



Department of
Social Policy and
Social Work

The Media and the Family Courts – key information and questions about the Children, Schools and Families Bill

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The Government is proposing to relax existing safeguards about media reporting of Family Court cases. The proposals come in two stages, and it is crucial that both are scrutinised fully, because many of the provisions which would protect the privacy of children and families during the first stage would be removed in the second.

There has been considerable pressure from the media for these changes to be introduced. However, there is concern amongst people working in the family justice system that the proposals do not strike the right balance between making the Family Courts open and transparent, and protecting children and families. They are particularly concerned about the violation of individuals' privacy, and the increased pressure that the changes would put on court resources.

These new proposals come out of a debate about how 'open' the Family Courts should be, which is discussed in detail by Julia Brophy and Ceridwen Roberts in Oxford Briefing Paper 5 (May 2009). Historically, most family cases were heard 'in private', meaning that only the parties, their lawyers and those immediately involved were allowed into the court. The reason was that Family Courts deal with personal and family matters, and, especially where children are involved, issues of safety, protection and welfare are central.

However, these privacy rules led some people to accuse the Family Court of 'secret justice'. In response, despite having initially 'decided against allowing the media into any tier of family court' because 'information about courts, not [media] attendance at court is the key to openness' (MoJ, 2007), the Government made changes in April 2009 to allow the media to attend Family Court cases.

Now, further changes are proposed in the Children, Schools and Families Bill. However, these changes are being introduced very

rapidly and without proper consultation. There has also been little public debate because the media, usually a source of public discussion, have a clear interest in promoting the changes. As a result, media coverage of this issue has been far from balanced.

This Briefing Paper therefore aims to facilitate a more informed debate as the Bill goes through Parliament, by discussing the proposals and comparing the approaches taken in other jurisdictions.

The law in England and Wales since April 2009

The original rules about Family Courts were enacted in 1991. They were amended in April 2009, and the President of the Family Division (the most senior Family Court judge) issued guidance about how judges should interpret the revised rules (Potter, 2009a; 2009b). In July 2009, the President heard a case called *Re X* [2009] EWHC 1728 (Fam), in which he amended his earlier guidance.

The current law comes in three parts:

- **media attendance** at Family Court hearings
- **access to documents** used in Family Court hearings
- **media reporting** of Family Court hearings.

Box 1 – Types of Family Court case

Disputes between family members are very personal, but many do not need to go to court. Those that do go to court are the most difficult, with complex issues and high levels of emotion. Family Courts hear the hardest cases involving:

- divorce (property and money) – private law
- disputes between separated parents about their children – private law
- child protection/care – public law
- adoption – public and private law

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Attendance at court hearings

Family Court hearings are 'in private', and so are not open to the general public. However, the **new rules allow 'accredited representatives' of the media to attend Family Court hearings**. To be accredited, a person must be working 'professionally as a media worker' and obtain a press card from one of the organisations authorised by the UK Press Card Authority (e.g. the BBC, Reuters, the British Association of Journalists, etc).

The court has a **power to exclude the media** if it is 'necessary' in the interests of a relevant child, to protect a party or witness, for 'the orderly conduct of proceedings', or if justice would 'otherwise be impeded or prejudiced'.

The media may be excluded following an application by a party or by the court's own initiative, but any media present should be allowed to speak to the court before such a decision is made (Potter, 2009a). According to the President's revised guidance in *Re X*, a party who intends to object to media attendance should give advanced notice, both to the court and to the media. This requirement is not mentioned in the Rules. It will impose a significant burden on individuals, who will now have to make an application just in case the media wish to attend. This increase in preliminary hearings will also add to the pressure on the Family Courts.

These rules leave considerable discretion with individual judges. There have been few reported cases since April, but media articles suggest that, although parties often ask to have the media excluded, judges usually let them stay.

Access to documents

The changes introduced in April **did not amend the law** regarding access to court documents – see Box 2. Since 1991, the law has been that there is no 'right' to see any documents used in family cases, but anyone can apply to see documents. There are no known instances of access being allowed before April 2009. However, although the law was not changed, there were **two major shifts in its application** in April 2009:

- even if access to documents is not sought, media present in court will hear documents being discussed, which may give significant insight into their content
- the President's April guidance suggests that judges must think carefully before refusing an application by the media to see documents – the parties should be consulted, but access should only be refused if one of the parties objects for a 'reasonably arguable' reason (Potter, 2009b). (*New Zealand has a much more rigorous procedure* – see Box 12.)

So, although the law itself was not changed in April, Family Court judges were instructed to change their practice.

- **Should such a major change be brought in through judicial guidance, rather than through legislation?**
- **Do courts have the staff and equipment to identify and photocopy the relevant documents?**

Reporting restrictions

In April, the law was changed to allow individuals involved in the Family Courts to discuss their cases and pass on documents to people like MPs and professional bodies. This allows people to make complaints and facilitate investigations into professional malpractice. These changes effectively addressed the criticism that people could not complain about

Box 2 – Documents in family cases

By the time a case reaches the Family Court, it often has a long history, which is recorded in the court file. **A single case will often have several lever arch files of documents.**

Documents often include:

- correspondence between the parties
- position statements from the lawyers
- court applications and previous court orders
- witness statements (including character witnesses)
- CAFCASS reports (i.e. child welfare reports)
- reports from GPs, etc.
- psychiatric or other specialist medical reports
- reports from other professionals (e.g. school teachers)
- financial reports and other financial information.

These documents can be very important in helping the judge to reach the best possible decision, and form one of the main sources of information on which judges rely.

miscarriages of justice in the Family Courts.

For the media, no changes were made in April to the restrictions on reporting Family Court cases. In particular, two things cannot be reported:

- the substance of any case before the court
- a child's identity, directly or indirectly, until the child is 18.

Breach of these provisions is a contempt of court – see Box 3. These provisions are **simple and easy to use**. Nothing can be reported about the substance of an individual case or about the identities of those involved – but the media can write about the system and how Family Courts work in general.

The changes proposed in the Children, Schools and Families Bill

Background to the new proposals

The April changes were 'fuelled by an ever-increasing lobby of which *The Times* has been at the forefront' (according to *Times* columnist Camilla Cavendish; the *Daily Mail* has also claimed credit for the campaign). Cavendish published at least 9 articles between June 2006 and December 2008, condemning

Box 3 – Contempt of court

It is a contempt of court to publish a report of proceedings of a court which relate wholly or mainly to the upbringing of a child. This restriction covers the hearing itself, and also documents which are prepared for use in court.

The primary punishments for contempt are imprisonment, a fine, or sequestration of property. In terms of fines, Magistrates' Courts are limited to a maximum of £2500, but there is no limitation on the size of fine which may be imposed by the County Courts or the High Court.

While there are no instances of contempt being used in relation to the April rules (which is unsurprising, given how new they are), the Family Courts are used to other types of contempt case (e.g. against parents who breach court orders requiring them to allow their child to see the other parent).

However, the courts have been given no guidance about how serious violation of reporting restrictions is. Should it be made clear that **breach of Family Court reporting restrictions will result in heavy penalties?**

the Family Courts and pushing for more media access – though these articles were said to present ‘a very one-sided view’ by the President of the Royal College of Paediatrics and Child Health in a letter to *The Times* (12 July 2008).

However, even as the April changes were taking effect, it was clear that the media were not satisfied. As early as April 10th, *The Times* described the changes as a ‘con trick’, and Cavendish’s campaign continued, with a BBC interview on June 25th and a *Times* article on July 9th. The media said that reporting restrictions and lack of access to court documents meant that they could not report meaningfully about cases.

The Justice Secretary, Jack Straw, made public announcements (on April 27th and July 9th) that there would be additional changes to the law on reporting of family cases. This Bill follows those announcements.

A two-stage Bill

The Government’s aim is ‘to create a [family justice] system that is transparent, accountable, and inspires public confidence in its good work, whilst still protecting the privacy of children and families involved.’ The Bill proposes to achieve this aim in two stages.

There would be **immediate changes** in Stage 1, and **additional changes** in Stage 2. Stage 1 would be implemented straight away, while the move to Stage 2 would involve:

1. a delay of at least 18 months from the implementation of Stage 1, followed by
2. a review of Stage 1 by the Lord Chancellor, and
3. the conclusions of the review being laid before Parliament.

Stage 1 – immediate changes

The Bill would continue the current position on media attendance at court hearings, but would expand the range of cases open to the media to include the first stage of adoption cases – see Box 4. There would be no further changes regarding access to documents.

The additional changes proposed in the Bill have a number of connected elements.

- Children and families would have **lifelong anonymity**, unless the court said otherwise – see Box 5.
- **The media could report the substance of the cases they saw** if a number of conditions were met, so long as the parties and any children involved were not identified – see Box 6.
- **Some information would be on a ‘banned list’** and remain confidential, unless the court allowed it to be reported. Other information could be reported by media representatives, unless the court imposed restrictions – see Box 7.
- **Experts who were paid by the court could be named**, but other experts would have their identity protected – see Box 8.
- Anyone could publish an anonymised version of **the text or a summary of a court order**, except in adoption and ‘parental order’ cases (see Box 4), unless the court restricted publication – but court judgments could not be reported unless the court specifically allowed it – see s.33 of the Bill.
- The **sanction for breach** of these provisions would be contempt of court – see Box 3.

Stage 2 – deferred changes

In Stage 2, ‘the more open phase’, a number of further changes would be brought into effect (under Schedule 2). These additional changes can be summarised succinctly:

- all references to ‘sensitive personal information’ (see Box 9) would be omitted from the statute
- the court could restrict publication under Condition 5 of s.34 if it was necessary to avoid ‘an unreasonable infringement on the privacy of any person’ (see Box 6)
- the standard required before the court could restrict publication under Condition 5 of s.34 would be lowered, from the court ‘being satisfied’ that there was a real risk to one of the identified categories, to the court ‘considering’ that there was such a risk (see Box 6).

The effect of these changes would be that ‘sensitive personal information’, protected during Stage 1, would be publishable unless the court specifically imposed restrictions – but the court would be given an additional ground under which it could impose restrictions, and would be able to impose such conditions more readily. The Government has also said that, in Stage 2, it would intend to amend the definition of ‘professional witness’ to mean all expert witnesses, but this change would not be automatic.

Box 4 – Adoption and parental order cases

Adoption cases come under the Adoption Act 1976 or the Adoption and Children Act 2002. Adoption cases have two stages. In the first stage, the child is ‘freed for adoption’ – in the second, the child is placed with a family. **Restricted adoption information** is information likely to allow one or more people to identify someone

- who is a prospective/actual adopter
- who has been/may be adopted or that person’s location.

Parental order cases arise when a child is born as a result of assisted reproduction under the Human Fertilisation and Embryology Acts 1990 and 2008. A parental order declares who the law considers to be the child’s parents.

‘Restricted parental order information’ is information likely to allow one or more people to identify someone

- who has applied for/been granted a parental order
- who has been/may be the subject of a parental order or that person’s location.

Box 5 – Anonymity and ‘identification information’

The Bill defines ‘identification information’ in s.41(1) as ‘information the publication of which is likely to lead one or more person to identify the individual as someone who is or has been involved in, referred to in, or otherwise connected with the proceedings’. Unless the court gave permission, identification information for individuals would not be able to be reported (except for professional witnesses – see Box 8).

- Is this definition sufficient to protect people’s anonymity?
- Would it be better to give clearer guidance about when information is likely to identify an individual, as happens in Australia (see Box 13)?
- Why is the Bill only protecting anonymity and not privacy (see Box 10)?

Box 6 – Media reporting of Family Court cases under the Bill's proposals

The conditions that the media must meet in order to be allowed to report Family Court cases are very complicated. The details are contained in sections 34 to 37 of the Bill. In summary, **there are five conditions that must be met** before a publication would count as an 'authorised news publication' – and two of the conditions have many exceptions.

The conditions that must be met are (s.34):

Condition 1: the information came from an 'accredited news representative' who was present at the Family Court hearing.

Condition 2: the information was published by that representative or with their agreement, or the publication repeated an earlier 'authorised news publication'.

Condition 3: unless a judge gave permission (see below), the information was *not*:

- information which identified someone involved in or referred to in the case (see Box 5), unless that person was a 'professional witness', i.e. they were paid for their evidence (see Box 8)
- 'sensitive personal information' (see Box 9)
- 'restricted adoption information' or 'restricted parental order information' (see Box 4).

Condition 4: unless a judge gave permission, the information was *not*:

- the text/a summary of a court judgment
- the text/a summary of a court order in an adoption or parental order case (see Box 4).

Condition 5: the publication was not restricted or prohibited by a judge (see below).

Conditions 3, 4 and 5 are complicated by the question of whether a judge has permitted, restricted or prohibited the publication. Condition 4 refers back to the rule in section 33 – Conditions 3 and 5 are explained in sections 35 to 37.

CONDITION 3:

Permitting publication of information under Condition 3 (s.35 and s.36):

For all applications, the court:

- must have regard to any risk which publication of the information would pose to the safety or welfare of any individual involved in the case
- can grant permission subject to conditions
- can grant permission after an application by any interested party, or of its own initiative.

Other conditions depend on the type of information in question.

*For cases where the information is **not** 'restricted adoption information' or 'restricted parental order information' (s.35):*

The court can only give permission if:

- publication is in the public interest, *or*
- publication is appropriate to avoid injustice to a person involved in the case, *or*
- publication is necessary in the interests of a child/vulnerable adult involved in the case, *or*
- the application is made by a party or on behalf of a child who is the subject of the case, and publication is appropriate in all the circumstances.

For cases where the information is 'restricted adoption information' or 'restricted parental order information' (s.36):

The following procedure applies when deciding whether to give permission.

- **Either:** *If the person who has been/may be the subject of the adoption or parental order is a child, lacks capacity to consent, or cannot be found* then the court may not permit publication unless it is sure that publication will not prejudice that person's safety or welfare
- **Or:** *In all other cases*, the court may not permit publication unless the person who is affected gives consent.
- The court must 'have regard to' whether consent has been given by the prospective/actual adopter, or the person who is seeking/has been granted a parental order, as the case may be.

CONDITION 5:

Restricting/prohibiting publication under Condition 5 (s.37):

The court can only restrict or prohibit publication under Condition 5 if:

- it is satisfied that the prohibition/restriction is necessary to avoid a real risk to i) the safety of any person, ii) the welfare of a child/vulnerable adult, or iii) the interests of justice in the case, *or*
- the information identifies a professional witness in the case (see Box 8), **and**:
 - a) the information also identifies someone else involved in the case (except another professional witness), *or*
 - b) the information is also 'sensitive personal information' (see Box 9), *or*
 - c) the professional witness is, has been or will be working with an individual involved in the case as part of their general work, i.e. otherwise than for the purpose of being a professional witness.
- *in Stage 2 only*, there would otherwise be an unreasonable infringement of the privacy of any person.

Box 7 – The ‘banned list’

Some types of information would be on a ‘banned list’. This information would be **strictly confidential** unless a judge specifically authorised publication.

During Stage 1, the banned list information would include:

- anything that is ‘**identification information**’ about an individual involved in or referred to in the case, other than expert witnesses who are paid by the court (see Box 5, *but compare the Australian approach discussed in Box 13*)
- anything listed as ‘**sensitive personal information**’ (see Box 9)
- the **names of expert witnesses who are not paid by the court**, such as GPs or A&E doctors (see Box 8)
- the names of ‘professional witnesses’ who are paid by the court if that information is also ‘identification information’ of someone who is not a professional witness, or if the information is also ‘sensitive personal information’, or if the witness is or will be providing care or treatment to someone involved in the case other than in their role as expert witness.

During Stage 2 this list would be amended so that **only ‘identification information’ would be confidential** (except for the identity of professional witnesses, i.e. those paid for their evidence). Sensitive personal information would be able to be reported (as long as that information was not ‘identification information’ of someone other than a professional witness) unless a judge specifically restricted publication. There would be a power to amend the definition of ‘professional witness’. The Government has suggested that it intends to allow all expert witnesses to be identified in Stage 2, whether they are paid for their evidence or not, but this would not happen automatically.

Box 8 – Experts in the Family Courts

Experts perform a vital function in the Family Courts, providing specialist advice in areas like physical and mental health, personal finances and education. Sometimes they only see a family in order to give evidence to the court, and they are paid specifically for this work. The Bill calls these people ‘professional witnesses’. In other cases, the expert has already been involved with the family as part of their general work (e.g. GPs, A&E doctors).

Experts can provide information in two ways:

- written reports
- oral evidence in court.

Some experts (e.g. doctors) are **bound by professional rules about confidentiality**, which restrict what they can share with third parties. At present, written reports are not normally seen by the media, but if the expert gives oral evidence then the media may hear it. However, if a witness gives a credible reason why they will not give evidence in front of media representatives, that may be a reason for excluding the media (Potter, 2009a).

Box 9 – ‘Sensitive personal information’

The Bill defines ‘sensitive personal information’ in Schedule 3. There are four categories:

- **information given by a relevant child** to someone who is expected to be a witness in the case, or any information given by that child which is expected to be referred to in the case
- **information relating to a medical, psychological or psychiatric condition** of any person, and which is expected to be referred to in the case
- **information relating to a medical, psychological or psychiatric examination** of any person, and which is expected to be referred to in the case (other than the identity of the person who carried out the examination)
- **information relating to health care, treatment or therapy** which is being, has been, or is proposed to be given to any person, and which is expected to be referred to in the case.

Concerns about the proposals

Although plans to make further changes to the law were announced in April, no details were available until the Bill was published on 19 November 2009. Individuals and organisations responded to initial ideas presented by the Justice Secretary – though **the Bill’s complicated proposals are different from those initial ideas**. Responses include:

- a press release from the Interdisciplinary Alliance for Children (IAC), which includes 22 major children and family organisations (26 October 2009)
- publicly available minutes of a meeting of the Family Justice Council (6 July 2009)
- public statements from judges and doctors (Potter, 2009c; Glaser, 2009)
- commentary by family law experts (Little, 2009; Whitten and Wilson, 2009; Doughty, forthcoming).

In its joint press release, the IAC expressed ‘deep concern’ about the Justice Secretary’s initial suggestions. The IAC said the changes were being introduced ‘without proper consultation with key stakeholders’ and with no ‘impact assessment of the dangers for and feelings of the children concerned’. A particular concern was that the media were less interested in promoting the interests of children and families than in the salacious presentation of the details of people’s private lives. Perhaps unsurprisingly, **these concerns were not reported by the media**, though worries about revealing expert evidence and the identity of experts did receive coverage (e.g. *The Times*, 28 September 2009).

There are three major concerns:

1. **Why is the Government rushing ahead with these proposals at this time?** There are a number of reasons why it is inappropriate to do this:
 - the Government concluded only two years ago that media access to the Family Courts was a bad idea, and that the focus should instead be on improving the information coming out of the courts (MoJ, 2007; DCA, 2007). Nothing of substance has changed in the last two years to alter that conclusion.
 - on 2 November 2009, a pilot study began under which Family Court judgments are published online (see Box 11). Similar programmes in other countries have worked very well – why is the Government not waiting for the

results of this pilot, due in late 2010?

- the experience of other countries is that allowing the media to attend and report Family Court cases does not result in greater openness or improve the legitimacy of the courts in the eyes of the public, because the media do not tend to invest the time and resources required to write informative articles (Oxford Briefing Paper 5).

2. Why is personal privacy being sacrificed as part of these proposals?

The Bill would go some way to protecting anonymity (i.e. people's identities), but details of their private lives would be made publicly available (see Box 10). This raises serious concerns for the children and families involved in the Family Court, as well as for those who attend as witnesses. Cases of professional malpractice can already be discussed with appropriate people (e.g. MPs, professional bodies) following the changes made in April.

3. What are the resource implications of these proposals?

The Family Court is already stretched in terms of resources, with long delays for hearings and a shortage of available facilities in and around courts (Woolf, 2009). Will the proposals lead to greater delays and consequent miscarriages of justice in urgent cases? Who is to pay for preliminary hearings about media attendance? What will the impact be on the Legal Aid bill?

It is important that these concerns are considered and given appropriate scrutiny while the Bill is being debated.

Box 10 – Anonymity and privacy

There is a difference between anonymity and privacy. Anonymity means that a person's **identity is kept secret** – privacy means that information about a person's **private life is kept secret**.

The Bill would make some effort to protect the anonymity of children and families, though it does not go far enough in making clear what would count as identifying a person – see Boxes 5 and 13. However, the Bill would increasingly allow the media to invade people's privacy by reporting details of their private lives. Family Court cases are **immensely personal**. Even in Stage 1, the media would be able to report intimate details of people's private lives, other than information about medical conditions/treatments and children's views – and in Stage 2, even these most personal things could be reported. Why is the Government proposing to allow such a **major invasion of personal privacy** at such a traumatic time in people's lives?

A recent story in the *Daily Mail* (20 November 2009) gives a good example of why clear guidance is needed. The Family Court moved a child from his mother to his father. The paper did not report details of the parents or their dispute, but did state the father's recent marital status, his home county, and the size and cost of his house. While the general public would not be able to identify the individuals involved, people in the same locality might well work out who the father was.

- Why were these details reported?
- Was there any public interest in knowing them?
- Would it be better to impose restrictions preventing this kind of reporting?

Given the emotions often aroused by Family Court cases, there is also a serious concern that this will lead to door-stepping of parties and witnesses by elements of the media and pressure groups, as already happens to judges.

Box 11 – Publishing Family Court judgments: a better way to achieve openness and transparency?

The original rationale for reforming the Family Court was to help the public to understand how Family Courts work and reach the decisions they do (Oxford Briefing Paper 5). One idea, which received widespread support, was to **make Family Court judgments available to the parties and to the public**.

Anonymised judgments of Family Court cases are generally more widely available in other countries than in England and Wales. Greater access to judgments may strike a good balance between respecting the privacy of those involved in these highly personal cases, and enabling the public to see more clearly how the Family Courts work.

A 12-month pilot programme started on 2 November 2009. Family Courts in Leeds, Cardiff and Wolverhampton are publishing judgments online to test the effectiveness of the plan, and to assess whether the same could be done by all Family Courts. This programme has the potential to improve the openness and transparency of family justice, and to clarify the use of expert evidence in the Family Courts. **A media representative who sat through a case and then received an anonymised copy of the judgment would be well placed to report effectively on the proceedings they had seen.** Would it be sensible to wait for the outcome of this pilot before going further?

The media and the Family Courts in New Zealand and Australia

Britain is not alone in debating the role of the media in the Family Courts (Oxford Briefing Paper 5). New Zealand and Australia are culturally and legally similar to England and Wales, and so make good comparators. However, the proposals about media reporting in the Children, Schools and Families Bill, and the procedure for accessing court documents introduced by the President's April guidance, go far beyond what any other jurisdiction has contemplated.

Media access to Family Court hearings and court documents in these jurisdictions varies, but the Family Courts are not as open as is often claimed (see Oxford Briefing Paper 5). The basic rules allow for media attendance, but there is considerable judicial discretion to exclude the press, and reporting is very restricted.

To explain the policies and practices in New Zealand and Australia, this Briefing Paper focuses on access to court documents and on reporting restrictions. The summary table on the back cover compares the law in these jurisdictions with the current law in England and Wales, and with the two Stages of the proposals under the Bill.

New Zealand

The media in New Zealand can attend family cases (other than adoption cases) unless the judge excludes them. As in England, there is a general power for people not involved in a Family Court case to apply to see court documents, but there are no special provisions for the media. Applicants **need to convince the judge that they have 'a proper interest** in the proceedings', and there is a standard procedure – see Box 12. When compared with the English approach, this procedure is very rigorous.

There are one or two cases where the media have made

Box 12 – Procedure for accessing court records in New Zealand

Applications to access court records must follow the procedure laid down in *Lunt v The Family Court at Dunedin*:

- there must be a written application to the court
- the applicant must make a specific and genuine application and not be on a 'fishing expedition'
- the applicant must show a 'proper interest' in seeing the file, meaning 'an interest which is lawful, respectable and worthy'
- the application must be heard in the presence of the parties to the original Family Court hearing, who 'always have an interest in such applications'.

applications to see documents under the standard provisions, but they have never been granted access. (Applications are normally made by the police when investigating crimes related to child abuse cases.)

Any person may report Family Court cases in New Zealand, but reports **may not include any identifying information** if a child is 'referred to' in the case. **Everyone involved in Family Court cases has their identity protected**, including expert witnesses.

The court has a general power to allow the media to publish reports which do contain identifying information if the judge thinks it appropriate. Although the court can allow unrestricted reporting of its own initiative, the High Court was strongly critical of a judge who exercised this power without hearing from the parties, and said that such an approach should be adopted only in an emergency (*Skelton v The Family Court at Hamilton*, 2007). There are no other known cases of the court exercising this power.

Violation of these restrictions is **punishable by imprisonment** for up to three months, **or a fine** of \$2000 (£800) for an individual or \$10000 (£4000) for a company. If the media's violation is flagrant **the court can impose a greater punishment** under its general powers. These punishment provisions have been used occasionally in family cases. There is no noticeable pressure for further changes in New Zealand.

Australia

The media can usually attend family cases, other than those involving child protection or adoption.

The court has a discretionary power to allow access to court files to anyone with **'a proper interest' in the case** or in a particular document. When applications are made, **the judge must consider**:

- the purpose for which access is sought
- whether access is reasonable for that purpose
- the protection of the parties, children and witnesses
- any restrictions which should be imposed, e.g. that the parties to the Family Court case give permission.

There are **no cases where the media have been granted access** to court files under these provisions. As the summary table on the back cover shows, it is exceptional for the media to be allowed to see or report on anything from the court file.

In family cases, it is an offence to publish information which identifies a party, a person related to or associated with a party or the case, or a witness in the case – see Box 13.

Violation of these restrictions is punishable by up to a year in prison, but there are no known cases of alleged violations.

While there is some media pressure for further changes in Australia, the Australian Government is not bowing to that pressure.

Box 13 – Protecting anonymity in Australia

Australia's Family Law Act 1975 **prohibits the publication of any information likely to identify an individual** to any member of the public. The statute includes the following examples:

- a person's name, title, pseudonym or alias
- a person's home or work address, or its locality
- a person's physical description or mode of dress
- a person's job, or any position they hold
- a person's relationship to someone else who is named
- a person's recreational interests
- a person's political or religious beliefs
- details about any property in which a person has an interest
- a picture of a person
- a recording of a person's voice.

Box 14 – References

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Summary table: what can the media do in England and Wales under the current law and under the Bill proposals, compared with New Zealand and Australia?

	England & Wales: the law since April 2009	England & Wales: the CSF Bill Phase 1	England & Wales: the CSF Bill Phase 2	New Zealand	Australia
Attend cases between separated parents					
Attend cases about child protection					
Attend adoption cases					
Attend other family law cases, eg divorce					
Report things that identify individuals involved					
Report the substance of the case					
Report/summarise the judgement					
Report/summarise the court order					
Report things that identify experts paid by the court					
Report things that identify other experts					
Report children's wishes and feelings					
Report medical/psychiatric information					
Access documents in the court file	?	?	?		
Report the substance of documents seen		varies	varies		

Key to symbols

- Always, or restrictions only in exceptional cases
- Usually but restrictions possible
- Usually not, but sometimes possible
- Never, or possible only in exceptional cases

Conclusions

Part 2 of the Children, Schools and Families Bill proposes major changes to the rules on media reporting of Family Court cases. **The proposals are both very complicated and controversial.**

The Government's aim is to increase the openness and transparency of the Family Courts – a goal with which many agree. The way the Government proposes to achieve this aim, however, has the support of no one but the media. The Government's own conclusion after a full consultation in 2007 was that 'information about courts, not attendance at court is the key to openness' – so **why is the focus now on media reporting of cases?**

A 1-year pilot study which puts anonymised Family Court judgments online started on 2 November 2009. This programme is an excellent way to help the public understand Family Courts, while ensuring that the children and families involved are fully protected. **Why is the Government rushing ahead with legislation about media reporting,** rather than waiting for the results of its pilot study?

Key questions

- **Why is the Bill so complex?**
- **Has there been adequate consultation over the latest proposals?**
- **Why is there not clearer guidance about protecting anonymity?**
- **Why is personal privacy being put at risk?**
- **Does the Bill infringe doctor-patient confidentiality?**
- **Will experts stop providing their services to the Family Courts?**
- **Will there be resource implications for individuals and the courts?**
- **Why have key changes about media access to court documents been made by judges, and not debated openly as part of the Bill?**
- **Does the Bill violate the right to respect for private and family life contained in the Human Rights Act 1998 (Article 8)?**



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Family Policy Briefing 6 continues the tradition of independent, research-based commentary on family policy issues initiated under the Family Policy Studies Centre which closed in 2001. FPSC published 17 Family Briefing Papers between 1996 and 2000 which are available on www.fpssc.org.uk Family Policy Briefings are now based in the Oxford Centre for Family Law and Policy (OXFLAP) in the Department of Social Policy and Social Work. Family Policy Briefings are available for £5 from the Department or may be downloaded from the Department's website.