a special statement for the child who was affected by the proceedings to find when he or she is 18, explaining the decision that was made. 7 agreed that the judge should leave a transcript or electronic record of the judgment on file, while 11 thought that summary judgment should be left. One young person wanted all of the options. When asked what else they would like to see left on file, it was suggested that a summary note might be left relating to issues that might have a significant impact on the child, such as violence, abuse or medical issues. The young people were not in favour of sealing certain documents. They were also clear that they would like some information from the judge at the conclusion of the hearing and that this should be written in a manner appropriate to the child's age. When asked whether there was a minimum age at which this should happen, the young people specified when a child became verbal and was able to understand the message.

Conclusions of the day

Young people have clear views on the issues raised by the consultation paper, and were interested in discussing them. While their views on access to the family courts by the public coincide with those expressed by the consultation paper, their view on admitting the media differ. The young people were perhaps surprisingly negative about the media and did not see them as a reliable or accurate conduit for informing the public about the working of the family justice system. Young people generally wanted the interests of the individual child taken into account in any decision on whether the press should be present, and weighted this more heavily than the right of freedom of the press.

The young people were also very clear that children involved in proceedings should be able to access their files. More particularly, they wanted special statements prepared by the judge and left in their file, explaining decisions made. They also suggested that the judge should prepare a specific statement for them at the conclusion of the hearing, in a manner that the child could clearly understand, and that this should explain the outcome of the proceedings and the reasons for it.

In speaking to practitioners in the field, and particularly the judges, there is a clear reluctance to prepare special summaries or documents for children setting out the reasons for a decision, and a feeling that a transcript of the judgment would be adequate. While understanding the pressure that the preparation of a special statement for children would place on a judge's time, and the difficulty some might have in preparing an appropriate document for children of different ages, this is undoubtedly what is wanted by the young people taking part in this consultation

day. When resource issues were explained, the same view was still taken. A judgment was not seen as a satisfactory alternative to a personal statement explaining the issues presented to the court, the decision taken and the reasons for that decision.

Discussion forum for children and young people

Forum Screenshot

We wanted to use the discussion forum to capture the views of children and young people who would be at the heart of any changes.

The discussion forum was divided into the following areas:

- The media attending family courts
- Other people attending family courts
- Protecting people's privacy
- Separate Representation of children
- Providing information to adults when they've been involved with family courts as kids.

About who used the forum[4]

32 people registered on the forum and there was a total of **26 comments** made – less than one comment per participant. The forum was administered by the Hansard Society and moderated by the DCA consultation team. Below is the statistical and demographic breakdown.

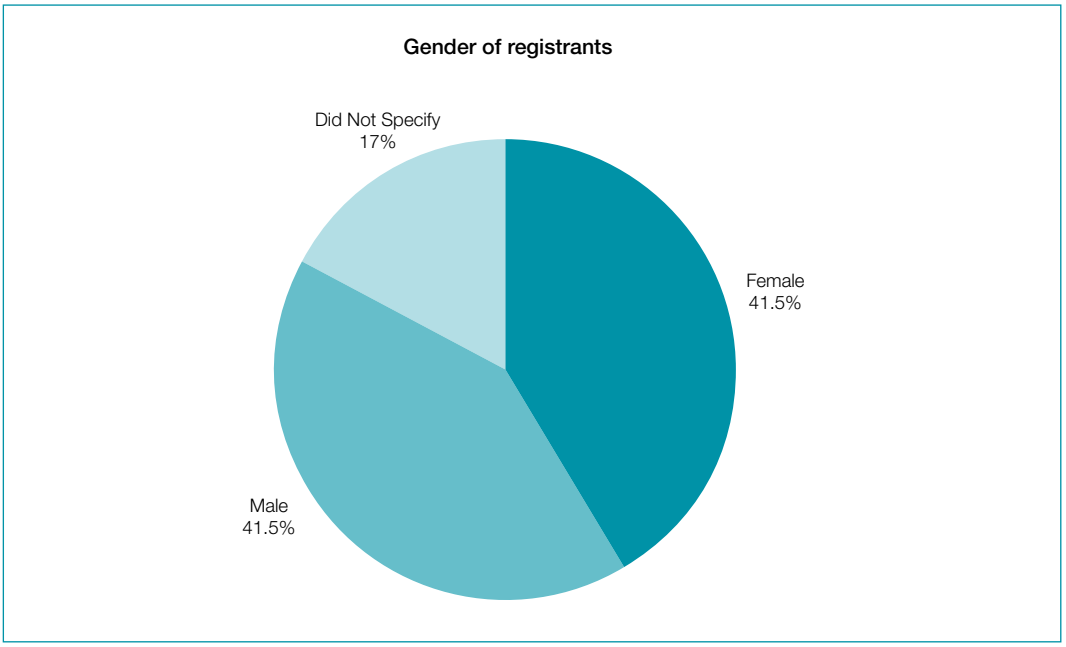
4 Statistics provided by the Hansard Society.

How children and young people were made aware of the forum

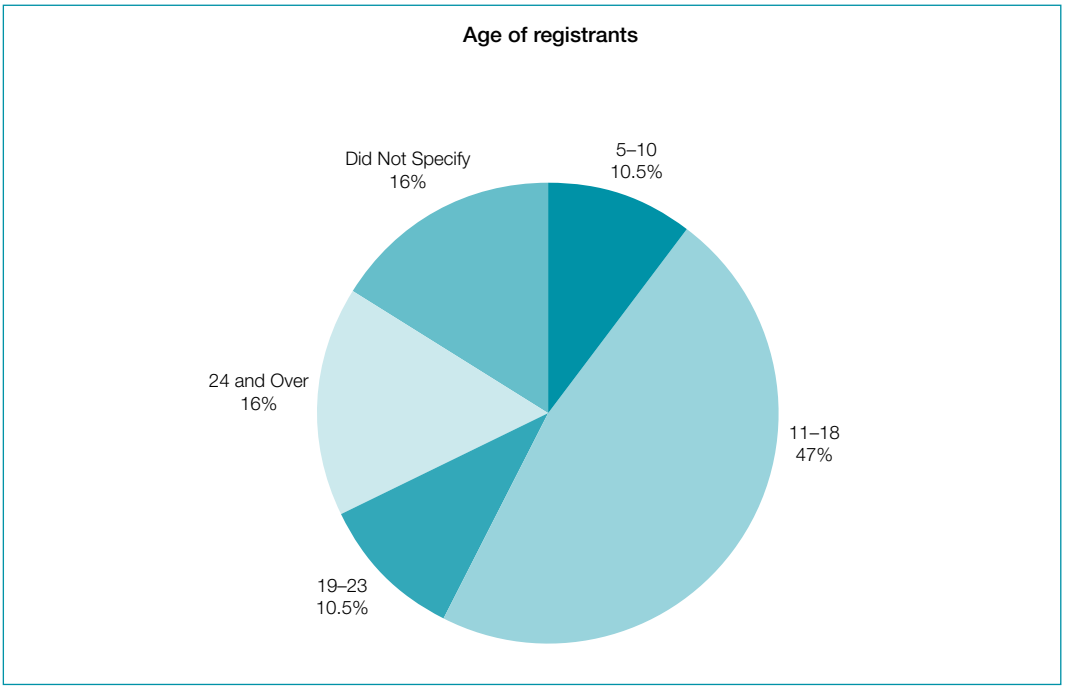
The low numbers of people who registered their comments is disappointing. A number of methods were used to publicise the site to young people, including links on other websites, media publicity and publicity at events held for young people.

The Hansard Society are currently evaluating the project and will make their findings public.

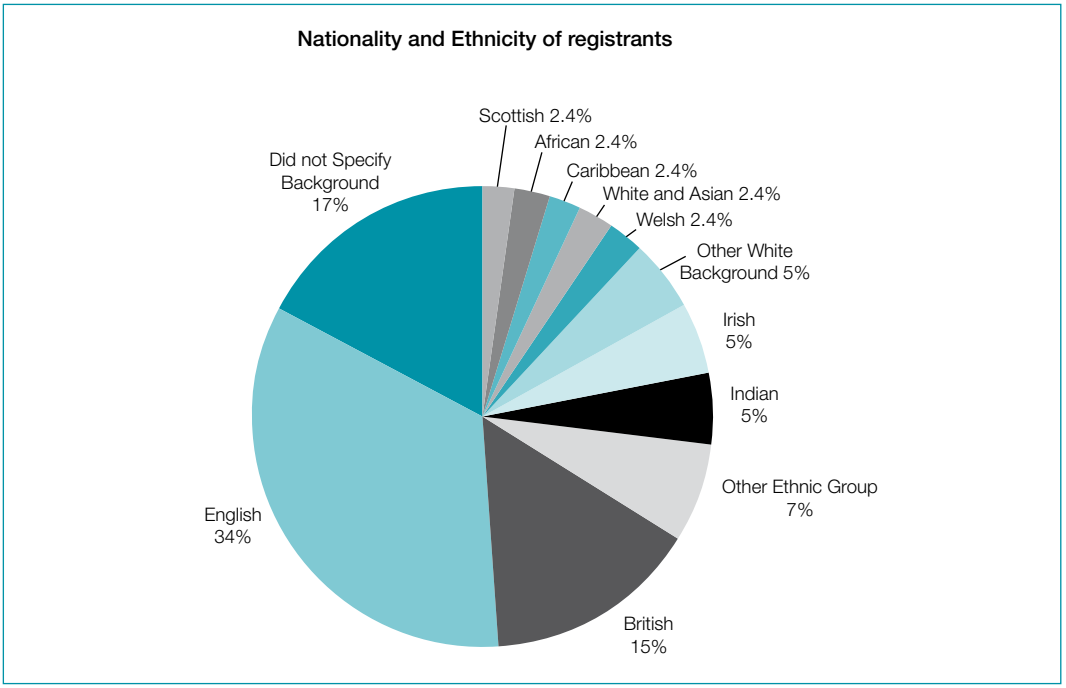
Gender of Registrants:



Age of Registrants:



Nationality and Ethnicity of Registrants



What they said

Other people attending family courts

> **"Who wants to be in the papers? It would not be very nice for everybody to read about your life in the papers. Some people are great, but some are horrible. Some things are private in the family, and it's better like that. The family comes together to help out in bad times. What would other people do? Just be nosey."**
>
> **Posted by rocky on 24/09/2006 – 13:50**

Media attending family courts

> **"I don't think the media should have an automatic right to attend a family court, but they should be able to ask permission. If everyone agrees that it is a reasonable request, then they should be allowed in, but if they cause any problems then they should be removed!**
>
> **Also, if something is said that the family does not want repeating, the media should accept this and respect the family's wishes – maybe exclude that part from the final story.**
>
> **Name should be changed to other names, not just shortened to initials, and any other easily identifiable things should be changed too, or excluded (e.g. if there are seven children in the family, don't list their ages or it could be obvious who the story is about!)"**
>
> **Posted by EmilyJEG on 30/09/2006 – 12:45**

Conclusion and Next Steps

1. The proposals in *Confidence and Confidentiality* were a genuine attempt to make the family courts more open, and still continue to protect the privacy of those families involved in family proceedings.
2. While some of the proposals received strong support others raised concerns amongst large sections of stakeholders, including children and young people. We have considered the responses to this consultation very carefully and we will be bringing forward our proposals in due course.

Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622 or email him at consultation@dca.gsi.gov.uk

Alternatively, you may wish to write to the address below:

Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 7.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Annex A – List of Respondents

List of respondents to the questionnaire.

Adoption UK

Jean Rosemary Albery

Mrs M Aldersley JP

Anonymous (Family Panel Magistrate)

Anonymous (Individual)

Anonymous (Individual)

Anonymous (Individual)

Anonymous (Individual)

Ardenleigh Child and Adolescent Mental Health Service, Psychology Team

Association of Directors of Social Services & Local Government Association

Association of District Judges

Association of Lawyers for Children

Mrs GM Banks JP

Mrs Banner JP

Mrs Justice Baron

Mr AE Barrett

Ray Barry

BBC

Martin Bedford

Judge Clifford Bellamy

Mrs HJ Bland

Dame Margaret Booth

Both Parents Forever

Mrs P Bowyer JP

Bradford Council, Adoption and Fostering Team

Bradford Social Services

Mrs J Brant JP

Brent Family Panel

Bristol University, School for Policy Studies

British Association for Adoption and Fostering

British Association for the Study and Prevention of Child Abuse and Neglect

British Association of Counselling and Psychotherapy

British Association of Social Workers

British Psychological Society's Faculty for Children and Young People

Mrs E Bromage JP

Dr Julia Brophy

Mrs V Brown JP

Mrs TP Bullock JP

Mrs EJ Burdge

David Burke

By the Bridge

CAFCASS

CAFCASS – Cumbria

Calderdale Family Panel

Calderdale MBC, Director of Children's Services and Independent Chair of the Safeguarding Board

Calderdale MBC, Head of Care Services, Children and Young People's Services

Camden Council, Department of Children, Schools and Families

Janet Catling JP

Mr RJ Cave

Central Devon Family Panel

Channel 4

Howard Charles JP

Karin Cheetham

Cheltenham Group

Mrs V Chesser

Children's Legal Centre

Christian Brethren Fellowship

Mrs ER Clayton

Cleveland Family Justice Council

Cleveland FPC

Mr RV Clifford JP

Stephen Cobb QC

Mrs JA Cooch

Coram Family Adoption and Permanent Family Services

Council of Circuit Judges

Francis Crawley

District Judge Nicholas Crichton

Kevin Crookes

Crown Prosecution Service

Dads R Us

Mr JHM Dalrymple JP

Miss J Darlow JP

George Davies JP

Jane Davies

Mrs TE Dickson JP

Mr WM Docherty JP

Julie Doughty

Mr CJ Drouet JP

Mrs J Eayrs JP

Bryan Edmands

His Honour Judge Charles Elly

Equal Parenting Alliance

Essex Family Proceedings Panel

Mrs A Evans JP

Roy Everett

False Allegation Support Organisation

Families Need Fathers

Family Justice Council

Family Law Bar Association

Family Policy Alliance

Greta Foulkes JP

Mr W Frost

Maria Gabrielczyk

General Medical Council

Mrs M Gent JP

Mr BN Gentry JP

Richard Gerrell

Mr D Glen JP

Gloucestershire County Council, Children and Young People's Directorate

Mrs MM Gould JP

Mr HJD Graham JP

Grandparents Action Group

Greater London Family Panel

Grimsby and Scunthorpe FPC

Mrs HE Gupta JP

Gwent FPC

Halton Borough Council

Jenny Ham

Karl Harris

PDJ Harrison

Mrs VA Henderson

Hereford Family Panel

Mrs Herrod JP

Mrs BN Hill JP

HM Inspectorate of Court Administration

David Hodson

Mrs Holliday JP

Dr J Horn

Mrs WE Huckerby JP

Huddersfield FPC

Mr DR Hudson JP

Inner London FPC

Inspire, Black Country

Steve Irvine

Isle of Anglesey County Council

ITN

Jewish Unity for Multiple Parenting

Trevor Jones

Mrs LM Keet-Marsh JP

Alan Kelsall JP

Mrs CB King JP

Law Reform Committee of the Bar Council

Law Society

Legal Services Commission

Leicester County Council, Legal Services Unit

Mr RA Lewis JP

Mrs T Lewis JP

Liberty

Mrs MA Liddle JP

Lincolnshire and South Humberside Magistrates' Association Branch

Mrs C Lodge JP

Clifford Longley JP

Mr DJ Loud JP

Mrs WE Lovell JP

Luton and Bedfordshire Family Justice Council

Mrs AC Mackley JP

Magistrates' Association

S Mahaffey

Mankind Initiative

Ruth McKenna

Men's Aid

Mrs MC Musson

Lynne Millar-Jones

Mothers Apart from Their Children

National Association of Guardians Ad Litiem and Reporting Officers

National Association of Probation Workers

National Children's Bureau

National Family Mediation

National Society for the Prevention of Cruelty for Children

National Union of Journalists

National Youth Advocacy Service

Neath Port Talbot Bench

Mrs D Newham JP

Newspaper Society

Mrs SE Nicholas JP

Norfolk Family Panel Executive and the Family Administration Department

North Nottinghamshire FPC

North Yorkshire Legal Services, Children's Team

Nottingham Family Panel

Derek Stanley Nutley JP

Office of the Children's Commissioner

Oldham MBC, Directorate of Services to Children

Mrs PL Ollive JP

One Parent Families

Mr SS Patel JP

Dr Heather Payne

Mrs R Pearson JP

Daniel Piggott

Mr J Powell JP

Jospehine Poxon JP

President and High Court Judges of the Family Division

Mr KW Pritchard

Public and Commercial Services Union

Refuge

Resolution

Lionel Rice

Rights of Women

Mr Riley JP

Mrs SL Roberts JP

Royal college of Paediatrics and Child Health

Royal College of Psychiatrists

Mr G Rutter

Sharnbir Singh Sangha

Karin Saunders

Mr MW Sawford JP

Mr G Sergent-Chalmers JP

Kathryn Sharp

Michael Shaw

Mr JF Snape JP

Scarborough Family Panel

Shared Parenting Contact Centre

Sheffield City Council

Peter Sherlock

Peter Rodney Shires

Mr D Smith JP

David Smith JP

Gillian Smith JP

Society of Editors

Solihull Family Panel

Solihull MBC, Education and Children's Services

South Devon FPC

South Somerset FPC

Southampton and New Forest Family Panel

David Spicer

Alan Stears JP

Mrs JM Steele

Suffolk County Council, Directorate for Children and Young People

Suffolk Family Justice Council

Sweet & Maxwell

UNISON

Julie Vale

Voice

Lord Justice Wall

Ursula J. B. Walton JP

Mr DW Ward JP

Emma Victoria Ward

Warwickshire FPC

James Welsh

Welsh Assembly Government

Welsh Women's Aid

Miss D Whittaker JP

Miss PG Whymant JP

Mike Wiffen

Ann Williams JP

James Austen Williams

Wimbledon FPC

Women's Aid

Mrs Justice Wood

Ljubima Woods

Worcestershire County Council, Legal Department (Christine Stockton & Filomena Ferrell)

Worcestershire County Council, Legal Department (Kiri Rademacher)

Worcestershire County Council, Legal Department (Marion Wilson)

Wrexham Family Panel

Arthur and Pam Wright

Leonid Yanovich

Annex B – Charts

Chart 1 – Do you think others should be able to attend family courts (with or without needing to apply)? If so, whom?

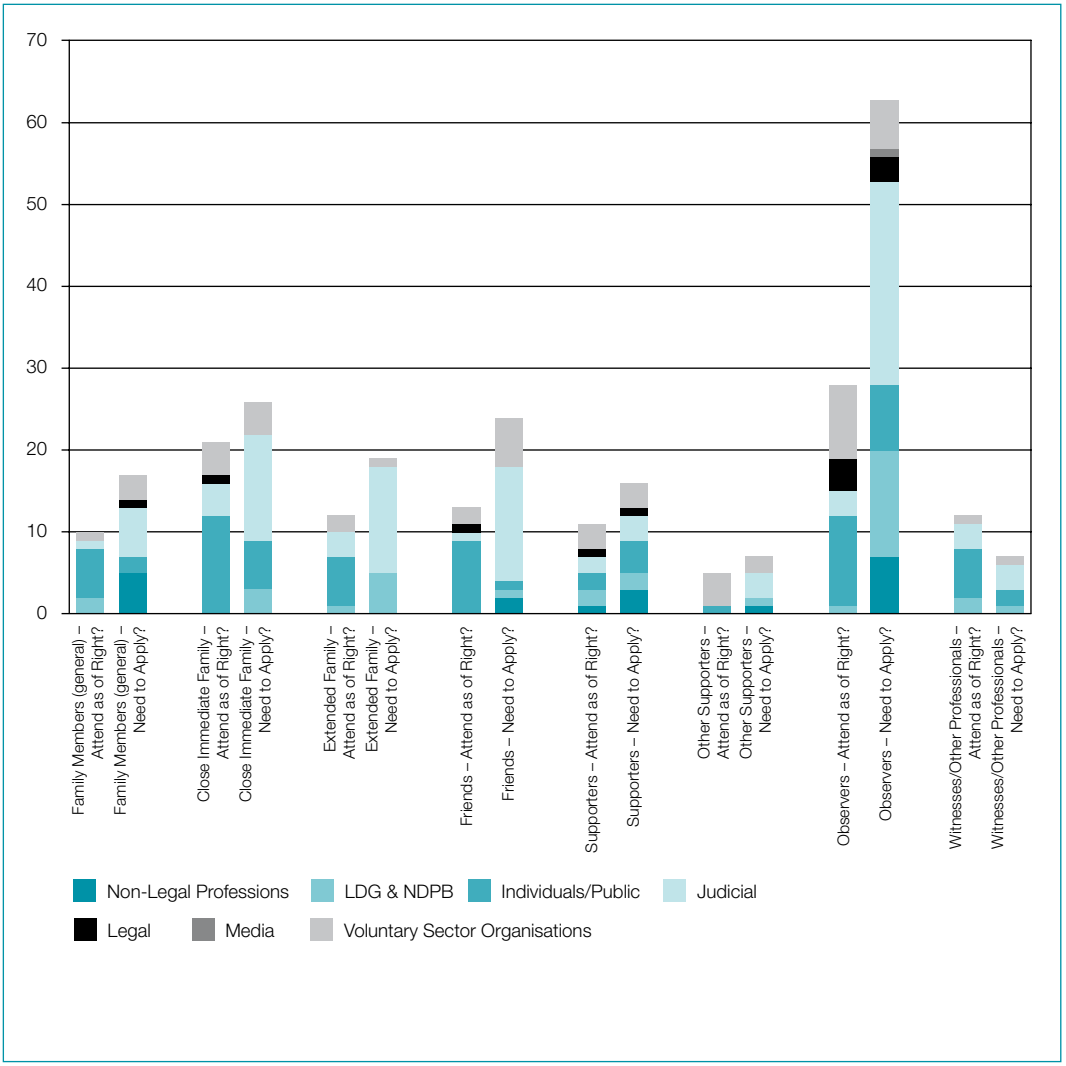
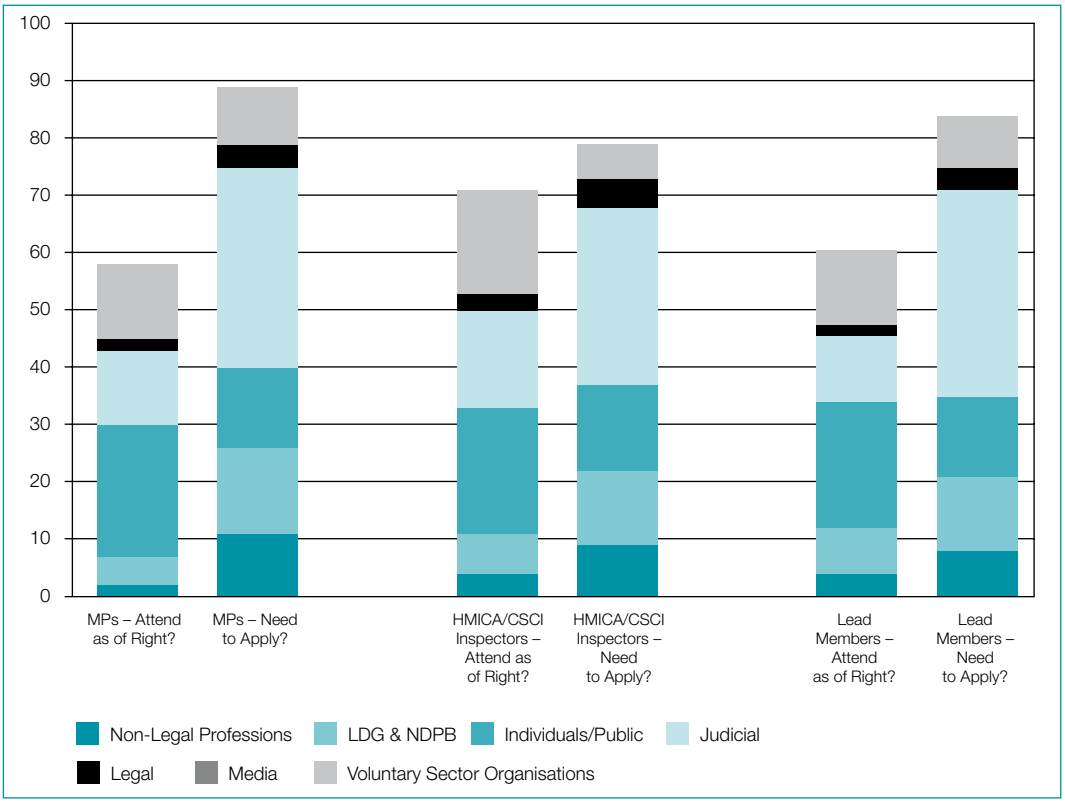


Chart 2 – Whether MPs, Lead Members or Inspectors should be able to attend family courts as of right or whether they need to apply to attend?



Printed in the UK for The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
ID5541332 03/07

Printed on Paper containing 75% fibre content minimum.

Published by TSO (The Stationery Office) and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich NR3 1GN
Telephone orders/General enquiries 0870 600 5522
Order through the Parliamentary Hotline *Lo-call* 0845 7 023474
Fax orders 0870 600 5533
Email book.orders@tso.co.uk
Textphone 0870 240 3701

TSO Shops
123 Kingsway, London WC2B 6PQ
020 7242 6393 Fax 020 7242 6394
16 Arthur Street, Belfast BT1 4GD
028 9023 8451 Fax 028 9023 5401
71 Lothian Road, Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-170362-8