

Summary: Intervention & Options

Department /Agency:

Ministry of Justice

Title:

Impact Assessment of improving transparency and privacy in family courts

Stage: Final proposals

Version: 1.1

Date: 16 December 2008

Related Publications: Confidence and Confidentiality: Openness in family courts - a new approach (cm7131) ; Family Justice in View (cm7502).

Available to view or download at:

<http://www.justice.gov.uk/publications/cp1007.htm>

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What is the problem under consideration? Why is government intervention necessary?

Most family cases are heard in private (with only the parties and legal representatives, witnesses and court officers present), which has fuelled a perception that 'secret' justice operates in the family courts. There is widespread recognition, ranging from academics and practitioners to MPs, the press and members of the public, that action is needed to improve public awareness and ensure confidence in the family justice system. Public scrutiny is an important part of this and will contribute to an increased public awareness of how the family courts operate. Measures necessary to ensure that public awareness and confidence in the family courts is increased cannot though be delivered by changes to court administration and judicial guidance alone. Amendments to primary legislation and to court rules will be needed in order to achieve the aims of the final proposed policy options. This will require government and parliamentary approval.

What are the policy objectives and the intended effects? The Government's objectives behind proposals to increase public confidence in the family justice system are to:

- Promote a culture of openness in the family justice system.
- Secure better scrutiny of the family justice system.
- Improve understanding by the general public and by families involved in proceedings of the decisions that courts make.
- Protect the welfare and best interest of the child.

In order to achieve the objectives above the Government is proposing to allow the media to attend family proceedings as of right, but subject to discretion of the court to exclude them if the welfare of the child requires it or for the protection or safety of the parties or witnesses. Reporting restrictions will apply (with court discretion to relax them) to ensure the identity of any children (and in certain cases of adult parties) is protected, and their application will be made consistent across all tiers of court. The identity of children will be protected beyond the end of proceedings (reversing the case law consequent from the decision in Clayton v Clayton).

What policy options have been considered? Please justify any preferred option.

Five main options for making the family courts more transparent and open were identified:

1. Do Nothing
2. Make a package of changes:
 - Allow the media to attend family proceedings with judicial discretion to exclude;
 - Change disclosure rules to allow disclosure by purpose; and unlimited onward disclosure provided it meets the original purpose;
 - introduce legislation to provide clarity and consistency of reporting restrictions in all tiers of family courts;
 - provide the magistrates courts and county courts with the power to impose case specific reporting restrictions binding on the media and parties;
 - reverse Clayton v Clayton.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Subject to development of implementation timetable but expected in 2013

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option:	Description: Allow the media to attend family proceedings with judicial discretion to exclude.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' A small increase in the number of applications by litigants to exclude the media from attendance.
	One-off (Transition) Yrs	
	£	
	Average Annual Cost (excluding one-off)	
£	Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups' Media, lawyers, judges, local authorities and CAFCASS and CAFCASS (Cymru) officers will need to adapt to the new legislative framework. The Ministry of Justice will provide relevant information to stakeholders on changes.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Reforming the current law on attendance at and reporting of family cases will deliver non-financial benefits by allowing for greater openness in family proceedings, and also allowing for greater public scrutiny.
	One-off Yrs	
	£	
	Average Annual Benefit (excluding one-off)	
£	Total Benefit (PV)	£ N/A
Other key non-monetised benefits by 'main affected groups' Greater public confidence in the family justice system and increased level of public scrutiny if all the more than 380,000 family cases each year which will affect all individuals going through the family justice system.		

Key Assumptions/Sensitivities/Risks We have estimated the volume of cases to which the media will attend and to which people will seek to have the media excluded from proceedings to be low. We have based this assumption on findings from other jurisdictions like New Zealand where their family courts have been recently opened to accredited members of the media and attendance has been low. Also, while the Press currently have the right to attend family proceedings courts (magistrates' courts hearing family proceedings), it appears anecdotally that they rarely do so. Under the new transparency proposals, provision will be made to limit applications to exclude the media to exceptional cases

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England & Wales
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	MoJ
What is the total annual cost of enforcement for these organisations?	
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£

Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase – Decrease)
Increase	£	Decrease	£	Net £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Consolidate reporting restrictions and provide magistrates and county courts with the power to impose case specific reporting restrictions
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' <ul style="list-style-type: none"> Small increase in costs to the court system of dealing with media applications to lift/ challenge reporting restrictions both general and case specific. negligible increase in legal aid costs where legally aided litigants are represented on those applications made by the media to lift reporting restrictions imposed by the courts. MoJ legal aid colleagues do not believe that it is feasible that this would have a significant impact on legal aid. 	
	One-off (Transition)	Yrs		
	£			
	Average Annual Cost (excluding one-off)			
	£		Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups' Media, judges and lawyers will need to adapt and be informed of the new statutory framework. The Ministry of Justice will provide relevant information to these stakeholders on change.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Consolidation of the inconsistent reporting restrictions will decrease the administrative burden on legal firms, barristers chambers, media and judges as they will benefit from looking at one coherent piece of legislation governing reporting of family cases. This will also save court time. A small very proportion of the over 250,000 non-children cases would benefit.	
	One-off	Yrs		
	£			
	Average Annual Benefit (excluding one-off)			
	£		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' Automatic reporting restrictions will provide consistent protection in child cases and certain cases involving adults. The power to impose case specific reporting restrictions will benefit individuals in specific cases where the courts can provide "tailor made" protection for individuals in particular circumstances.				

Key Assumptions/Sensitivities/Risks We are assuming that applications by the press to lift the reporting restrictions imposed by the courts would be possible on something like the Children and Young Person 1933 Act model, but that the incidence of applications, based on the 1933 Act experience, we estimate would be low.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	HMCS/MoJ
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£

What is the value of changes in greenhouse gas emissions?			£	
Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation <small>(excluding one-off)</small>	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase – Decrease)
Increase	£	Decrease	£	Net £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Change disclosure rules so they are based on the purpose for which the disclosure was made; also court rules should be amended to allow unlimited onward disclosure for the same purpose as the original disclosure.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'					
	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">One-off (Transition)</td> <td style="width: 5%; text-align: center;">Y</td> <td style="width: 25%;"></td> </tr> <tr> <td>£</td> <td></td> <td></td> </tr> </table>		One-off (Transition)	Y		£	
	One-off (Transition)	Y					
	£						
Negligible increase in legal aid costs arising from challenges to limit disclosure.							
<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">Average Annual Cost (excluding one-off)</td> <td style="width: 5%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td>£</td> <td></td> <td></td> </tr> </table>	Average Annual Cost (excluding one-off)			£			Total Cost (PV) £
Average Annual Cost (excluding one-off)							
£							

Other **key non-monetised costs** by 'main affected groups' A decision by a court to restrict disclosure may have an adverse impact on an individual in seeking advice and support at an early stage in their case.

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The main benefit of any change will be that the current disclosure rules will be simplified and we estimate that the number of applications to courts requesting the permission to disclose information will go down as a result hence saving judicial time and money. The number of applications to court for disclosure are not known, but the group who are likely to benefit most are the (more than) 120,000 cases affecting children.					
	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">One-off</td> <td style="width: 5%; text-align: center;">Yrs</td> <td style="width: 25%;"></td> </tr> <tr> <td>£</td> <td></td> <td></td> </tr> </table>		One-off	Yrs		£	
	One-off	Yrs					
	£						
Average Annual Benefit (excluding one-off)							
<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">Average Annual Benefit (excluding one-off)</td> <td style="width: 5%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td>£</td> <td></td> <td></td> </tr> </table>	Average Annual Benefit (excluding one-off)			£			Total Benefit (PV) £
Average Annual Benefit (excluding one-off)							
£							

Other **key non-monetised benefits** by 'main affected groups' Those involved in family proceedings will find it easier to approach organisations and individuals who can help with the necessary advice and support, without the cost and time commitment of having to obtain the court's permission before they are able to disclose information.

Key Assumptions/Sensitivities/Risks We are assuming that the court will only use its discretionary powers to limit disclosure in circumstances where there is a genuine need. We believe that courts will only use their discretionary powers in a handful of cases.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	HMCS/MoJ
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£

What is the value of changes in greenhouse gas emissions?			£	
Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation <small>(excluding one-off)</small>	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase – Decrease)
Increase	£	Decrease	£	Net £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Reversal of Clayton v Clayton
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Negligible increase in legal aid costs through challenges to decisions not to protect the anonymity of a child after the conclusion of proceedings.				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">One-off (Transition)</td> <td style="width: 5%; text-align: center;">Yrs</td> </tr> <tr> <td style="background-color: yellow;">£</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£	
	One-off (Transition)		Yrs			
	£					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Average Annual Cost (excluding one-off)</td> <td></td> </tr> <tr> <td style="background-color: yellow;">£</td> <td></td> </tr> </table>	Average Annual Cost (excluding one-off)		£			
Average Annual Cost (excluding one-off)						
£						
Total Cost (PV)		£				
Other key non-monetised costs by 'main affected groups'						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">One-off</td> <td style="width: 5%; text-align: center;">Yrs</td> </tr> <tr> <td style="background-color: yellow;">£</td> <td></td> </tr> </table>		One-off	Yrs	£	
	One-off		Yrs			
	£					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Average Annual Benefit (excluding one-off)</td> <td></td> </tr> <tr> <td style="background-color: yellow;">£</td> <td></td> </tr> </table>	Average Annual Benefit (excluding one-off)		£			
Average Annual Benefit (excluding one-off)						
£						
Total Benefit (PV)		£				
Other key non-monetised benefits by 'main affected groups' The key benefit will be that up to 120,000 children involved in family proceedings will have the security of knowing that they have automatic protection from being identified by the press and others when the proceedings have come to an end, unless the judge decides to the contrary.						

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales				
On what date will the policy be implemented?					
Which organisation(s) will enforce the policy?	HMCS/ MoJ				
What is the total annual cost of enforcement for these organisations?	£				
Does enforcement comply with Hampton principles?	Yes/No				
Will implementation go beyond minimum EU requirements?	Yes/No				
What is the value of the proposed offsetting measure per year?	£				
What is the value of changes in greenhouse gas emissions?	£				
Will the proposal have a significant impact on competition?	Yes/No				
Annual cost (£-£) per organisation (excluding one-off)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; background-color: yellow;">Micro</td> <td style="width: 25%; background-color: yellow;">Small</td> <td style="width: 25%; background-color: yellow;">Medium</td> <td style="width: 25%; background-color: yellow;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		

Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase	£	Decrease	£	Net £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.

Introduction

1. This is an interim Impact Assessment to accompany the response paper “Family Justice in View”. This Impact Assessment examines the implications of opening up the family courts to the media, while providing judicial discretion to exclude, as well as a number of other proposals.

Devolution

2. The proposals will only apply in England and Wales. Family law is a devolved matter for Scotland and Northern Ireland.

Background

3. The family courts in England & Wales hear over 375,000 cases every year. Decisions in each one of these will have a profound impact on the families involved. They provoke strong and emotionally fraught reactions in the way that they deal with the complexity of human relationships and the thorniest moral dilemmas. It is no surprise that there is a strong public interest in family law and this is reflected in media coverage of the subject.
4. All divorces must go through the courts as part of the legal process to end a marriage but, for most couples, this is largely an administrative exercise. Most make their own financial arrangements which are then sometimes endorsed by the court. Where couples cannot agree, the court will consider what a fair outcome should be and make an order.
5. Children cases are more complex. If parents cannot agree about an important issue relating to their children, one parent may make an application to the court to make a decision. Sometimes, an independent judicial decision based on parental and expert evidence is needed to settle the dispute in the best interests of the child.
6. Currently, a number of laws and rules regulates the confidentiality of family law proceedings. Most family cases are heard in private, with the exception of some proceedings, for example appeals to the Court of Appeal, and the House of Lords, or the pronouncement of divorce decrees. This has led to growing criticism that the family justice system operates in secret and away from public scrutiny.
7. In July 2006 the then Department for Constitutional Affairs (whose functions in this area passed to the MoJ) published a consultation paper, *Confidence and confidentiality: improving transparency and privacy in family courts*. The responses of interested parties were published in March 2007, with support for more openness a consistent theme. In June 2007, the Ministry of Justice published a second consultation paper, *Confidence and confidentiality: openness in family courts – a new approach*, in which it was indicated that it had been decided not to proceed with proposals to allow the media into family courts as of right.

Current rules on attendance in family proceedings

8. Divorce proceedings are presently held in open court (FPR 1991, r 2.28(1)) while ancillary relief proceedings are heard in chambers (FPR 1991, r 2.66(2)) and in private with judicial discretion to open the court to the public. In children cases different courts operate under different rules. In the Family Proceedings Courts (magistrates' courts) the media are permitted to attend subject to some restrictions. Section 69 of the Magistrates' Courts Act 1980 is the principal provision governing media access to family proceedings in magistrates' courts. With

the exception of adoption proceedings representatives of newspapers and news agencies are entitled to attend hearings and determinations of family proceedings, alongside officers of the court, parties, legal representatives, witnesses and others directly concerned with the case. Access to proceedings under the Adoption and Children Act 2002 is more restricted. Press representatives have no right to attend adoption proceedings and the court cannot give permission for anyone to attend who is not an officer of the court, or one of the parties, lawyers, witnesses or other person directly involved in the proceedings.

9. The press can be excluded during the taking of any indecent evidence if the court considers it necessary in the interest of the administration of justice or of public decency (section 69(4) of the Magistrates' Courts Act 1980). S. 69 is, however, without prejudice to any other powers to hear proceedings in private; and s.97 (1) of the Children Act 1989 enables provision to be made in rules for proceedings under that Act and the Adoption and Children Act 2002 to be held in private. Provision to that effect has been made, in rule 16(7) of the Family Proceedings Courts (Children Act 1989) Rules 1991.
10. Press attendance for the county courts and High Court is via application to the courts. In the County Court, the presumption is for proceedings to be generally in private with judicial discretion to open the case to the public/press. FPR 1991, r 4.16(7) provides that proceedings under Part IV of the Children Act 1989 (CA 1989) shall be heard in chambers unless the court orders the matter to be heard in open court. Such orders are unusual. In the High Court, the starting point is for cases to be heard in private with judicial discretion to open the court when reporting restrictions could apply. Judgments are increasingly given in open court if deemed to be in the public interest and, where desirable in the interests of the child, appropriate directions are given to avoid identification.

A table illustrating current arrangements can be found below.

Court	<u>Current arrangements – Open/Closed</u>
Family Proceedings Court	<p>Adoption cases always in private.</p> <p>Press may attend other proceedings subject to reporting restrictions.</p> <p>The press may be excluded by the court on the grounds of interests of the child and on the grounds of public decency or the administration of justice during the taking of indecent evidence.</p> <p>Others people directly concerned in the case may attend.</p> <p>In Children Act 1989 and Adoption and Children Act 2002 proceedings, the court may hear proceedings with only the parties, their legal representatives, officers of the court and any other persons specified by the court present, if the court considers this expedient in the interests of the child.</p> <p>Court may permit any other person to be present.</p>
County Court	<p>Generally in private with judicial discretion to open the court to the public/press.</p> <p>Some proceedings in open court - for example contested divorce, the decree nisi is pronounced in open court in the special procedure used for most divorces, judicial separation and nullity (and civil partnership equivalent) (But subject to reporting restrictions).</p>

High Court	Starting point is proceedings held in private with judicial discretion to open the court. If in open court, reporting restriction could apply depending on the type of proceedings. Judgments increasingly given in open court if deemed in the public interest.
Court of Appeal	Open court. Press and public access. Judgments may be anonymised on a case by case basis. Reporting restrictions at judicial discretion.
House of Lords	Hearings generally operate under Select Committee rules. Judgments given in chambers.

The need for reform

11. The *Confidence and confidentiality: improving transparency and privacy in family courts* consultation paper put forward a number of proposals with the aim of improving both the public's confidence in the family courts, and protection of the privacy of those involved in proceedings. The attendance of the press as of right and acting as a proxy for the public was seen as central to this.
12. It may be helpful to remember that the original driver for the consultation was not one of confidence, but of openness and transparency. Following Munby J's *Re B* judgment (March 2004) and the subsequent consultation about the rules on disclosure of information in family proceedings involving children, the then Constitutional Affairs Select Committee (CASC) inquiry into the family courts (November - January 2006) made specific recommendations about making family courts more open.
13. Following its response to the CASC report, the Government consulted on proposals in 2006 with the aim of improving public confidence in the family courts, while safeguarding the privacy of those involved. The Government published a consultation in July 2006, which proposed allowing the media into family courts as of right, with judicial discretion to exclude. A response paper was published in March 2007 summarising responses and saying that Ministers would be reflecting further.
14. This was announced in a second consultation paper in June 2007. The consultation paper also announced piloting the provision of better information in some family cases, so that a new approach would focus on improving the openness of family courts not by the ability of people to go into family courts, but by the amount and quality of information coming out of the courts. It also proposed further changes to the rules on disclosure of information in cases involving children and heard in private, so that information could be more widely disclosed. The legislation governing attendance at and reporting of family proceedings is complicated and depends upon both the level of court and type of proceedings.
15. Since the last consultation we have received over 200 letters from individuals, MPs and constituents around the country. It is clear from this that those using the family courts - the court users - want a change to allow for greater openness and public scrutiny of family cases.

What can be done to improve confidence?

16. The concerns about the family justice system fall into four key areas, some of which are already being addressed at least in part, and some of which are outside the control of the courts. There will always be those who cite confidence as an issue because the court has not

decided in their favour. Government policy cannot influence judicial decisions – but it can ensure that the processes are open, just and easily understood.

The four key areas are:

- Better understanding by the general public
- Better understanding by those involved in proceedings
- Better scrutiny of the family justice system
- A more open approach to family justice

17. In order to take these themes forward, a number of possible solutions have been identified which, as a package would improve confidence in the family justice system and at the same time contribute to creating a climate of greater openness, understanding and scrutiny. These are analysed and explored in the costs and benefits section of this impact assessment.

Consultation

18. We have consulted on two sets of proposals to improve transparency. Our first consultation in 2006 proposed that the media be allowed into family proceedings in all tiers of court to counter claims about lack of accountability for decisions. Our second consultation in 2007 proposed instead that we increase information coming out of the family courts by piloting the provision of providing written anonymised judgments in some cases to those involved in proceedings, and the wider public. Also, by allowing parties to disclose information more widely to enable them to get the support and advice they need based on the purpose for which they are sharing the information.

19. The July 2006 and June 2007 consultation papers were sent to organisations and individuals known to have an interest, these included the media and children groups amongst others. The consultation papers were also made available to the general public via the Departments website. Organisations consulted included :

- Association of Lawyers for Children
- Resolution
- Law Society
- Bar Council
- NYAS
- 11 Million
- National Children Bureau
- Society of Editors
- Newspaper Society

20. The proposals to improve the openness of family courts have been the subject of extensive consultation both within Government and with wider stakeholders. Throughout the first consultation period we held a number of stakeholder events with different groups notes of the issues raised can be found at page 38 of the response to the first consultation published on 20 March 2007. There have also been wide discussions across Government departments of this policy. We have discussed the policy with:

- The Department for Children, Schools and Families

- Welsh Assembly Government
- Crown Prosecution Service
- Home Office

Policy Options

Objectives

21. The objectives of reforming attendance at and reporting of family cases are:

- To improve public confidence in the family justice system through public scrutiny;
- To improve knowledge and understanding of the workings of the family courts among court users and the general public;
- To provide arrangements that are simple, easily understood, consistent and workable;
- Maintain an *appropriate balance* with the rights of litigants to privacy concerning their family life.

Options

22. The Ministry of Justice considered a range of policy options. These are summarised below. We have decided, on the basis of responses to both consultations, conversations with experts and professionals across the field of family justice, and the many letters we have received, to merge these two sets of proposals together to deliver a coherent and co-ordinated response.

The options are as follows:

- Option 1 Do nothing
- Option 2 Allow the media to attend family proceedings with judicial discretion to exclude
Change disclosure rules so they are based on the purpose for which the disclosure was made; also court rules should be amended to allow unlimited onward disclosure for the same purpose as the original disclosure.
Align and make consistent reporting restrictions governing family proceedings;
Provide magistrates and county courts with powers to impose case specific reporting restrictions
Reverse Clayton v Clayton

23. The costs and benefits of each are summarised in Table 1.

Analysis of options

Option 1: Do Nothing

Benefit

24. No extra additional costs will be incurred.

Cost

25. The present system would remain unchanged. The family courts will continue to be criticised for lacking openness and operating in secret. The concerns about public confidence in the family justice system are contributing to the public perception that the family courts are 'secret' and 'biased'. The judiciary, public and MPs will continue to call for greater openness. The danger of the Government not responding to change will further reinforce people's views of 'secret' family courts.

Option 2: Allow the media to attend family proceedings with judicial discretion to exclude

Attendance of the press at children proceedings

26. This option would mean that the media would have the automatic right to attend family courts, subject to a court order in the specific proceedings to the contrary. During the course of two consultation papers, views about whether the media should be able to attend family courts have been emotive and strongly split. In the first consultation we argued that the media should be able to attend as a proxy for the public and to provide accountability for a system that was suffering from loss of public confidence. Responses were equally balanced.

27. We want to change the rules to open up the family courts so that the press can attend all family courts as a matter of right with judicial discretion to exclude. We are proposing that in all tiers of family proceedings heard in private where a child is involved, the media will have the right to attend, unless the court believes that it would be appropriate to exclude them in the 'interests of the child'. Whilst what meets the interests of a child in the individual case must be a matter for the judge to decide, examples of situations in which the press could be excluded might be where the child may wish to attend, but will not do so if a representative of the media is present, or where the evidence being given is of an indecent nature.

28. The family proceedings courts (magistrates' courts, who currently allow members of the media to attend as of right) have such powers to exclude in the interest of the child through rules. Given that the media will be able to access all levels of court, we also propose to provide all courts with the power to exclude in the interests of the child.

Attendance of the press at non-children proceedings

29. In non-child family proceedings, for example domestic violence cases or forced marriages, the media will have the automatic right to attend. However the court will have the power to exclude for the safety and protection of parties and witness including those with learning disabilities. Both the High Court and county courts have the power to exclude the media in non-children proceedings (such as domestic violence cases where parties could be intimidated by others attending, in forced marriage proceedings, or in cases involving people with learning disabilities), where as magistrates do not. The only power of exclusion available to magistrates' courts is where indecent evidence is being taken.¹ In the interests of consistency, a limited discretion to exclude will be provided across all tiers of court via rules "*for the safety and protection of parties and witnesses, including those with learning disabilities*". While parties and their legal representatives may object if the court chooses not to exclude, we believe that the risk of

¹ Magistrates Court Act 1980 s.69(4)

increased legal aid costs for additional court time would be negligible. The courts will be given the power to restrict both attendance and what can be reported.

Benefits

30. Press attendance would allow closer public scrutiny of the operation of the family courts and improve public knowledge about how decisions are reached by judges in family cases. The press has an important role to play in that. This could help remove the current public perception of 'secret courts'. If the media are excluded, the public may continue to believe that children are being taken away from their parents for spurious reasons; that decisions are being made without proper and full investigation; that the local authorities are (inexplicably) taking children from perfectly good parents and adopting them into new families.
31. There needs to be a distinction between what the public is interested in, and what is in the public interest. We do not think that making family courts more open should mean publishing information that is very private or intimate. Opening the courts to the press is largely seen as a benefit to the public at large, to improve understanding.

Costs

32. It is likely that in some cases parties to proceedings will object to the press being in attendance. The courts will have the discretion to exclude if it is in the best interests of the child or for the safety and protection of parties including those with learning disabilities.
33. Given the policy that the the media should have the right to attend family proceedings subject only to a judicial discretion to exclude for specific reasons principally related to the interests of children or other vulnerable persons involved as parties or witnesses, an application to exclude the media will by definition be in exceptional cases. We do not know how often objections to the press or others attending may be raised. The press rarely attend the family proceedings court. We do know, though, that when similar procedures changed in New Zealand, there was an initial flurry of activity that quickly died away.
34. Where a legally aided party makes an application to exclude the press (for example where a children's guardian makes an application to the court to exclude the press in the best interest of the child), there may be an impact on the legal aid budget. There may also be an impact on the court in terms of extra court time should a separate directions hearing be required. The cost of this will fall to HMCS. As part of the costing exercise to estimate the likely costs we have used the same methodology in costing the legal aid costs and HMCS costs of holding directions hearing to decide whether to exclude the press that we did during the 2006 consultation, but we have updated the figures with statistics from 2007. As we have said before we believe there will only be limited cases where the press attends and very limited objections to the press being in attendance.

Legal aid impact on press attendance at family courts

35. The assumptions we are making are based on a similar pattern of behaviour emerging for England and Wales, as in Australia and New Zealand and using a figure of 1% of family proceedings resulting in any objections. This might turn out to be an overestimate. Where court time may be required and the party is publicly funded, there may be extra legal aid costs. These costs are estimates only.
36. The costs to MoJ (legal aid) and HMCS (court time) is underpinned by these assumptions:
 - MoJ Economics and Statistics Division have estimated the legal aid costs of a direction hearing in a care case at approximately £250 and a costs to HMCS of £81 (accommodation, judiciary, administration etc) based on data from HMCS and LSC.
 - We have assumed that the average legal aid costs of a directions hearing across all family cases will be £125 as care cases make up a small proportion of all cases and will have a higher number of parties in receipt of legal aid. We have no comparator for how frequently objections

are likely to be raised. We do know that the press rarely attends the family proceeding court and there are very few objections to the press attending when they do so.

- The proportion of cases requiring an additional direction hearing to decide on admittance of the media is shown in the following table. However, not all cases are legally aided. The estimated annual increase in legal aid expenditure is based on the number of certificates in family proceedings granted during 2007-08, the most recent year for which information is available. This assumes that where the main family proceeding does not attract legal aid then neither will the ancillary direction hearing.

Percentage of cases requiring an additional direction hearing to decide on admittance of the media

	1%	2%	5%
No. Cases	2,252	4,505	11,261
Cost to HMCS	£200,000	£400,000	£900,000
No. legal aid certificates	1,151	2,302	5,754
Cost to LSC	£140,000	£290,000	£720,000

37. There may also be an impact on security costs for courts. We know that the level of security varies between courts and locations. While admitting the press may not appear to raise concerns unduly, we know that, in New Zealand, for example, they have had to review security in courts and incurred additional costs as a result.
38. There may be a requirement to improve the security provisions in county courts and careful consideration will need to be given to the hearings which take place in District Judge's Chambers to ensure the parties and the judiciary are kept safe. Not all county courts have a permanent security presence and as such do not have the necessary search and detection equipment in place.
39. There is concern, especially with the county courts where accommodation is often not suitable or large enough to admit others than those people directly involved in proceedings. Arrangements must be flexible enough to allow limits to be put on those attending if necessary (for example, a single press representative from each press group, or moving the hearing to a more suitable venue).
40. The Ministry of Justice will be producing guidance and question and answers leaflets for the parties involved, outlining what the new proposals for allowing the press to be present will mean for them. We will also produce a fact sheet for the press that also outlines what the new changes mean for them and what they can and can't do. We will make the leaflets available in all family courts. The leaflets will be produced in house and paid for by the Ministry of Justice.

Option 2 - Allow for wider disclosure of information involving children heard in private and unlimited onward disclosure provided it meets the original purpose

41. We have already changed the law and rules of court which deal with disclosing information about proceedings involving children and which are heard in private. In 2004, s12 Administration of Justice Act 1960 was amended so that it would not be a contempt to disclose information about family proceedings involving children which were heard in private, where rules permitted such disclosure.
42. In addition, we inserted Rule 10.20A of the Family Proceedings Rules 1991 which deals with disclosure of information in cases involving children and which are heard in private. The new rules came into effect in October 2005. The changes allow people involved in proceedings to share certain information with other specified people, so long as it is for a specified purpose. The effect of the changes means that people can now, for example, seek advice and support from a range of people, including legal advisers, close family members, medical practitioners and elected representatives. However, there remain restrictions on what information they can disclose. The Statutory Instrument setting out the changes to the rule is reproduced at Annex C.

43. Having been in operation for almost over three years, it is now clear that in some cases the rules remain unnecessarily restrictive and complex. The current disclosure rules allow for only one further onward disclosure in support of the purpose for which information was originally disclosed. We proposed that there should be unlimited onward disclosure in support of the purpose for which it was originally disclosed. There were mixed responses to this question. Generally, people felt that allowing unlimited onward disclosure would not provide sufficient protection to the parties or children involved. There was significant resistance to amending the rules to allow unlimited onward disclosure. 99 responses were received. 38 respondents agreed or strongly agreed; and 45 respondents disagreed or strongly disagreed. 13 respondents did not answer the question, or their feelings were not apparent from their response; and 16 were unsure. The public and voluntary sector organisations supporting adults were the only sub-groups where the majority supported the Government's proposals.
44. The Ministry of Justice consulted last June on proposals to clarify the current complex and restrictive rules on disclosure. That paper proposed to base the ability to disclose information on the *purpose* for which it is being shared, rather than whom it is being disclosed to and what information is being disclosed. It also proposed to allow information to be onwardly disclosed for the same *purpose* as the original disclosure. 100 responses were received to this question. 71 respondents agreed or strongly disagreed; and 21 respondents disagreed or strongly disagreed. 12 did not answer the question, or their feelings were not apparent from their response and 8 were unsure. In general, people tended to agree that the current rules on disclosure were overly complicated and restrictive; and that the rules should change. We therefore propose that changes should be made so that:
- Parties and legal representatives can disclose information for the purposes of advice and support, for mediation and the investigation of a complaint.
 - With the consent of the party involved, information may be onwardly disclosed by the person receiving it for the purposes of mediation and investigation of a complaint.
 - Information may also be onwardly disclosed, without the consent of the parties involved but in an anonymised format, for training and research.
45. The current rules make it clear that the courts have the power to authorise or restrict disclosure even if they are prescribed as permissible by the court rules.
46. Therefore, the rules will be simplified to allow people to disclose based on the purpose of the disclosure rather than who the information is being disclosed to.

Benefits

47. The main benefits of this proposal is that parties to a case will be able to share information in order to get whatever advice and support they feel they need, from whoever they feel can provide it. Also the other main benefit of the change will be that the current disclosure rules will be simplified and we estimate that the number of applications to courts requesting the permission to disclose information will go down hence saving judicial time and money.
48. One of the benefits of the proposed changes to the disclosure rules will be that a constituent will be able to disclose any information relating to proceedings at any stage during the proceedings to their MP.
49. Current rules limit a constituent to seeking advice from their MP at the end of a case once the judgment has been made. The current rule does not, therefore, address the particular issue of constituents automatically approaching MPs at an early stage of the proceedings, or while the proceedings are ongoing. The current restriction on MPs only receiving the judgment and not other papers inhibits what a democratically elected Member of Parliament can do for their constituents. While MPs would not want to interfere with the legal process, they do, for example, want to be able to (potentially) support their constituents by questioning the role, for example, of a local authority where the due process within that local authority (rather than the court) raises concerns.

50. This is clearly unhelpful and confusing for constituents wishing to discuss their case with their MP for whatever reason. It also places MPs in a difficult position if the information disclosed to them is not provided for in the current rules. Both constituents and MPs might expect some further appropriate action as a result of the disclosure. However, by forwarding information that is outside the current rules (even to a Minister) the MP may be in contempt of court.

Costs

51. There may instances where the court may wish to impose its powers to authorise or restrict what will be permissible to disclose under the new disclosure rules. This may result in parties wishing to challenge the court's discretion to impose the restrictions, which may have an effect on the legal aid budget should the parties be legally aided, and also court time in hearing the application should it require a separate directions hearing and is not part of the substantive hearing. MoJ legal aid colleagues have confirmed that if an individual is legally represented in a family proceeding and if the court imposes its discretion to restrict what can be disclosed and if the court decision is such which the individual may want to appeal against the decision, and if there is a right of appeal, then there would be an impact on legal aid in that case. Given the likely small volume of restrictions, MoJ legal aid colleagues do not believe that it is feasible that this would have a significant impact on legal aid. By widening the disclosure rules, there would be fewer applications for disclosure and hence savings.

52. The Ministry of Justice will be required to update the current court users guidance form EX710, which sets out to the individuals involved in family proceedings heard in private involving children who and what information they can disclose for what purpose. The leaflet will be updated and printed in house therefore incurring minimal costs.

53. In taking forward the new proposals on disclosure, the Ministry of Justice will work closely with the Family Procedure Rules Committee with regards to any amendments required to court rules, and to ensure that final proposals are workable and effective to achieve the desired aims.

Option 2: Align and make consistent reporting restrictions governing family proceedings

54. In the 2007 consultation, we said that we would make reporting restrictions consistent across all tiers of court for all types of proceeding. A summary of reporting restrictions governing different family proceedings can be found at Annex B of the 2006 consultation paper. A key concern about who can currently attend family courts, and what can be reported about proceedings is that the legislation and rules are inconsistent and confusing. It is dependent on the tier of court, the type of proceeding, and how the court exercises its discretion. Therefore, we will consolidate these provisions to make them consistent as soon as parliamentary time allows. This was widely supported.

55. As part of the changes we also wish to confer explicit power on both county courts and Family Proceedings courts to impose case-specific reporting restrictions which are binding on the media and general public. This will require primary legislation. Currently applications may only be made to the High Court for reporting restrictions to be imposed. The procedural vehicle for doing this is the High Court's inherent jurisdiction.

56. Where the upbringing of children is concerned, provisions in the Children Act and other legislation provide protection. However, in proceedings where children are **not** involved, the reporting restrictions may be difficult to assess and/or be much less stringent. For example, there is no *specific statutory* provision for reporting restrictions for domestic violence proceedings under Part IV of the Family Law Act 1996 – restrictions in such cases will be dependent on the type of proceedings, whether they come within s.12 of the Administration of Justice Act 1960, or whether publication will otherwise impede the administration of justice. In proceedings for divorce, nullity and judicial separation (and their Civil Partnership equivalents) statute permits the publication of the names, addresses and occupations of parties and witnesses, and some detail of the proceedings.

57. If all family proceedings are open to the media, we consider it essential to bring forward legislation that provides the necessary protection for children and families by preventing certain

information from being published without the permission of the court. Children and families need to be confident that their privacy will be protected.

Benefits

58. This option provides both clarity and legal certainty to families involved in proceedings as well as ensuring that parties to proceedings receive relevant protection. The proposals ensure that the original policy objective is achieved and that as far as possible, courts adopt a common approach. The proposal will also provide clarity to judges and lawyers who will benefit from clear and consistent laws on reporting restrictions. Our proposal to consolidate the numerous reporting restrictions also fits into the Cabinet Office objective of tackling unnecessary or over complicated legislation to reduce the burdens to business caused by regulation. We believe by consolidating the various provisions and rules of law governing reporting restrictions the media will benefit, as the current administrative burden on members of the press looking up numerous different pieces of legislation will be reduced by providing a consolidated scheme governing reporting restrictions in one place. We also believe that the consolidation of the scheme for reporting restrictions will also save time for legal practitioners who frequently look up legislation as part of their day to day work. Lastly, judicial time may be saved for the same reasons.

Costs

59. Providing the Family Proceedings Court and the county courts with the powers to impose case-specific reporting restrictions that are binding on the media and general public will most likely result in a number of applications being made by the media to the court to lift the reporting restrictions being imposed by the courts. However we estimate that the number of these cases will be low because the discretionary powers to impose case specific reporting restrictions will only be used where there is no current statutory protection. Also there may be legal aid costs where legally aided litigants are represented on those applications made by the media to lift reporting restrictions imposed by the courts. MoJ legal aid colleagues have confirmed that if an individual is legally represented in a family proceeding and if the court imposes its discretion to restrict what can be reported and if the court decision is such which the individual may want to appeal against the decision, and if there is a right of appeal, then there would be an impact on legal aid in that case. Given the likely small volume of restrictions, MoJ legal aid colleagues do not believe that it is feasible that this would have a significant impact on legal aid.

Option 2: Reverse Clayton v Clayton

60. In our last consultation published in June 2007 we consulted on whether the Government should reverse the effects of the decision made in Clayton v Clayton. Clayton v Clayton clarified that the protection under s97 (2) Children Act 1989, that the anonymity of a child be maintained, comes to an end at the end of proceedings.

61. This proposal received overwhelming support. There were a small number of people who did not agree with the proposal to reverse the effect of the ruling. The media did not support this proposal.

62. As we have stated throughout both our consultations any move towards greater openness must be balanced against the welfare, privacy and well-being of children. While it is right that the individual circumstances of each case should be considered at the end of each case in deciding whether details can be disclosed, we believe that the starting point should be in favour of protecting the child's welfare by respecting the child's privacy. That is why we will legislate so that while the active requirement to consider the circumstances of each case should continue, the balance should be shifted so that the identity of the child continues to be protected after the conclusion of proceedings unless there is an order to the contrary. We believe that this change would be in the interests of the vast majority of children and where this is not the case, the court will have discretion to lift anonymity.

63. We will legislate to reverse the effect of Clayton v Clayton as soon as a suitable legislative opportunity arises.

Benefit

64. The reversal of the Clayton v Clayton will benefit children who are the subject of family proceedings by automatically protecting the identity of the child beyond the conclusion of the case unless the judge decides otherwise. This proposal will give children the added protection from the outset of the case.

Cost

65. The Court of Appeal concluded in Clayton v Clayton that when restricting the reporting and publication of proceedings involving children, the court was obliged in the face of challenge to conduct a balancing exercise between the article 8 rights of the child and the article 10 rights of the parent asserting such right, and/or, where press or media interest was involved, the article 10 right to report and discuss the circumstances surrounding, as well as the issues arising out of, a case of public interest. There may also be legal aid costs of any party represented on an application to lift s.97 (2) protection. MoJ legal aid colleagues believe this would only impact on legal aid where the legally aided party wanted to bring wider public attention to his or her case. However we estimate that the number of these applications by the press and parties will be low. The media, should they be party to a case will need to pay for any applications to lift the automatic protection that section 97(2) of the Children Act 1989 will provide.

Sectors and groups affected by the final policy proposals

66. The different ways in which these groups are likely to be affected are outlined below. A range of specific impact tests (including competition, small businesses and legal aid) have been completed and are attached at Annex A. An equality impact assessment is at Annex B. The proposals to improve transparency of family courts will have an impact on the following groups in England and Wales:

- **Family law firms and legal advice sector** - The usual way to address new issues is through their required programme of continuing professional development.
- **Judiciary** - Changes will have an impact on the judiciary, who will be required on a case by case basis to decide whether reporting restrictions should apply and whether the media should be excluded. We will work with the Judicial Studies Board to update current training materials to make sure that when the new legislation and rules come into effect the judiciary are aware of the changes.
- **Children** - For children and young people, there are concerns about maintaining anonymity and privacy, particularly in small communities where, despite reporting restrictions preventing identification, they may still be identified through other (reportable) information. The current restrictions provided by section 97(2) of the Children Act and section 39 of the Children and Young Persons Act 1933 provide very stringent reporting restrictions to protect and prevent the publication of information which may lead to the identification of a child as being involved in proceedings. The new proposals will give all courts the power to decide that reporting restrictions should more stringent than the statutes provide. This will mean we can reassure children that, if their case requires it, little or nothing may be reported.
- **Parties**- In domestic violence cases, the victim's safety is a prime concern. Any consideration of the media attending must be balanced by keeping a victim safe and free from reprisals from a perpetrator and/or other people. Victims must feel able to give evidence in court without fear of intimidation – and importantly, not deterred from taking legal action in order to protect themselves from further harm. Other vulnerable adults, such as those with mental health problems or learning difficulties also need to be protected. There may be concerns over whether, for example, their medical history, or their ability to cope with the court process should be exposed to the public gaze. We will need to ensure that the courts continue to offer adequate protection, which is why the courts will be given the powers to exclude the press in interest of the safety of witnesses or the parties.

The Ministry of Justice will also be producing guidance leaflets for court users to make sure they understand what the changes will mean for them. This will take the form of public information including by putting up posters and providing leaflets in court waiting rooms for those involved in family proceedings.

- **Local authorities** – There are currently 410 local authorities in England and Wales². These local authorities will be party to almost all proceedings in public law cases such as care proceedings where the state is acting in the best interest of the child. The new court procedures will need to be filtered down to all these local authorities to make sure that they are aware of the changes. We hope to do this by working closely with the Local Government Association and using them as a hub to cascade information down to their members. We have studied the DCLG's new burden doctrine and believe that the proposals we wish to bring in will not increase the cost of providing local authority services.

- **Press** - There are currently 1300 local and regional newspapers in England and Wales and 11 daily national newspapers³. If the media is allowed to attend family proceedings it will be important to ensure that they fully understand the reporting restrictions and the consequences of breaching them.

² Local Government Association website.

³ News paper society website.

- **Court staff** – The press attending family courts will have an impact on court staff who are used to dealing with only the parties involved. In order to prepare court staff the Ministry of Justice will be working closely with colleagues in the HMCS communications team to update current internal guidance for dealing with the media in criminal and youth courts and include a section on the family courts.
- **CAFCASS and CAFCASS Cymru Guardians** – In cases where a guardian is appointed to look after the best interest of the child, he or she will be required to explain to the child that the media may be present at proceedings but will be under reporting restrictions. The Ministry of Justice will be working closely with CAFCASS and CAFCASS Cymru to produce child friendly language leaflets to explain what the new changes will mean for them.

Practical considerations

67. Once the proposals are implemented there will be implications for court resources, in terms of increasing security, changing listing procedures, how members of the press will be identified. We will be developing with those concerned a system that has minimal impact on their daily work.

Summary and Recommendation

68. In our view, the proposals in option 2 taken as a whole, strike a fair balance between the rights and privacy of those involved in family proceedings and the public's right to know. The reforms proposed will also improve existing legislation and simplify procedure.

Table 1 – Detailed options for improving the transparency of family courts

Option		Costs	Benefits	Risks	Overall Assessment	Recommendation
1	Do Nothing	Zero	No disruption to the present system.	MPs, members of the public will carry on lobbying for more openness in the family courts. Confidence in the family justice system will continue to be low.	Fails to address the current accusations of 'secret justice' and 'secret family courts'. It therefore fails to meet the objectives of the reform.	Not recommended.
2	Allow the media to attend all family proceedings with judicial discretion to exclude.	Should 1% of people object to the media attending then the estimated cost to LSC for legal aid will be £ 140,000 and a cost to HMCS of £200,000.	Will help to increase public confidence in the family justice system. Could help remove the current public perception of 'secret courts'.	Some applications are likely to be made by parties objecting to the press being present. There is a slight risk that in the exceptional cases where the parties can appeal against the media being present the costs could be high.	This option would give the press the right to attend the county courts and High Court. Will increase public confidence.	Recommended.

	<p>Align all reporting restrictions and provide a single coherent statutory legal framework.</p> <p>Also provide the magistrates and county courts the power to impose case specific reporting restrictions.</p>	Negligible	<p>Will provide benefits to organisations such as lawyers, barristers, judges and the media by only having to look at one consolidated piece of legislation governing reporting restriction. The proposal will also benefit these groups by decreasing the administrative burden.</p>	<p>There is a slight low risk that the press will routinely make applications to the court to lift the reporting restrictions imposed by the court.</p>	<p>Meets the overall Government objective of simplifying legislation and reducing the administrative burdens placed on organisations. The consolidation will also provide legal clarity and consistency to those interpreting and applying family law.</p>	Recommended.
	<p>Allow for disclosure of information based on purpose.</p>	Negligible	<p>Will benefit individuals by allowing them to seek the advice and support they need.</p>	<p>Some judges may choose to use their inherent powers to always restrict disclosure at the outset of the cases. Hence more applications by parties seeking permission to disclose or appeal against the judge's decision restricting disclosure.</p>	<p>Will meet the original policy objective of allowing individuals to seek the appropriate advice and support they need.</p>	Recommended.
	<p>Allow for unlimited onward disclosure provided it meets the original purpose for which it was disclosed.</p>	Negligible	<p>Will benefit individuals by allowing them to seek the advice and support they need.</p>	<p>Some judges may choose to use their inherent powers to always restrict disclosure at the outset of the case. Hence more applications by parties seeking permission to disclose or appeal against the judge's decision restricting disclosure.</p>	<p>Will meet the original policy objective of allowing individuals to seek the appropriate advice and support they need.</p>	Recommended.
	<p>Reverse Clayton V Clayton.</p>	Negligible	<p>Will provide automatic added protection to children involved in family proceedings even when the proceedings have ended unless the judge decides to the contrary.</p>		<p>Will meet the Government's aim of increasing the transparency of family courts while maintaining the privacy of the child concerned.</p>	Recommended.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

Annexes

Annex A

Small firms impact test

1. The family justice system currently interacts with three groups of small businesses solicitors, barristers and newspaper organisations. The proposals will not affect the nature or quality of those interactions and so the impact on small business is minimal.

Law firms

2. The proposal to allow the media the right to attend family courts will require lawyers to explain to their clients the likelihood that there may be a member of the press in attendance at court. However the lawyers will be able to provide their clients with a leaflet that the Ministry of Justice will be producing for court users when the changes come into force. In addition the Ministry of Justice will work together with the Law Society for England and Wales to produce guidance for their members.

Local newspapers

3. There are currently around 1300 local newspapers in England and Wales. Newspaper organisations can already attend Family Proceeding Courts with judicial discretion to exclude. This includes local newspapers. Therefore the proposals on press attendance and reporting restrictions will not have an extra disproportionate burden to local newspapers as they already have the right to attend Family Proceedings Courts.
4. The proposal to give powers to the magistrates court and county court to impose case specific reporting restrictions may have an impact on small local newspapers who, if they are in attendance, may wish to challenge or appeal the reporting restrictions being imposed by the court but do not have the money to fund such an application. The bigger daily newspaper will have less of a problem paying for applications to relax reporting restrictions being imposed by the court. Although this may be an issue for some local newspapers who wish to contest their application but are unable to do so for financial reasons, there is an element of public interest which will need to be taken into consideration, as there is a need for the court to be able to have the powers to impose reporting restrictions to be able to protect the human rights of those concerned.

Race, Gender and Equality Assessment

5. The Ministry of Justice Equality Impact Assessment, which is attached at Annex B, covers these three areas.

Human Rights

6. Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for the public hearing and the public pronouncement of judgments, but with the proviso of exclusion of the press and the public from all or part of the trial "in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties

so require.” The European Court of Human Rights has held that the present system regarding attendance in family courts in England and Wales is compliant with Article 6 of the Convention. The Court of Appeal has reaffirmed that this is the case. However, the Court of Appeal accepted criticism of its practice of automatically applying reporting restrictions. Since that judgment, the Court of Appeal has only anonymised newspaper reports in exceptional cases.

7. The European Court of Human Rights noted that the restrictions regarding attendance and reporting must always be subject to the court’s control and the court must always consider whether or not to exercise its discretion to relax the normal restrictions if requested by one of the parties. The Convention also enshrines the right to freedom of expression (Article 10). This is a right to receive and impart information and ideas without interference by a public authority. The Convention further enshrines the right to respect for private and family life (Article 8). These rights may be in conflict when, for example, a newspaper wishes to publish details about a case but a family involved in proceedings wants to restrict that publication. In these circumstances, the court will balance the competing rights using the facts of the individual case to determine which right has precedence over the other.
8. The new proposals enabling the media to attend as of right, subject to court discretion to exclude, certainly favour Article 10 rights to freedom of expression. However, reporting restrictions remain. Both attendance and reporting remain subject to the control of the court. Where there is an issue regarding whether the media should attend, or whether reporting restrictions should be imposed or relaxed, in an individual case, the court will continue to carry out its familiar balancing exercise between Article 8 and Article 10 rights of those concerned on the specific facts of the individual case. Therefore we believe that there is no significant change in the impact on human rights of those involved as a result of these proposals.

Rural Proofing

9. The Commission for Rural Communities impact guidance lists three areas to consider when developing policy, the first is to consider whether the policy is likely to have a different impact in rural areas, because of particular circumstances or needs. Our policy on improving the openness of family courts may have a different impact in rural areas. This may be say for example when the media attends a particular court and reports details of a particular case from which a child may be identified. This was the case in Z County Council and TS and DS and ES and A. Mr Justice Hedley in his judgment stated that “ because the child lives in a rural community where because of the comparatively unusual nature of the disability, he is more likely to be identifiable than if he live in a massive conurbation”.
10. The Ministry of Justice as mentioned earlier in the Impact Assessment will be providing judges with the discretion to exclude members of the media for the safety and protection of parties and witnesses, including those with learning disabilities. Also the courts will have the power to impose reporting restrictions on the press where judges as in the case mentioned above feel that reporting of particular facts or matters, or indeed any reporting at all, in an individual case may identify a child as being involved in proceedings.

Carbon and Greenhouse Gases

11. Defra's environmental impact guidance lists six areas which are key sources of green house gases: energy; industrial processes; solvents and other product use; agriculture, land-use change and forestry; and waste.
12. Other environmental issues are vulnerability to the predicted effects of climate change; impacts on waste management; impact on air quality; material change to land or townscape; water pollution; the disturbing or habitat or wildlife and the number of people exposed to noise or the levels of exposure. Our proposals on improving the openness of family courts has no impact on these areas.

Health Impact Assessment

13. The Department of Health has developed a checklist to help assess whether there might be adverse impacts on health as a result of new legislation. The three questions are:

Will your policy have a significant impact on human health by virtue of its effects on the wider determinants of health?

The wider determinants listed cover income, crime, environment, transport, housing, education, employment, agriculture and social cohesion. There is nothing to suggest that the proposals to improve the openness of family courts would have an impact on any of these areas that might lead to a significant impact on human health.

Will there be a significant impact on any of the lifestyle-related variables?

The variables listed are: physical activity; diet; smoking, drugs or alcohol use; sexual behaviour; and accidents and stress at home or work. For some being involved in some types of family cases is a very stressful time. However the key objective of improving the openness of family courts is to improve public confidence in the family justice system and so it is not considered that there would be a significant detrimental impact on any of these variables.

Is there likely to be a significant demand on any of the following health and social care services?

The services listed are: primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services and health protection and preparedness response. Our proposals focus on improving the openness of family courts and therefore will not have a significant impact on demand for these services.

Competition Assessment

14. The Office for Fair Trading (OFT) asks nine questions in order to carry out a competition assessment for any new policies.

The nine questions are:-

- 1) In the market affected by the new regulation, does any firm have more than 10% market share?

Yes. The Daily Mirror has 14.4% of the market share of national daily newspapers.

2) In the market affected by the new regulation does any firm have more than 20% market share?

Yes. The Daily Mail (21.6%) and The Sun (28.6%).

3) In the market affected by the new regulation, do the largest three firms together have at least 50% market share?

Yes. The market share of the Daily Mirror, Daily Mail and the Sun add up to 64.6% of the market share for the national daily newspaper market.

4) Would the costs of the regulation affect some firms substantially more than others

Possibly. The proposals to allow the media to attend family courts will not have a disproportional effect on some firms more than others. However were there are reporting restrictions placed in some cases, the bigger press organisations may have more money to pay for and contest the reporting restrictions.

5) Is the regulation likely to affect the market structure, changing the number or size of firms?

The major proposals affecting the newspaper sector are about letting the media into family courts with judicial discretion to exclude, and the courts having the powers to impose reporting restrictions on a case by case basis. These proposals are very unlikely to have an effect on the market structure or changing the number or size of firms.

6) Would the regulation lead to higher set-up costs for new or potential firms compared with the costs for existing firms

As outlined in the answer to question 5 the proposal affecting the media will not lead to higher set-up costs for new firms compared with the costs for existing firms.

7) Would the regulation lead to higher ongoing costs for new or potential firms compared with the costs for existing firms?

No.

8) Is the market characterised by rapid technological change?

Yes. More and more newspaper organisations are using different digital solutions to reach their target audience such as using the internet. The proposals to improve openness will not hinder this.

9) Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?

Possibly. The proposals affecting the newspaper organisations will not restrict the ability of firms to choose the price, range or location of their products, however it may impact on the quality of their published articles. This is because the courts will impose cases specific reporting restrictions to make sure those that are most vulnerable are not identified in the press. This public interest safeguard is needed to make sure that the press do not publish information which may result in distress for individuals including children.

Equality Impact Assessment - Initial Screening
Annex B

This form can be used to screen policies for equality and diversity impacts. Before you complete this form you must read section 2.1 of the Guidance Notes.

A. Identify objectives and outcomes

1. Name of the legislation, policy or service being assessed

Improving the transparency and privacy of family courts

2a. What is the aim, objective or purpose of the policy, legislation or service and who will benefit from it? **NB** The Treasury Green Book provides useful guidance on setting objectives http://intranet.dca.gsi.gov.uk/reports/policy_makers/green_book.htm

- To protect children's interest
- A culture of openness in the family justice system
- Better scrutiny of the family justice system
- Better understanding by the general public and by families involved in proceedings.

2b. What are the intended outcomes? Before you answer, consider:

- **Are the outcomes specific/measurable?**
- **How will you monitor progress towards these outcomes?**
- **Do the outcomes support or hinder other policies or objectives within the MOJ?**
- **If they hinder other work is this justifiable**

Outcome desired

Attendance:- All family proceedings will be open to the media. There will be judicial discretion to exclude. In children cases this will be “ in the interests of children”. In non-children cases (i.e divorce cases) this will be “for the safety and protection of parties or witnesses, including those with learning disabilities”.

Reporting:- There will be a single legal framework setting out reporting restrictions consistent across all tiers of family courts. These will include the continuing anonymity for children after proceedings have ended unless there is an order to the contrary.

Disclosure: - Parties may disclose for advice and support, mediation, investigating a complaint. In anonymised format, disclosure can be for training or research. The person receiving the disclosure for the purposes of mediation and investigation of a complaint, with the consent of the party involved, may onwardly disclose that information. Information may also be onwardly disclosed, without the consent of the parties involved but in an anonymised format, for training and research.

1. Do you share responsibility for this legislation, policy or service with another Government Department or organisation (e.g. criminal justice partners). If so, who defines it and who implements it?

The Ministry of justice is responsible for the legislative framework within which family courts operate. It does not have the operational responsibility. HMCS are responsible for the running of courts. We will continue to work closely with HMCS.

4. Who are the key stakeholders in relation to the legislation, policy or service? What outcomes do they want? Does the list of stakeholders include representatives from all relevant/interested groups of people? If not, why not?

The final proposals will affect everyone who comes into contact with the family courts. A number of interested groups including those interested specifically in equality and diversity issues have responded to both consultations.

The Key stakeholders are:

- Local Authorities
- Judiciary
- Legal Profession
- Organisations representing the rights of children
- Children’s Commissioner for England
- Children’s Commissioner for Wales
- CAFCASS & CAFCASS Cymru

- Welsh Assembly
- Families Need Fathers
- Asian Family Counselling
- Equal Parenting Alliance
- JUMP (Jewish Unity for Multiple Parenting)
- Devon’s Male
- Women’s Aid
- Children & young people
- NSPCC
- Adoption UK

B. Analyse existing evidence and collect further data

5. Please list the data used to facilitate the initial screening of the legislation, policy or service. For example, statistics, survey results, complaints analysis, consultation documents, comparative policies from internal and external sources and other Government Departments

We have studied examples from other comparable jurisdictions like New Zealand and Australia, and noted the initial findings by Dr Julia Brophy on her research into transparency of family courts in other jurisdictions. The need for change in the family justice system was identified by the then Constitutional Affairs Select Committee (now called Justice Committee) report titled “Operation of family courts”. The Committee took evidence from a wide spectrum of people including senior members of the judiciary, members of the legal profession. The MoJ has consulted twice on this subject in the last three years. We have also noted the correspondence from MPs and members of the public.

6. Are there gaps in information which require further research or consultation, or that may require additional information to be collected as part of the monitoring and review process? Yes. It is likely that some qualitative analysis, will be needed to evaluate the operation of new Rules and legislation.

C. Assess the impact of the legislation, policy or service

7. Is there any evidence that different groups of people have different participation rates for the legislation, policy or service (eg men do not access the services provided by the domestic violence courts in the same way that women do)?

	Yes	No	Not Known		Yes	No	Not Known
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Age	X			Racial Group	X		
Caring Responsibilities			X	Religion or Belief	X		
Disability			X	Sexual orientation			X
Gender	X						

Please set out the evidence on which you based this conclusion: Dr Julia Brophy mentions in her response to the first consultation proposal of allowing the media to attend family courts that “ the position of some ethnic minority parents and some mother in particular, is enormously sensitive. Some mothers will have had arranged marriage, some will have experienced force marriage. Many women in such circumstances do not trust professionals/officials and anticipate disclosure of information to their communities. Concepts of shame and honour are central to understanding and working with such families; such concepts make it extremely difficult for some parents to come to court. The consequences for certain mothers being involved in care proceedings can be horrendous; being seen as brining dishonour and shame on their family/community – whatever the outcome of proceedings. It is likely that knowledge of the press will be present will provide an additional and extremely powerful deterrent to the engagement and co-operation of some parents”.

We have taken on board the observations made by Dr Julia Brophy as outlined above, that is why we are proposing the courts will have the discretion to exclude the media in the interests of children or for the safety and protection of parties and witnesses, including those with learning disabilities. There will be a consistent set of reporting restrictions to ensure children and families are protected; and that certain information cannot be published without the permission of the courts.

8. Are there barriers that might inhibit access to the benefits of the legislation, policy or service? Consider:

- **Is anyone excluded from enjoying the benefits of the policy?**
- **Will information be available in alternative formats (<http://intranet.dda/alt.htm>) or languages (e.g. Welsh language)?**
- **Will disabled people be able to access the service?**

	Yes	No	Not Known		Yes	No	Not Known
Age	X			Racial Group	X		
Caring Responsibilities			X	Religion or belief	X		
Disability			X	Sexual Orientation			X
Gender	X						

Please indicate what the barriers may be or if there are no barriers, please set out the evidence on which you based this conclusion? Children might be more reluctant to give evidence in court if the media is present. However we are giving the courts the discretion to exclude the media were it is in the interest of the child.

9. Is there any evidence that different groups have (or are likely to have) different needs, experiences, issues and priorities in relation to the

current or proposed legislation, policy or service. For example, have any equality stakeholders (organisations or individuals) indicated that the legislation, policy or service could (or would) create exclusion or hold specific challenges for them?							
	Yes	No	Not Known		Yes	No	Not Known
Age	x			Racial Group	X		
Caring Responsibilities			X	Religion or Belief	X		
Disability	X			Sexual orientation			X
Gender	x						

Please set out the evidence on which you based this conclusion: The policy was taken forward through two full public consultation. Stakeholders consulted include: a broad spectrum of voluntary sector organisations particularly representing adults, children and families; legal and other professionals; the judiciary; the media; and individuals. A number of pre-consultation stakeholder meetings were held with key stakeholders from Black and Minority Ethnic (BME) groups during the first consultation in 2006 which proposed allowing the media to attend family courts. During the consultation period for the consultation paper in 2006, a number of events for key stakeholders and children and young people were held. Two online forums were also set-up in order to give both adults and children and young people the opportunity to express their views on the consultation proposals. Directly in relation to the consultation proposals, some diversity issues were raised by responses to the consultation. Common to these were that they were centred on a small number of proposals and a small range of people. The proposal identified as potentially having adverse impacts on family court users was to allow the media to attend proceedings as of right, with judicial discretion to exclude. The people/groups identified as those for whom the proposals may have an adverse effect were: Children and young people generally (vulnerable); Victims of domestic violence (adults and children and young people); People from some BME communities. In particular, it was suggested by a number of stakeholders that within some BME communities, particularly South Asian, some African and/or communities with evangelical or fundamentalist religious beliefs (Association of Lawyers for Children response, 2006), concepts of “shame” and “honour” may not only prevent full interaction with family courts in the first place but pressure on parties from such backgrounds may be additionally high if they feel under scrutiny from others in a court.

There were similar, although perhaps greater, concerns from responses to the consultation in regard to the media attending family courts and diversity issues. CAFCASS (Response, 2006) were particularly concerned that children from some BME backgrounds would feel a greater sense of familial shame than the wider population, particularly if there were ‘media sensationalism’ or ‘simplistic analysis’ of a case. Inspire, Black Country submitted the findings of a relatively small research project as their response to the consultation. The qualitative research explored women’s – and particularly women from BME backgrounds’ – views on the consultation proposals. While none of their respondents agreed that the media ‘should be present at family court cases’, due mostly to a ‘serious concern about irresponsible reporting’, one respondent felt that ‘Asian women in particular would retract their case knowing that the media would be present for fear of alienation from the community’. In their response to the consultation, Women’s Aid argued that, ‘in cases where domestic violence is identified as an issue such an eventuality creates a further opportunity for a perpetrator to threaten talking to the press to maintain control of a victim and will in some cases deter a victim from accessing the family courts. Litigants may feel inhibited by the social stigmas and shame about the breakdown of the family or abuse they have suffered, especially victims of domestic violence, and in particular those from Black and Asian ethnic minority communities where shame and so-called ‘honour’ are strong deterrents’. The Government has taken on board the concerns of respondents to the consultation as outlined above, that is why we are proposing the courts will have the discretion to exclude the media in the interests of children or for the safety and protection of parties and witnesses, including those with learning disabilities. There will be a consistent set of reporting restrictions to ensure children and families are protected; and that certain information cannot be published without the permission of the courts.

10. Is the legislation, policy or service sensitive to the needs and cultures of different groups of people?

	Yes	No	Not Known		Yes	No	Not Known
Age	X			Racial group	X		
Caring Responsibilities			X	Religion or Belief	X		
Disability	X			Sexual orientation			X
Gender	X						

Please set out the evidence on which you based this conclusion

Yes. In terms of forced marriage and domestic violence cases our proposals would allow the court to exclude the media where the safety and protection of the parties or witnesses require it. Also sufficient reporting restrictions will be in place to safeguard against any sensitive information being published by the media. Research on the New Zealand model of openness in family courts has shown that they have made special provisions for people with mental health issues which is why we are also proposing to give courts judicial discretion to exclude the media where the safety and protection of the parties and witness including those with learning disabilities require it. The proposals also allow the courts to exclude the press where it is in the best interest of children.

11. Is there any evidence that this legislation, policy or service could directly or indirectly discriminate against any group of people?

	Yes	No	Not Known		Yes	No	Not known
Age		x		Racial Group		x	
Caring Responsibilities		x		Religion or Belief		x	
Disability		x		Sexual Orientation		x	
Gender							

Please set out the evidence on which you base these conclusions

12. Does the policy result in positive impacts, if so please list them here? For example, does it have a beneficial effect on a group of people or improve equal opportunities and/or relationships between different groups of people?

Yes. The policy will have a beneficial impact on fathers groups who have long campaigned that 'secret' family courts are biased against fathers when it comes to contact and residence cases. The policy is responding to growing calls for more openness from members of the public, MPs, judges and others. The proposals will also benefit the public in general of all religious groups and communities by allowing them to be more informed on how family courts make their decisions.

13. What measures can be taken to promote equality of opportunity by altering the legislation, policy or service, or by working with others, for examples, partners? Is there any evidence of missed opportunities to promote equality of opportunity, if so please provide details?

**14. Is a full equality impact assessment required? NO
If not, please explain why not.**

The proposals included in the response paper are intended to make the family courts more transparent. The proposals will not have any disproportionate effect on any group or individual. We have spoken to representatives from ethnic minority groups about the issue of greater openness as well as representatives from women's, men's and parent's group during the first consultation paper. The proposals will affect every court user but will not disproportionately affect any particular group.

15. If a full equality assessment is not required what data is required in the future to ensure effective monitoring? How and when will the policy be monitored and reviewed?

16. Any other comments on the policy and/or initial screening process:

You should now complete a brief summary (if possible, in less than 50 words)) setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the impacts (positive and negative) and any decisions made, actions taken or improvements made as a result of the EIA. The summary will be published on the external MoJ website

The proposals included in the response paper are intended to make the family courts more transparent. The proposals will not have any disproportionate effect on any group or individual. We have spoken to representatives from ethnic minority groups about the issue of greater openness as well as representatives from women's, men's and parent's group during the first consultation paper. The proposals will affect every court user but will not disproportionately affect any particular group.

Name (must be grade 5 or above): Sally Field

Department: Family Law & Justice Division

Date: 16 December 2008

If no adverse impacts have been identified and a full equality impact assessment is not going to be completed, please send a copy of the initial screening plus summary by e-mail to the Equality, Diversity and Human Rights Division. If a full equality impact assessment is required then retain the initial screening until the full impact assessment has been completed and then send both the initial screening and full equality impact assessment together to the Equality, Diversity and Human Rights Division.

2005 No. 1976 (L.18)

FAMILY PROCEEDINGS, ENGLAND AND WALES

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

**The Family Proceedings (Amendment No 4)
Rules 2005**

Made - - - - - *18th July 2005*

Laid before Parliament *19th July 2005*

Coming into force - - *31st October 2005*

We, the authority having power under section 40(1) and (4)(aa) of the Matrimonial and Family Proceedings Act 1984 ⁽⁴⁾ to make rules of court for the purposes of family proceedings in the High Court and county courts, in the exercise of the powers conferred by section 40 of that Act, make the following Rules:

Citation and commencement

1. These rules may be cited as the Family Proceedings (Amendment No 4) Rules 2005 and shall come into force on 31st October 2005.

Amendments to the Family Proceedings Rules 1991

2. The Family Proceedings Rules 1991⁽⁵⁾ shall be amended in accordance with the provisions of these rules.

3. In the Arrangement of Rules—

omit the entry for rule 4.23;

after the entry for rule 10.20 insert—

⁽⁴⁾ 1984 c.42; section 40(1) was amended by the Courts and Legal Services Act 1990 (c.41) and section 40(4) was amended by the Civil Procedure Act 1997 (c. 12), the Children Act 2004 (c. 31) and the Civil Partnership Act 2004 (c. 33).

⁽⁵⁾ s.I. 1991/1247, amended by S.I. 1997/1056, S.I. 2000/774, S.I. 2001/821 and S.I. 2005/559; there are other amending instruments but none is relevant.

“10.20A

Communication of information relating to proceedings”.

- 4. Omit rule 4.23.
- 5. In rule 10.20(3) for “and 3.16(10)” substitute “, 3.16(10) and 10.20A”.
- 6. After rule 10.20 insert—

“ Communication of information relating to proceedings

10.20A—(1) This rule applies to proceedings held in private to which these Rules apply where the proceedings—

- (a) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
- (b) are brought under the Act of 1989; or
- (c) otherwise relate wholly or mainly to the maintenance or upbringing of a minor.

(2) For the purposes of the law relating to contempt of court, information relating to the proceedings (whether or not contained in a document filed with the court) may be communicated—

- (a) where the court gives permission;
- (b) subject to any direction of the court, in accordance with paragraphs (3) or (4) of this rule; or
- (c) where the communication is to—
 - (i) a party,
 - (ii) the legal representative of a party,
 - (iii) a professional legal adviser,
 - (iv) an officer of the service or a Welsh family proceedings officer,
 - (v) the welfare officer,
 - (vi) the Legal Services Commission,
 - (vii) an expert whose instruction by a party has been authorised by the court, or
 - (viii) a professional acting in furtherance of the protection of children.

(3) A person specified in the first column of the following table may communicate to a person listed in the second column such information as is specified in the third column for the purpose or purposes specified in the fourth column.

Communication of information without permission of the court

Communicated by	To	Information	Purpose
A party	A lay adviser or a McKenzie Friend	Any information relating to the proceedings	To enable the party to obtain advice or assistance in relation to the proceedings.

A party	The party's spouse, cohabitant or close family member		For the purpose of confidential discussions enabling the party to receive support from his spouse, cohabitant or close family member.
A party	A health care professional or a person or body providing counselling services for children or families		To enable the party or any child of the party to obtain health care or counselling.
A party or any person lawfully in receipt of information	The Children's Commissioner or the Children's Commissioner for Wales		To refer an issue affecting the interests of children to the Children's Commissioner or the Children's Commissioner for Wales.
A party or a legal representative	A mediator		For the purpose of mediation in relation to the proceedings.
Communicated by	To	Information	Purpose
A party, any person lawfully in receipt of information or a proper officer	A person or body conducting an approved research project		For the purpose of an approved research project.
A party, a legal representative or a professional legal adviser	A person or body responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers		For the purposes of making a complaint or the investigation or determination of a complaint in relation to a legal representative or a professional legal adviser.
A legal representative or a professional legal adviser	A person or body assessing quality assurance systems		To enable the legal representative or professional legal adviser to obtain a quality assurance assessment.
A legal representative or a professional legal adviser	An accreditation body	Any information relating to the proceedings providing that it does not, or is not likely to, identify any person involved in the proceedings	To enable the legal representative or professional legal adviser to obtain accreditation.

A party	An elected representative or peer	The text or summary of the whole or part of a judgment given in the proceedings	To enable the elected representative or peer to give advice, investigate any complaint or raise any question of policy or procedure.
A party	The General Medical Council		For the purpose of making a complaint to the General Medical Council.
A party	A police officer		For the purpose of a criminal investigation.
A party or any person lawfully in receipt of information	A member of the Crown Prosecution Service		To enable the Crown Prosecution Service to discharge its functions under any enactment.

(4) A person in the second column of the table in paragraph (3) may only communicate information relating to the proceedings received from a person in the first column for the purpose or purposes—

- (a) for which he received that information, or
- (b) of professional development or training, providing that any communication does not, or is not likely to, identify any person involved in the proceedings without that person’s consent.

(5) In this rule—

“accreditation body” means—

- (a) The Law Society,
- (b) Resolution, or
- (c) The Legal Services Commission;

“approved research project” means a project of research—

- (a) approved in writing by a Secretary of State or the President of the Family Division, or
- (b) conducted under section 83 of the Act of 1989 or section 13 of the Criminal Justice and Court Services Act 2000⁽⁶⁾;

“body assessing quality assurance systems” includes—

- (a) The Law Society,
- (b) The Legal Services Commission, or
- (c) The General Council of the Bar;

“body or person responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers” means—

- (a) The Law Society,
- (b) The General Council of the Bar,
- (c) The Institute of Legal Executives, or

⁽⁶⁾ 2000 c.43.

(d) The Legal Services Ombudsman;

“cohabitant” means two persons who although not married to each other, are living together as husband and wife, or (if of the same sex) in an equivalent relationship;

“criminal investigation” means an investigation conducted by police officers with a view to it being ascertained—

- (a) whether a person should be charged with an offence, or
- (b) whether a person charged with an offence is guilty of it;

“elected representative” means—

- (a) a member of the House of Commons,
- (b) a member of the National Assembly for Wales, or
- (c) a member of the European Parliament elected in England and Wales;

“health care professional” means—

- (a) a registered medical practitioner,
- (b) a registered nurse or midwife,
- (c) a clinical psychologist, or
- (d) a child psychotherapist;

“lay adviser” means a non-professional person who gives lay advice on behalf of an organisation in the lay advice sector;

“legal representative” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990⁽⁷⁾) who has been instructed to act for a party in relation to the proceedings;

“McKenzie Friend” means any person permitted by the court to sit beside an unrepresented litigant in court to assist that litigant by prompting, taking notes and giving him advice;

“mediator” means a family mediator who is—

- (a) undertaking, or has successfully completed, a family mediation training course approved by the United Kingdom College of Family Mediators, or
- (b) a member of the Law Society’s Family Mediation Panel;

“peer” means a member of the House of Lords as defined by the House of Lords Act 1999⁽⁸⁾;

“professional acting in furtherance of the protection of children” includes—

- (a) an officer of a local authority exercising child protection functions,
- (b) a police officer who is—
 - (i) exercising powers under section 46 of the Act of 1989, or
 - (ii) serving in a child protection unit or a paedophile unit of a police force;
- (c) any professional person attending a child protection conference or review in relation to a child who is the subject of the proceedings to which the information relates, or
- (d) an officer of the National Society for the Prevention of Cruelty to Children;

“professional legal adviser” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990) who is providing advice to a party but is not instructed to represent that party in the proceedings;

⁽⁷⁾ 1990 c.41.
⁽⁸⁾ 1999 c.34.

“welfare officer” means a person who has been asked to prepare a report under section 7(1)(b) of the Act of 1989.”

In rule 10.21A for “nothing in rules 4.23 (confidentiality of documents), 10.20 (inspection etc of documents in court)” substitute “nothing in rules 10.20 (inspection etc of documents in court), 10.20A (communication of information relating to proceedings)”.

*Sir Mark Potter, P
Mr Justice Charles
David Salter
Philip Waller
Duncan Adam
Angela Finnerty
Bruce Edgington
Charles Hyde
Falconer of Thoroton, C*

18th July 2005

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules 1991 (“FPR”) and deal with the communication of information relating to children cases.

These Rules follow on from the amendments made by section 62 of the Children Act 2004 (2004 c.31) and in particular the amendment made by section 62 to section 12(4) of the Administration of Justice Act 1960 (1960 c.65) (publication of information relating to proceedings in private). Section 12(4) provides that nothing in section 12 of the Administration of Justice Act 1960 shall imply that any publication is punishable as contempt of court where in particular the publication is not so punishable by reason of it being authorised by rules of court.

Rule 6 of these Rules introduces a new rule (rule 10.20A) into Part X – Procedure (General) – of the FPR entitled, “Communication of information relating to proceedings”.

Paragraph (1) of rule 10.20A sets out the types of family proceedings held in private to which the new rule will apply. Broadly, these are proceedings concerning the welfare and upbringing of children.

Paragraph (2) of rule 10.20A sets out 3 circumstances in which it is permissible, for the purposes of the law of contempt, to communicate information. These are (1) when the court gives permission; (2) in the circumstances provided for in the table in paragraph (3) and the onward disclosure rule in paragraph (4); and (3) when the communication is made to specified and listed people. Disclosure in accordance with the table and paragraph (4) may be modified or restricted in any way by a direction of the court under paragraph (2)(b).

Paragraph (4) of rule 10.20A provides that a recipient of information pursuant to the table in paragraph (3) may only communicate that information for the purpose or purposes for which he received that information (set out in the table) or for the purpose of professional development or training. In the latter case, however, it is a requirement that the communication should not identify, or be likely to identify, any person involved in the proceedings unless that person has consented.

Rule 4 of these Rules omits rule 4.23 (confidentiality of documents) from the FPR. Rule 10.20A applies to information and includes documents held by the court. In doing this it replaces rule 4.23.

Rules 5 and 7 of these Rules make consequential amendments to the existing rules following the introduction of rule 10.20A and omission of rule 4.23.