

Pressing case

Prying or privilege? **Frances Kelly** examines the arguments for allowing the media access to family courts and other measures to increase transparency in this sensitive area

IN DECEMBER 2008, a Ministry of Justice report, *Family justice in view*, presented a summary of the responses to the consultation paper, *Confidence and confidentiality: Openness in the family courts – a new approach*. Following pressure from groups such as Fathers for Justice, and cases where care procedures appeared to override parents' rights, the issue was whether the family courts should allow the public access to more information regarding family cases, including whether/how much information should be made available to the media.

This is always a controversial debate – everyone has a view. The individuals and organisations who responded to the consultation paper were from a wide background. The names of respondents and a copy of the report can be found at family.consultation@justice.gsi.gov.uk.

The Lord Chancellor Jack Straw announced that family court hearings in county courts and the High Court are to be opened to the media from 27 April. He also announced that media representatives who attend family courts must be holders of the UK Press Card.

Public confidence

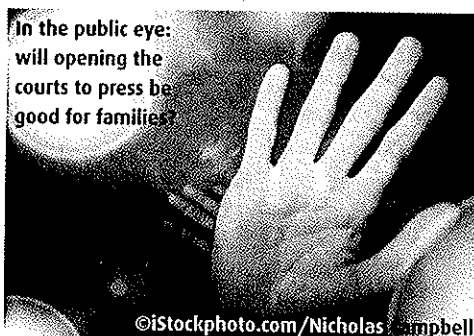
The UK Press Card Authority is a voluntary scheme for issuing press/media credentials to professional newsgatherers in the UK.

The scheme comprises 16 'gatekeepers': national organisations which represent journalists and other media personnel (employed or freelance) whose work involves gathering material for editorial publication in all media – print, broadcast and electronic. The gatekeepers issue cards to their members or to those they represent and are responsible for ensuring that the conditions are adhered to.

The scheme was launched by the Metropolitan Police in 1992, with the co-operation of all the major industry bodies, with the aim of ending the proliferation of press cards and reaching agreement on a universally-recognised card (bearing the word PRESS). The card is formally recognised by all police forces in the UK, and de facto by other public bodies.

Accredited media will be able to attend all levels of family courts, removing the existing

inconsistency of access between magistrates' courts and the county and High Court. The court will be able to restrict attendance if the welfare of the child requires it, or for the safety and protection of parties or witnesses. Existing reporting restrictions will still apply to protect children and families, although reviewing those rules is the next phase of the transparency project.



Mr Straw said: 'Public confidence in the justice system is a necessary and vital part of a democratic society. I want to ensure that reforms to the family courts system increase their accountability to the public.'

'People need to trust the justice system. One important way is by creating a more open, transparent and accountable system while protecting children and families during a difficult and traumatic time in their lives.'

Open access

In addition, revised court rules also come into effect on 27 April about disclosure of information about cases involving children. These will make it easier for parties and their legal representatives to seek help and advice about their case. These include allowing parties and their legal representatives to disclose information about their case to advisors (including MPs) while a case is ongoing, rather than at the end.

Further, there will be an information pilot in Leeds, Wolverhampton and Cardiff later this year. These pilot areas will, for the first time:

- Routinely produce a written record of the court's decisions in the High Court and county courts (Family Proceedings Courts will continue to provide written reasons);
- Publish these anonymised judgments online;

- Encourage disputed judgments, such as contested residence or contact cases where the outcome is unusual, to be produced for the purpose of publication;
- Issue judgments/written reasons to the parties; and
- Retain judgments/written reasons on the court file for children to access if they wish when they reach adulthood.

The purpose of publicising anonymised family judgments online is to improve public confidence in the family courts, and by allowing parties' access to judgments it is hoped to help those parties to understand more fully reasons why judicial decisions are reached in their case.

The pilot will identify the cost and resource implications of providing information in family cases which have until now been kept private and confidential to protect the identity of the children and families who are the subjects of court proceedings.

Private affair

However, this is a double-edged sword. On the one hand transparency in application of the law is to be applauded, but on the other it is fundamental that we should protect the privacy of children and those vulnerable adults who are the subjects of family proceedings.

Trial by media must not be allowed to add to the stress of families and children for whom court attendance is already a traumatic experience; nor should the possibility of their private dispute being made public discourage those who need the assistance of the courts from coming forward for fear of being reported in the media – albeit 'anonymously'. Society and the legal system that serves it should protect the right of individuals generally to conduct personal affairs in private.

This is a sensitive and difficult line to tread. It will be interesting to see the outcome of the information pilot (much will depend on adequate funding) and whether the 'guinea pig' cases justify the public scrutiny of family life in the justice system or whether the cost to those who are the subjects is too high.

Frances Kelly F.Inst.L.Ex. works in the family department of London firm Cumberland Ellis