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## **A review of anonymised judgments on Bailii: Children, privacy and ‘jigsaw identification’**

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**With Kate Perry and Eleanor Harrison**

**October 2015**

# **A review of anonymised judgments on Bailii: Children, privacy and ‘jigsaw identification’**

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## The Team

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Previous work in this field includes 2010 study of young people and media access to courts (commissioned by the OCC, England), a 2009 review of law and policy on media access to family courts in other common law jurisdictions (commissioned by the Nuffield Foundation) and the 2014 report, *Safeguarding, privacy and respect for children and young people and the next steps in media access to family courts* (commissioned by NYAS and the ALC) in response to the proposed *Next steps in media access to family courts* (Aug. 2014).

**Kate Perry** is Operations Manager at the National Youth Advocacy Service (herein, NYAS). She manages the Participation Team and co-facilitated a NYAS convened a group of young people (CAFCASS/FJC Young People's Panel, Sept 2006) to look at the DCA 2006 proposals (*Confidence and Confidentiality: Improving transparency and privacy in family Courts*). She was also part of the team which explored the response of young people to the 2014 proposals (*The next steps in media access to family courts*) and the resulting report: *Safeguarding, privacy and respect for children and young people*, as above.

Kate continues to manage the Participation Team with a remit to develop the social media platform within NYAS. It is intended that this will increase the dynamic and creative involvement of young people within the organisation.

**Ellie Harrison** is the Senior Advocate for NYAS in Warrington and National Participation Officer for NYAS. As Participation Officer, her role is to ensure children and young people are listened to, given opportunities to get involved and have their voice heard through projects, events and consultations. This involves working with children and young people from across England and Wales – both meeting with them in person and supporting online participation through NYAS social media platforms.

**The young people:** 'the investigators' who read and analysed the judgments are almost all members of the NYAS Young People's Participation Group; they were aged between 17 and 25 years and almost all had been the subject of care proceedings.

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## EXECUTIVE SUMMARY

### Introduction

- For several years policy and practice in family courts have struggled to improve public information about the work of courts while also protecting children's rights to privacy. One method of increasing information has been to encourage judges to place judgments on a public website (Bailii).
- Despite protections for children under, for example s.12 of the Administration of Justice Act 1960 and s.97 (2) of the Children Act 1989 young people remain concerned that judgments can enable some children and families to be identified.
- When consulted, young people indicated very clearly that they were opposed to any relaxation of the rules on media access to court documents, and to legislation regarding what may be published from cases. The prospect of contempt of court proceedings in the case of a breach of privacy did not change their views.
- Young people were concerned that anyone reading a judgment and with some local knowledge and/or a desire to identify a child/family - or at least to indicate an area where a child/family live – may be able to do so from information in judgments. Judgments can permit 'jigsaw' identification putting vulnerable children at further risk.
- The purpose of the pilot exercise therefore was to put young people's concerns and views to an initial test. It is part of a further exercise exploring issues and options for accountability in family justice (see Brophy J (2015) forthcoming).

### The review exercise and the sample judgments

- Eight young people aged between 17 and 25 years analysed a total of 21 judgments posted on Bailii between 2010 and 2015 (12 from county courts (post 2014, the (single) Family Court), four from the High Court and five from the Court of Appeal).
- The aim was to select judgments with a potential geographical link to the young investigators via local authority applicants: twelve such judgments were selected
- Two further searches resulted in nine additional judgments. It was not possible to select these matched by geographical location; selection criteria were therefore as follows: 20 most recently posted judgments for each family court database (at 1 May 2015); cases that concerned a young person aged 8 years and above; judgment issued between 2010 and 2015 and limited to about 30 pages.
- The review was followed by a computer search for coverage of judgments/cases by the media and social networking sites.

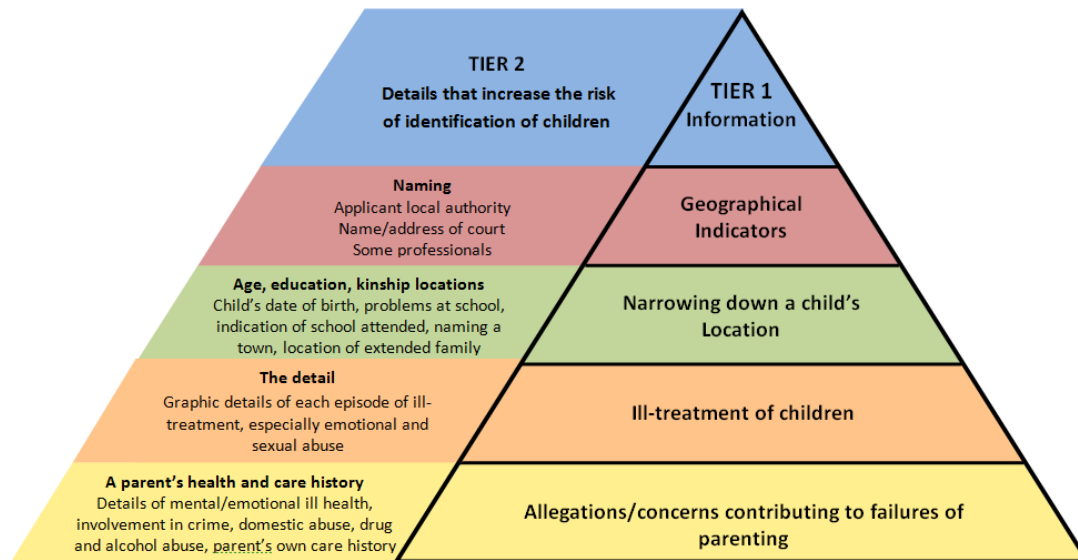
### Law reports and judgments on Bailii

- Law reports and judgments on Bailii serve some similar but also different aims. It has generally been assumed both documents are fully anonymised and protect the identity of children and families.

- We have not however addressed whether, in practice, that is always achieved and whether the standards applied protect children in the face of contemporary media and social networking cultures and technologies.

### Geographical 'indicators', sensitive information and jigsaw identification

- Young people indicate it might be helpful to consider the ease with which children and families might be identified in terms of tiers of information, each with 'layers' of risk with the potential to contribute to jigsaw identification:



- **Tier 1 information** (right hand pyramid above) giving the name of the applicant local authority and court provides geographical boundaries to the location of a child and family. This information can be supplemented by '**layers**' of information from the judgment (**Tier 2** left hand pyramid) this narrowing down the area further.

### Geographical 'indicators'

- Almost all judgments identify a local authority applicant by name thus giving the geographical boundaries to the location of a child and family. The name and address of the family court at first instance largely confirms that boundary.
- Young people identified five initial categories of information in judgments with potential to narrow down considerably the area where child/family resides. These include information about an area (e.g. naming a town), information about a school or school issues, gender and age of children, information about extended family members and information about religious/cultural customs within households.
- Six judgments (29% - 6/21) had at least four out of five ('4/5') 'within county' markers for the location of the child/family. Young people said these markers placed children at high risk of being identified by peers at school and in local communities.
- Information about school problems coupled with a date of birth made some children easily identifiable - indeed investigators were strongly opposed to stating a child's date of birth in a public document.

- Most judgments (81% -17/21) contained information about other family members. This information can assist jigsaw identification of children and when coupled with certain details from the profile of parents, makes some young people easily identifiable in communities and at school.

#### **Details about ill-treatment of children and concerns/failures of parenting**

- Most young people had little/no idea of the content of judgments on Bailii, and for most, what they found was a shock. Judgments contained difficult, deeply embarrassing, shaming and damaging information about children's lives; that such information was effectively *already* in the public arena was distressing – many felt let down.
- Young people were well aware of a need to demonstrate why a court may remove children from parents, and that it has held local authority applicants to account for their actions with families. What they questioned was the degree of detail on child ill-treatments and failures of parenting and how much of 'the story' was necessary and appropriate.
- They said judges need to be more aware of information technology. Details of a parent's mental health problems, drug/alcohol problems, involvement in crime and domestic violence and intimate details of child abuse can go viral 'at the click of a button'. When drafting judgments that possibility should be part of a balancing exercise in determining the detail necessary. For the Bailii website at least, they felt a summary of aspects of ill-treatment and parental problems should be considered.
- In particular they questioned the necessity of so much detail on the sexual abuse of children and an apparent lack of thought about how details might be used. They questioned whether judges were really aware of the amount of material on the internet about sexual abuse of children, and targeting and grooming of young people in the care system.
- Relevance, context and *necessity* of details were central to responses to information in judgments that are now accessible on the internet – and always with a view to potential for jigsaw identification and impact on the child. Overall, they felt judges had lost sight of the child and their immediate and longer term needs.

#### **Professionals and issues of accountability for services to children and families**

- As indicated above naming the applicant local authority and court provides geographical boundaries to the location of children and families. Naming social workers, guardians, doctors and other professionals/agencies narrows the field.
- For example, social workers may be known in local areas where they work in teams/area offices; naming family assessment centres and clinics could also indicate a catchment area.
- Judicial comments about the work of professionals, whether critical or complimentary, did not determine whether young people thought professionals should be named. Rather their concerns focused on potential for jigsaw identification of children – and

other ways for reviewing professional practices where these were deemed necessary.

### **What young people liked about judgments, what they thought should be published**

- While there was information in some judgments (about 25%) which young people liked, there was very little they thought should be in the public arena.
- In identifying what they liked young people focused on judicial discussion about the risks to children of publication of judgments, a need for diversity training in a local authority, and the contribution of socio-economic factors in a failure of parenting.

### **Do young people think their peers can be identified from Bailii judgments?**

- In addition to potential for jigsaw identification, young people said 13/21 judgments contained specific information which would permit children to be identified.
- While some of the details they identified are arguably errors in the anonymisation process, the 'direction of travel' for such errors in a larger sample is worrying.

### **Coverage in mainstream media and social networking sites**

- Information from judgments (details of abuse, towns, dates, ages, some details of problems of parenting such as mental health problems, involvement in crime including domestic abuse) enabled young people to find coverage in on-line local and mainstream newspaper sites, and social networking sites. They identified:
  - coverage in local and national newspaper/media sites for 24% of judgments (5/21); and,
  - coverage on social networking sites for 33% of judgments (7/21). Materials on social networking sites (e.g. Facebook pages etc.) identified children and other family members; some also contained photographs of children.

## **CONCLUSION AND RECOMMENDATIONS**

### **Geographical 'indicators' and sensitive information**

- Young people said some aspects of judgments would enable the identification of some children and young people. That was not the intention of policy changes.
- It is fair to say that in endeavours to protect the reputation of family courts by encouraging judges to place judgments on Bailii, the views of young people and others about the content of judgments was not sought.
- Ministers supporting changes in this field in general declared it was not the intimate content of cases that would be reported by the press, rather the process and issues of fairness and justice. That has yet to be demonstrated.

### **The risks and the price**

- The risks to children from information published in judgments, where these were considered by adults, were thought to be minimal; some argued they are worth taking. Whether the benefits are proving tangible and proportionate to the risks and realities identified by young people requires further consideration. It is not of course



judges or 'the system' that takes the risk or pays the price, and as research identifies much of that cost to children is 'hidden'.

- Cases in the sample judgments may well reflect aspects of the investigators' background. That experience and their skills and expertise on the internet are why they were asked to undertake the exercise. They were seen as the best judges of the likely impact of information once placed in the public arena; they live with the fear and reality of exposure.

### The evidence

- As indicated above, geographical indicators can be built upon to narrow down the location of a child and family: some details are especially problematic: sexual abuse but also emotional abuse renders children vulnerable to further abuse and humiliation in communities. Certain details about the health and problems of parents provide further information which render children more vulnerable to identification.
- If they can demonstrate 'jigsaw identification' in cases where they have no local connections/knowledge, is it likely someone with local knowledge and/or a strong desire to locate a child, could identify the child/young person concerned.

### 'Necessary' and 'appropriate' information for Bailii judgments

- Young people were well aware of current debates in this field including how better to inform the public why a court may remove children from parents, and how applicant local authorities are held to account for their actions. What they questioned was the degree of detail on child ill-treatment and failures of parenting in public judgments and how much of that 'story' was *necessary and appropriate*.
- Relevance, context, and *necessity* of information were central the evaluation of details by young people. This contextualised within a view as to the potential impact on the child of publication - and with a working knowledge of modern media and social networking technology – and how details could be used.
- They felt that for general public consumption only limited information regarding child ill-treatment and failures of parenting should be covered in a summary.

### Judgments for Bailii and the law reports

- Given that the judgments published on Bailii are not official law reports and do not create legal precedents, can and should they be different with regard to the level of detail, to law reports and what are the considerations and challenges?
- Would an agreed summary of *certain* areas suffice, at least for initial publication, perhaps with a full judgment on file for future reference? Would a carefully drafted summary enable the public to understand how decisions are made in the vast majority of cases? In view of the issues identified by young people, that would make an important contribution in support of the best way forward.
- Findings raise questions about whether law reports might benefit from a review of anonymisation practices. This is a complex issue: law reports serve a different primary purpose and are not representative of the majority of children cases heard in

courts. However it is fair to say reports have not been reviewed against contemporary media and social networking technologies and potential for breaches of children's privacy, however inadvertently.

### The challenges

- This pilot review raises some challenging questions – for judges and policy makers and Parliament. Judges play many roles. They interpret the law and assess the evidence presented, and recently, as in case managers, they determine the evidence they wish to receive, and control how hearings/trials unfold in their courtrooms.
- Importantly, judges are impartial decision-makers in the pursuit of justice. In children cases the child's welfare remains the court's paramount consideration. In considering applications, the judge must remain impartial, providing an independent assessment of the facts and evidence and determining how law applies to the facts.
- Judgments provide a record of how judges reach decisions. Headings in judgments, for example, in a fact-finding hearing, set out the background and events leading to proceedings with key dates, parents' responses to allegations, the law, relevant precedents and guidance to judges in approaching judicial tasks (e.g. treatment of child and hearsay evidence), witness credibility and treatment of clinical evidence.
- Broadly the focus has been two-fold: first to demonstrate that the court has heard and considered *all* the evidence (oral and written), and applied the law impartially and fairly, and to set out the analysis on which findings and decisions are made.
- The judgment is thus a record. But it is also written with an 'eye' to any appeal, if parties wish to challenge a decision (in case management or an order) it provides a superior court with a record of the evidence and the weight given to that evidence and the analysis supporting a trial court's decision.
- More recently some judges have also begun to see judgments as a record for children so that they can – perhaps at a future date, how and why courts made decisions about their welfare and future care.

### Ways forward

- Providing a **summary** of certain sections of certain judgments - at least for the public arena - presents a challenge, at least for ideological shifts towards making all information in children cases publicly available.
- However this is not an argument about protecting judges or professionals. Rather it is about finding ways of informing the public about the work of family courts and subjecting the work of judges to reasoned scrutiny, while at the same time protecting children and safeguarding their future.

- Findings indicate that alongside exploring other options for accountability in family courts as public bodies, and in the context of Article 10, ECHR issues, a careful and evidence-based way forward with potential to meet the needs of several viewpoints would be:
  - 1 **A pilot evaluation of judgments posted on Bailii in which a summary of certain sensitive information is provided**; this to also indicate the circumstances where a summary may be inappropriate.
  - 2 **A review of anonymisation practices in law reports** and potential for jigsaw identification of young people in the context of contemporary media and social media technologies.
  - 3 Both the above exercises to explore whether, in children cases:
    - i. **guidance in anonymisation of judgments** would be helpful to judges;
    - ii. **the options and resources required for better anonymisation practices** – including guidance/formats and dedicated teams employed for this work in similar common law jurisdictions, along with the corresponding **training requirements** likely to be necessary;
    - iii. whether policy debate might be assisted by a consideration of s.33 of the Criminal Justice and Courts Act 2015 (disclosure of private sexual photographs with intent to cause distress) and whether this might be helpful in thinking about the way forward in children cases.

## 1 INTRODUCTION

### INFORMATION IN CHILDREN CASES

- 1.1 There are differing views about whether and how information about the work of family courts should be placed in the public arena and the degree of risk posed for the privacy and safeguarding needs of the subject child(ren)<sup>1</sup>. Views within the family justice system also vary as to the role and responsibilities of the press in this endeavour – and whether members of the press should have access to court documents. Debate continues as to the best methods of providing accurate information for the general public about how the system works and how decisions are made; judges have been encouraged to place more judgments on Bailii<sup>2</sup> - a public website – and legal professionals tend to argue that such judgments provide the best source of information.
- 1.2 Compared for example with media reporting, judgments on Bailii are said to be comprehensive, providing a meaningful account of the disputes, the evidence, the relevant legislation and case law, and any findings of fact made and how all these relevant aspects factor and weigh in reaching decisions on applications relating to children. However in a meeting with the President of the Family Division (Dec 2014) (hereinafter the 'President') young people expressed concerns about placing judgments in the public arena and the potential for information therein to compromise children's privacy and safety.
- 1.3 This report is based on an evaluation of a sample of judgments on Bailii, exploring whether some of those concerns and fears might be justified. It is important at the outset however to set out the difference between a *law report* and a Bailii judgment<sup>3</sup> and the underscoring principles for publication.

## 2 JUDGMENTS ON BAILII AND LAW REPORTS

- 2.1 In short, a *law report* is a document which provides an analysis of a court case, most often accompanied by text from a judge's decision. It is produced by a lawyer but not one who participated in the case itself. It is, in effect, a third party view but *one arising from a legal perspective*. The general reporting of a case in a newspaper is reportage, but for the most part, it is likely to lack the critical legal knowledge and skills (and knowledge of case law and its role) which comprise a law report. As Leith and Fellows (2013) identify, law reports have been produced in England since the 13<sup>th</sup> century, and while legal historians highlight various reasons for their existence (precedent, educational, record keeping and entertainment value) the formal reason is that of precedent.

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<sup>1</sup> In this report the term 'children/young people' is used; it refers to all minority age ranges; this can however make for writing which is awkward and reading which, although technically correct, is clumsy. Therefore both terms are used for fluency of reading; each should be taken to infer both and where there are specific issues which might be age related that will be made clear in the text.

<sup>2</sup> The British and Irish Legal Information Institute (BAILII, pronounced like "Bailey") is an on-line database of British and Irish legislation, case law, law reform reports, treaties and some legal scholarship. Decisions from England, Wales, Ireland, Northern Ireland, Scotland and the European Union and the European Court of Human Rights are available to anyone with access to the internet.

<sup>3</sup> Best described in Leith P and Fellows C (2013) BAILII, Legal Education and Open Access to Law, European Journal and Law and Technology, Vol. 4, No.1.

- 2.2 Precedent in a common law system can generally be defined as legal principles as identified and developed through judicial decision-making (i.e. what has occurred in a previous case may have persuasive value or be binding on the lower courts when deciding a current case). Thus access to the reasoning and decisions in previous cases is key in a system where the practice of lower courts, in the first instance, is to abide by principles established in the higher levels of court. The system is dynamic: in the UK the courts not only interpret and clarify statutory law, they also create law in areas not covered by statute (e.g. civil liberties) and take precedent into consideration as a base for this dynamic 'law creation' process. Access to the reports of family cases is thus essential for lawyers and judges; judgments may refer to a precedent and if a judge's treatment of that precedent is significant it is likely the case will be reported in the law reports – along with a law reporter's view as to its significance (summarised in the form of a case "head note"). As Leith and Fellows (2013) identify, this process is the life blood of common law jurisdictions where the real 'meaning of law' or 'law in action', lies in the case law which interprets legislation.
- 2.3 As indicated above<sup>4</sup> in collecting together a range of legal resources, the Bailii website, although available to anyone with access to the internet, has a largely 'legal education' function and placing materials on the site is entirely voluntary. Courts do not accept Bailii as an authoritative source of case law – and indeed the importance of citing, for the purposes of proceedings, the official law reports (i.e. All England) as opposed to specialist reports (e.g. the FLR) was set out by Wall J (as was) in 1995:

*'In my view, where a case is reported in the law reports, it is that report which should be cited in court unless there is some particular explanation for not doing so. The reason is not simply that the law reports contain the official report of a case: they are to be preferred because they report argument, list the additional cases cited in argument, and provide information not usually contained in the specialist reports. For example, it is usually impossible to tell from the specialist reports whether or not a judgment is ex tempore or has been reserved.'*

(Re T and E (Proceedings: Conflicting Interests) [1995] 1 FLR 581 at 596).

- 2.4 Law reports and judgments on Bailii are thus different 'animals' – with different audiences and aims – albeit both may have implications for the degree to which 'law in practice' can be understood. Most judgments placed on Bailii however are not the 'life blood' of common law: they are not the key source for judgments that create a precedent and to which all lawyers and judges must refer. Judgments that create a precedent may, in addition to appearing in the official law reports, also be posted on Bailii. Both are public documents albeit historically access to official law reports usually required access to a law library: the internet has however also changed that and law reports can also be found on-line.

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<sup>4</sup> See footnote 2, above.

### 3 INFORMATION THAT MAY BE PUBLISHED FROM CHILDREN CASES

- 3.1 Notwithstanding such protections as exist under s.12 of the Administration of Justice Act 1960 and s.97 (2) of the Children Act 1989 young people have reported that, despite these formal protections, they remain concerned that reporting of cases can enable children to be identified.
- 3.2 We know from debates about privacy and transparency, and from research and consultations with some 200 young people over several years, that they remain concerned that case details may enable children and families in proceedings to be identified. Young people did not support relaxation of the rules in 2009 which permitted the media to attend most family courts hearings (unless otherwise directed); they were also opposed to proposals to further relax the rules on media access to court documents<sup>5</sup> and to any relaxation in legislation regarding what may be published from cases.<sup>6</sup> Such proposals remain controversial within family justice.
- 3.3 It is also the case that young people have not been consulted regarding information contained in judgments on Bailii – or for that matter, in Law Reports. It has generally been assumed that judgments are fully anonymised with priority in that exercise accorded to protecting the identity of any child involved. Anecdotally we know that when writing judgments for public consumption family judges try to take great care to ensure the identities of children are not revealed: what we have not asked is whether, in general, that works, or indeed meets the standards necessary for the protection of children in the contemporary climate of social media.
- 3.4 When a judgment has been delivered in private then made publicly available (e.g. on Bailii), the document also contains the following warning:
- 'This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.'*
- 3.5 As a 'disincentive' to the press and others with regard to potential breaches of children's privacy, the President and others have tended to argue that potential for contempt of court proceedings and the possibility of fines will preserve the anonymity of children and family members in any reporting.
- 3.6 Research evidence from young people indicates that they do not agree. First, they said that the threat of sanctions for a breach of privacy was a poor

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<sup>5</sup> President of the Family Division (2014) The Next Steps: A Consultation Paper [http://www.familylaw.co.uk/news\\_and\\_comment/transparency-the-next-steps-a-consultation-paper-issued-by-the-president-of-the-family-division-on-15-august-2014#.U\\_Hc4uPt98E](http://www.familylaw.co.uk/news_and_comment/transparency-the-next-steps-a-consultation-paper-issued-by-the-president-of-the-family-division-on-15-august-2014#.U_Hc4uPt98E)

<sup>6</sup> For example, as was suggested in Part 2 of the Children Schools and Families Act 2010; while these provisions (which resulted from the 'wash-up' period in Parliament and thus not tabled and debated by the House) were later repealed, 'uncommenced'; it is probably naïve to think that this issue will not be revisited following a decision on media access to certain court documents.

response to children's concerns – a lawyer's response to a failure of courts to protect them in the first instance. Second, they argued that once information is in the public arena, the damage is done – and information remains in the public arena for the remainder of a child's life – especially when it is available on-line. Third, they said that living with the fear of exposure of the most private and intimate details of their lives is an unacceptable burden for society and courts to place on already vulnerable children; such pressures are likely to have emotional and psychological implications for their future well being. Finally, they said that once informed about media access provisions in children cases, young people will disengage from the process; that has implications for the way in which courts and other professionals can proceed.

- 3.7 Young people were concerned that anyone reading a judgment – and with some local knowledge or a desire to identify a child/parent further or to at least indicate an area where a child/family live – may be able to do so from information in judgments. Young people have previously reported that the circumstances of many children in care proceedings – and indeed those 'looked after' by the state following proceedings – make them especially vulnerable. Some factors alone and some when combined with other information, permitted 'jigsaw' identification<sup>7</sup>.
- 3.8 As indicated above when children become the subject of state concern some features of their family life can render them relatively easy to identify in local communities.<sup>8</sup> For example, young people have expressed concern about parents with mental health problems; they fear such problems may become public knowledge in a way that the mental health problems of other parents are not – and where patient confidentiality ordinarily protects such parents, their children and extended families.

## **4 A PILOT REVIEW OF JUDGMENTS ON BAILII: AIMS AND OBJECTIVES**

- 4.1 The purpose of the pilot exercise therefore was to put young people's concerns to a test. It is one part of a further exercise exploring issues of accountability in public services (see Brophy J, forthcoming) in which an initial pilot on the risk posed to children by judgments was deemed necessary.

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<sup>7</sup> Guidance to the industry alerts journalists/editors to this issue; Channel 4, Producer's Handbook - Jigsaw Identification states: 'media organisations need to be careful of 'jigsaw identification', in other words one media organisation giving certain details about proceedings, but omitting others so as not to identify a juvenile, but other media organisations giving/withholding different information so that, when everything published is taken together, the juvenile is identifiable. In order to avoid jigsaw identification, the Press Complaints Commission's Editors' Code of Practice (applicable to the print media) states that in such cases: 'the child must not be identified; the adult may be identified; the word 'incest' must not be used where a child victim might be identified; and care must be taken that nothing in the report implies the relationship between the accused and the child.

(<http://www.channel4.com/producers-handbook/media-law/contempt-and-reporting-legal-proceedings/reporting-legal-proceedings>; Accessed July 2015). Despite guidance however there are examples of where parents and children have been identified locally following press reporting.

<sup>8</sup> It should be noted that over 40% of care cases are likely to involve parents with serious mental health problems (for a summary of available research on the profile of parents, see Brophy J (2006) Research Review: child care proceedings under the Children Act 1989. DCA Research Series 5/06.

[http://www.dca.gov.uk/research/2006/05\\_2006.htm](http://www.dca.gov.uk/research/2006/05_2006.htm)).



- 4.2 It was agreed between the President and young people that the best people to determine the degree to which children's privacy and safety might be compromised by judgments on Bailii, are young people themselves. They have local knowledge, experience of proceedings and firsthand knowledge of playground/youth/street culture – and the likelihood of information from judgments giving rise to ridicule, shaming and the humiliation of children. They also have knowledge and experience of the power of social media and social networking sites to place children at risk<sup>9</sup>. It was also acknowledged that young people have internet skills few adults can match. It was thus suggested that they should also search for any coverage of cases on social networking sites.
- 4.4 Young people (the 'investigators') explored geographical indicators in judgments, information on the health and social profile of parents (background, history, details of concerns/allegations contributing to failures of parenting), alleged harm to children and information about them (age, school issues, recreational activities and information about extended family members).
- 4.5 They also explored information about professionals in cases (social workers, guardians, probation officers, doctors etc.) and clinics and assessment centres, and the capacity of information to permit/contribute to identification of children.
- 4.6 Finally, young people searched for coverage of cases in online media sources (local and national print and other media). They also searched social networking sites (Facebook, Twitter, You Tube etc) for any coverage.

## 5 SAMPLE AND METHODS

- 5.1 Details of the young 'investigators', criteria for selecting judgments, the development of a schedule and analysis of views is detailed in Appendix I.
- 5.2 Eight young people aged between 17 and 25 years undertook two exercises reading and analysing 21 judgments on Bailii between 2010 and 2015 (Appendix I, Para A.7 for distribution across tiers of court). A review of the content of judgments was followed by a computer search for coverage of cases/judgment by the media and social networking sites.
- 5.4 A key issue for young people is that local knowledge by a person reading a judgment, or reporting from it, increases the risk of identification of the child/family described within it. The first stage in the selection of judgments therefore was to locate those with a geographical link to young investigators (by applicant local authority). Twelve such judgments were selected; each investigator took two judgments and with a support person read and discussed the judgment and completed a schedule. This (first) exercise took place on 16 April 2015. A second exercise with a further nine judgments took place on the 13 May 2015. The latter judgements could not be matched by location with young people; criteria for this and a further tranche are set out in Appendix I (Paras A5-6).

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<sup>9</sup> For their views and experiences see, Brophy J et al. (2010) The views of children and young people regarding press access to family courts. London: Office of the Children's Commissioner (England); Brophy J, with Perry K and Prescott A (2014) Safeguarding, privacy and respect for children and young people and the next steps in media access to family courts. NYAS – ALC.



## SECTION A

### THE LOCATION OF CHILDREN

#### 6.1 Initial geographical indicators

The first category of information in judgments with what might be termed, potential geographical indicators focused on the area where the child lived/resided for a period, information about a school and/or school issues, gender and age, information about the location of extended family members and about religious/cultural contexts.

#### 6.2 Location

Young people said most judgments (17/21) contained some information about the area where a child had lived/resided, for example, referring, to a specific town:

'....this child/parent lives in [town].....'

'.... [mother and child] moved to a refuge in [town] then in [town]'

#### 6.3 School attended and leisure activities

Where children were of school age very few judgments (one) contained information about the specific school attended or clubs/activities attended.

However some judgments contained information about the religious denomination of a school and on occasion, entry requirements (e.g. passing an 11Plus examination). Investigators said it was unlikely there would be more than one such school in each age range in an area (i.e. primary and secondary) and that information coupled with the age of the children would identify both their school and year.

#### 6.4 Problems children may experience at school

Investigators identified 9/21 judgments that referred to problems a child experienced at school; almost all investigators said this information should not have been published. For example, one judgment reported that a child had had a specified period of absence due to a parent's mental health problems; that information would make the child easily identified by peers at school and in his wider community:

'[30] days are mentioned and, you know, that if that [lad] was in your school everybody would know who [he] is...'

Judgment 14/Female, 17 years

'This judgment says since the [parenting] difficulties started this young person had [troubles] at school – so school friends could identify [her]'

Judgment 17/Female, 18 years

'This Judgment contains some specific information about the school and events – it's catholic, with a forthcoming sports event and [she] has '11plus' coming up: people in this school could identify this young person'

Judgment 20/Female, 17 years

## 6.5 Age of child(ren)/young people

All judgments gave the age of children but they varied in the detail provided; young people pointed out that many judgments listed children by an initial (adopting a letter such as 'X' or 'Y' etc) followed by their date of birth. Other judgments gave a child's age in years (rounded to nearest year) at the start of proceedings.

Investigators were strongly opposed to judgments giving a child's date of birth; for some children that information coupled with other details facilitated the identification of children. They questioned why a date of birth was necessary: 'what purpose does it serve in a public document?'

## 6.6 Information about extended family members

Most judgments (17/21) contained information about other family members. For example, siblings and step siblings and grandparents, aunts and uncles and partners and other family members not necessarily a party to proceedings.

Many young people were concerned about the capacity of this information to assist in jigsaw identification of children; they said some details about extended families should not have been published. Young people said relevance for inclusion, whether it was really necessary, and the detail of what was included – given its capacity to contribute to jigsaw identification – should be considered very carefully by judges. For example:

'There are bits of information about [other family members] – for example, the [previous] death of daughters in [another country] – and with details of ethnic identity added... [It makes them locally identifiable] – I am not sure this detail should be published'

Judgment 17/Female, 19 years

## 6.7 Information about religion/cultural contexts

Most judgments (16/21) did not contain information about religious or cultural contexts. Reviewers said this was a complex issue but generally they felt such details should not be published unless essential – and then with great care. In one case the reviewer said details on religion, coupled with the background and religious and cultural mores of the family - and a young person's reactions to these made this person easily identifiable in her community and school. The reviewer argued:

'...this [ethnic group] is a [fairly] small community and background details of the mother and father and religious conflicts... narrow it down instantly.'

Judgment 14/Female 17 years

## 6.8 SUMMARY

- Six judgments on Bailii (29% - 6/21) had at least four out of five ('4/5') 'within county' markers for the location of the child/family. Young people identified these markers placed children at high risk of being identified by peers at school and in local communities:
  - 5/6 such judgments included details of problems a child/young person experienced at school; investigators were strongly opposed to this information appearing in a public judgment; it made children very easily identifiable by their peers at school.
- Schools *per se* were not usually named in judgments but some schools could be identified by reference to other information. For example, religious denomination or school type coupled with a date of birth enabled identification of whether it was a primary or secondary school and also the child's year at school.
- Some judgments named towns where children had lived/resided; young people asked why that was necessary.
- Information about the location of extended family members (e.g. siblings, step-siblings, grandparents etc.) could also contribute to the identification of children and families in wider communities.

## SECTION B

### 7 DETAILS OF CHILD ILLTREATMENT

7.1 In exploring information in judgments about alleged harm and risks to children<sup>10</sup>, young people identified:

- **Neglect:** 9/21 judgments included allegations of physical neglect
- **Emotional abuse:** 9/21 judgments included allegations of emotional abuse
- **Physical abuse:** 5/21 judgments included allegations of physical abuse
- **Sexual abuse:** 7/21 judgments included allegations of sexual abuse
- **Other harms/risks of harm:** 6/21 judgments included additional harms; most of these (5/6 judgments) included allegations of male domestic violence.

7.2 As to whether/how this information should be published, some young people said that in principle they recognised a need for information about allegations of harm or risk of harm to a child (on which applications to courts are based). However, they all raised serious concerns about the level of detail included.

7.3 First, a group of young people said coverage in a public judgment should be restricted to relevance (i.e. to findings of fact and reasons for an order); however they expressed concerns about the level of detail of maltreatments – and whether and why that was necessary in a public document.

7.4 They referred to future risks to the privacy and the safeguarding needs of the children concerned. So for example, they questioned the need to use some of the 'technical' terms – and how young people themselves might feel reading such descriptions:

‘... I am concerned about ‘labelling’ [of children] and the details of ‘emotional abuse’; the judge should just put the kinds of medical attention needed to help the children through’.

Judgment 16/Female 19 years

7.5 Another young investigator said such labels could be very upsetting for a young person to read later in life. He understood why some information regarding harm had to be included, but for a *public document* he felt the impact on the child (in terms of confidence and self esteem and self worth) should be considered. He felt a summary using more general words should be considered to describe behaviours.

7.6 Some young people were shocked – some angry – about the level of detail of ill-treatment of children in a public document. For many it was the first time that

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<sup>10</sup> All public law judgments cited more than one form of maltreatment thus numbers will exceed cases.

they had seen a judgment: they had not realised the detail judgments contained about each episode of ill-treatment; they were visibly shocked such information should be in the public arena without the apparent knowledge of the young people concerned, or apparent thought as to how the information might be used or the future impact on the child/young person concerned.

- 7.7 Of particular concern were judgments in cases of alleged sexual abuse of a child/young person (33% - 7/21 judgments). Reading the detail, young people questioned whether judges recognised how such intimate, shaming details might be used in the public arena. They questioned whether detailed descriptions of sexual assaults on children were absolutely necessary in a public document, and whether judges, in describing each incident in graphic detail, thought about the fact that such details would be in the public arena for the rest of a young person's life with all the possibilities for humiliation, ridicule, grooming and exploitation of the child which such details could facilitate. For example in a case concerning the sexual abuse of a young woman of 15 years, an investigator argued:

*'.... [These details] allow identification of the child and family....it will impact on her life, her chances, her privacy...public exposure opens her to further shame and ridicule'*

Judgment 3/Male 17 years

- 7.8 It is worth noting that this judgment also contained four of the five potential 'within county' geographical indicators of the family (above, Section A). A key indicator was details of the problems the young woman experienced at school. The investigator said this information, along with others (e.g. number of children in the family, religious/cultural aspects, and her age) made her easily identifiable at school and in the wider community.

- 7.9 In a judgment concerning the sexual abuse of a younger child, an investigator raised concerns about the detail, and referring to other information in the judgment, he said:

*'....risk of identification of this child is increased because the [judgment] also says the mother's partner is a convicted paedophile for offences in [recent date]...'*

Judgment 7/Male 22 years

- 7.10 In a judgment concerning two children below 11 years, an investigator said the extent of detail about episodes of sexual abuse was particularly disturbing:

*'...yes the abuse is of course relevant to the case but there should not be so much intimate detail of all the episodes of sexual abuse [it is detailed in 12 separate paragraphs in the judgment] – could the details not be summarised with the [total] number of occasions? This level of detail and for each occasion is now in the public arena and for the rest of this girl's life'.*

Judgment 8/Male 22 years

Other young people made the same point about similar cases, for example:

*'..This judgment gives detailed historical information on the allegations of sexual abuse – **read the internet!** [For coverage of sexual abuse of children]. The judges should think about that – and think about the impact on the child here and just say something like... 'The mother made allegations about the father'; make it simple [say] for example, 'the mother can no longer look after her children due to [the] allegations'*

Judgment 20/Female 17 years

*'It should only say, the mother made allegations that the father was the sexual abuser of the child – it should only be very general information, not as detailed as in this judgment...'*

Judgment 21/Female 17 years

## 8 INFORMATION ABOUT PARENTAL PROBLEMS AND FAILURES OF PARENTING

8.1 Judgments in care proceedings set out the applicant local authority's concerns/allegations contributing to failures of parenting;<sup>11</sup> other judgments (e.g. in private law proceedings) frequently refer to the behaviour of a parent(s) and the impact on a child. Against a list of the dominant concerns/allegations in the profile of parents<sup>12</sup> young people identified the following features in judgments:

- **Mental /emotional health problems:** 7/21 judgments contained details of mental/emotional health problems of a parent
- **Drug/alcohol problems:** 5/21 judgments referred to drug/alcohol problems
- **Involvement in crime:** 7/21 judgments referred to a parent's involvement in crime
- **Unable/unwilling to protect a child:** 10/21 judgments referred to the inability/unwillingness of a parent to protect a child(ren)
- **Housing problems** (lack of stable home/constant moves): 5/21 judgments referred to housing problems of a parent(s)
- **Living conditions:** 3/21 judgments referred to the conditions in a child's home

<sup>11</sup> 8/21 judgments were based on other applications (e.g. s.34(4) – refusal of contact), committal proceedings, breach of publication restrictions, application for reporting restrictions, contempt of court proceedings – some of these also included allegations/harms to children at first instance.

<sup>12</sup> Established by research on care proceedings over many years (for a summary of research findings in this regard to 2006 see Brophy J ; see also Masson J et al 2008; it appears government has no further data on this issue despite a need for management information for courts identified by the Family Justice Review in its Final Report in 2011 (see, <https://www.gov.uk/.../uploads/.../family-justice-review-final-report.pdf>).

- **Domestic abuse in family:** 6/21 judgments included issues of domestic abuse in the child's household (most (5/6 cases) concerned male violence)
  - **Frequent changes of carer:** one judgment included concerns/allegations about frequent changes of carer for a child
- 8.2 When addressing whether these factors (and very specific details of each concern/allegation) should effectively be in the public arena, comments reflected an awareness of tensions in this field. Investigators were well aware of a need to demonstrate the reasons why children might be removed from parents. They were thoughtful and reflective about where the balance lay – at least for a public document.
- 8.3 In trying to balance issues, however, they always returned to the potential impact on children's safety and wellbeing of such information being placed on a public website. Looking across the information about concerns/allegations of failures of parenting and the detail included in judgments, young people felt the potential impact on children and young people had not been considered – or not considered sufficiently – by judges.
- 8.4 For some issues/allegations, young people were emphatic: for example, they did not want the detail of episodes of male violence towards a mother placed in a document meant for the public to read. Equally, they were shocked to find refuges where women and children had stayed identified by the name of the town.
- 8.5 Many did not want the detail of a parent's mental health problems made available for public reading. Others said this and other issues should feature only if they were essential to a finding of fact – and even then, for a public document they said a careful summary should normally be sufficient. Notwithstanding current reporting restrictions, young people said a parent's mental health problems and history should not be on public display.
- 8.6 Some young people recognised *some* difficulties for courts; they acknowledged some tensions: in effect, the judge needs to demonstrate the evidence on which the court is being asked to remove a child from parents, and show that children and parents are treated fairly – 'they are equal with the local authority' – and have had a fair and honest hearing. However, young people said in this endeavour had to be set against the needs of children for privacy and safety in the context of modern media and social networking.
- 8.7 They know family courts sometimes get negative publicity but they said judges have gone too far at least in public documents; they have not recognised the risks for children/young people when giving 'the family story' and providing intimate details of a parent's health and background. For example:
- Having a parent who has severe mental health difficulties – and where this featured in the neglect/mistreatment of a child who was then removed – carries a double stigma for a child/young person concerned.

- In some sectors of some minority ethnic communities mental health problems in a family carry increased stigma and shame – for a child removed from such a parent and for extended family members, community reactions can be severe.
- Having a mother who has been unable or unwilling to protect a child was 'bad enough', placing every detail of that failure in the public arena, 'and for all a child's life' is a grave decision.
- Describing in detail appalling conditions in a child's home could have far reaching implications for the young people concerned: such details are very shaming.

- 8.8 One investigator said that while a parent's housing problems, male violence and frequent changes of carer for a child were relevant to the case, other issues, in the end, were not: the young person added:

*'... Information about the parent's mental health problems was irrelevant and should not have been included...'*

Judgment 8/Male 22 years

- 8.9 In a complex case, one investigator referred to a whole range of concerns/allegations in the judgment (a parent's mental health problems, involvement in crime, inability to protect a child, housing problems, conditions in the child's home, and male violence): he could see how some were relevant but for others he was not sure. In particular he thought that details of a parent's involvement in crime – and reporting from criminal proceedings, in which adults are named – could lead to a breach of confidentiality for the children. He wondered who was taking responsibility for that<sup>13</sup>.

- 8.10 As well as concerns about the impact of publication on children themselves, one investigator had a concern about balance and fairness in a judgment:

*'If I read this [degree of] information about [my parent's] mental health problems and ...male violence I would not want to see them again!...and references to criminality, details of convictions recorded – and an inference that the young person could become a criminal delinquent ...The judgment also talks about a parent's mental illness but does not qualify this...and references to drug use – I think it lacks balance and fairness'.*

Judgment 11/Female 25 years

- 8.11 In another judgment where the profile of a parent contained most of the key allegations/concerns implicated in failures of parenting (5/8), the young investigator said most of the detail in the judgment carried risks for all the young people concerned:

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<sup>13</sup> Judgment 10/Male 18 years.



*'Details of the parent's mental health problems could harm the children later in life. For example, public knowledge that they came from a family with a history of mental illness could impact on their work life. Details of the [parent's] abandonment of the children to go out drinking could also impact on their employment prospects...the mother and children were also moved between refuges...that could see this family identified and targeted...'*

Judgment 17/Female 18 years

- 8.12 Key to young people's concerns about judgments was the sheer detail of the problems and failures of parents – and how failures were worded, and thus the potential impact on the children – at the time of publication on Bailii and later in their lives. They felt that these factors seem to have been missing in a consideration of how judgments – for public consumption – were drafted.
- 8.13 In addition to some specific information and some information permitting jigsaw identification (see below), relevance, context and *necessity* of details were all points of concern to young people. Even where relevance of a factor was demonstrated to the satisfaction of investigators, they said that did not absolve the judge of responsibility to consider specifically, the degree of detail *necessary and appropriate* in a document that could be read by anyone.
- 8.14 They said that when drafting judgments for publication on Bailii, consideration of the degree of detail necessary must include the potential impact of the detail on the children concerned. With an eye to negative messages about children 'in care', young people were concerned about the potential impact of details on a young person's future prospects. They returned to issues of applying for a job, undertaking voluntary work, applying for college etc. and to the emotional and psychological impact on a young person of knowing intimate and shaming information remained available to anyone using a search engine in the internet.
- 8.15 They said judges need to be more aware of information technology; details of a parent's mental health problems, drug/alcohol problems and domestic violence and intimate details of child abuse can go viral 'at the click of a button'. When drafting judgments, that possibility has to be a part of the balancing exercise to determine the detail necessary. For the Bailii website at least, a summary of aspects of the case should be considered.

## **9 POTENTIAL FOR JIGSAW IDENTIFICATION: DETAILS OF HARM, FAILURES OF PARENTING AND AREA INDICATORS**

- 9.1 Five judgments addressed alleged sexual abuse of children/young people: as indicated above (Section A), investigators identified that one such judgment also contained four of a possible five (4/5) features which gave indications of the area where a child/family<sup>14</sup> lived/had resided. Another judgment contained 3/5 indicators, another, 2/5. Combined, these features substantially increased the

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<sup>14</sup> Indications of the area (town), information about extended family members, problems experienced at school, date of birth and information about religious/cultural contexts.

risk of identification of children and families within local communities – and beyond.

- 9.2 Nine judgments included allegations of the physical abuse of a child: four of these contained at least 3/5 area indicators, three contained two indicators.
- 9.3 Details of the problems and failures of parents also provided opportunities for jigsaw identification of families and children. For example, as indicated above seven judgments included parents with mental health problems, two of these judgments also contained 3/5 area indicators; a further four included two such markers.
- 9.4 A further feature of judgments concerning a parent had mental/emotional health problem was that most (5/7) also addressed involvement in crime, domestic abuse and drug/alcohol abuse. Young people said these issues made families all the more vulnerable to identification. For example, reporting of criminal proceedings could put children at risk; while they were not named, reports could, for example, identify the (named) defendant as '...a father of three from the [Stockport] area'. Male violence in this group and the placement of children and mothers in refuges (in named towns) also increased children's vulnerability to identification. Where any male violence was cited (six judgments) four also contained at least 2/5 additional area indicators.
- 9.5 In judgments that included a parent's inability/unwillingness to protect a child (10 judgments) 4/10 judgments contained at least 3/5 area indicators, 4 included two.
- 9.6 Naming the applicant local authority (para 11.2 below) identifies the county/borough in which a child/family usually resides. This covers a wide geographical area but other information in judgments can narrow the field considerably, and some details, alone or combined, permit children to be identified.

## 9.7 SUMMARY

- Most young people had little or no idea of what was contained in judgments on Bailii – and for most, what they found was a shock. Judgments contained difficult, deeply embarrassing, shaming and damaging information about children's lives; that such information was effectively *already* in the public arena for anyone to read was distressing – many felt let down.
- Young people were well aware of a need to demonstrate why a court may remove children from parents and that it has held local authorities to account for their actions. What they questioned was the degree of detail in judgments on child ill-treatments and failures of parenting and how much of the 'story' was necessary and appropriate.
- Relevance, context and *necessity* of information were central to their responses to information in judgments that are now easily 'readable' on the internet – and always with a view to the potential impact on the child.

Overall, they felt judges had lost sight of the child and their immediate and longer term needs.

- In particular they questioned the necessity of so much detail on the sexual abuse of children – and a seeming lack of thought by judges about how some appalling details might be used. They questioned whether judges were really aware of the amount of material on the internet about the sexual abuse of children – and issues of targeting and grooming of children in the care system.
- Information about harms to children may make them vulnerable to identification and to further abuse; details addressing problems and failures of parenting coupled with area indicators (e.g. towns named, school problems discussed, children's dates of birth) narrow the field considerably permitting some children to be identified.

## SECTION C

### 10 APPLICANT LOCAL AUTHORITIES, COURTS AND PROFESSIONALS

#### 10.1 Identifying the court

All judgments identified the name and address of the court hearing the application, and when hearing appeals, the court of first instance<sup>15</sup>. Seven investigators raised concerns about this information: it provided further geographical indicators for the family.<sup>16</sup>

#### 10.2 Naming the applicant local authority

Almost all judgments resulting from a local authority application named the authority – directly, or by way of listing advocates for each party. A small number of judgments (3) simply referred to 'the local authority (cover page noting 'Between A Council – and – etc) and within the judgment referring to the views and evidence of the applicant as 'the local authority', or 'the LA'.

In six judgments young people said the local authority should not have been named, in a further eight judgments young people raised concerns about naming the local authority. In the remaining cases young people referred to the risks involved: it provided another indication of the area where a child/family lived/had resided.

#### 10.3 Naming professionals in judgments

Some cases predate Practice Guidance on naming public bodies, professionals and experts in judgments<sup>17</sup>, young people identified variations in practices:

- 8 judgments named one or more social workers
- 5 named the child's guardian
- 5 named a doctor(s)
- 8 named other professionals/agencies

#### 10.4 Who was named?

Within individual judgments, one judge named the social worker, the team manager, the person who had undertaken a parenting assessment, the child's guardian and clinical experts (a psychiatrist and a psychologist); another named three social workers, a doctor and other professionals but not the guardian; a further judge named two social workers and the child's guardian, while another

<sup>15</sup> That is, the first (trial) court hearing an application and before any appeal.

<sup>16</sup> One person said the court should be named; one said the local authority should be named.

<sup>17</sup> The Practice Guidance (Jan 2014) states public authorities, professionals and expert witnesses should be named (unless there are compelling reasons to the contrary). While historically most professionals and experts were not routinely named, s12 of the Administration of Justice Act 1960 does not protect everyone in proceedings. Alongside attempts to change practices, in a brief resume of recent cases in 2010, Munby LJ (as was) indicated at that point that public agencies, professionals and treating clinicians and expert witnesses cannot expect to obtain injunctions to protect their identities (ALC Hershman Levy Memorial Lecturer (Lost opportunities: law reform and transparency in the family courts, Birmingham, 2010).

judge named the social worker, the manager of a family assessment centre, an expert and a probation officer – but not the guardian.

### 10.5 The court's evaluation of the work of professionals/agencies

Young people identified that overall about a third of judgments (7/21) contained criticisms of the work of professionals/agencies: these included social workers, local authorities, children's guardians, a judge, magistrates, the manager of a family assessment centre, an expert witness and a McKenzie friend<sup>18</sup>. A small number of judges (4) praised the work of a person/agency in a judgment; these included a social worker, the manager of a family centre, a child's guardian and a probation officer.

### 10.6 SUMMARY

- Naming the applicant local authority provides geographical boundaries to the location of children and families. Adding the location of the court can increase levels of anxiety for some young people (naming judges also assists in narrowing the geographical location of a case – since it is possible to search and find the location where a judge is normally deployed).
- Most young people addressing this type of information in judgments said social workers, guardians and doctors should not be named. Equally they did not want the names of other professionals/agencies (teachers, health visitors, probation officers and clinics and family assessments centres) to be published. This also increased anxieties about identification of children.
- Reasoning focused on risks to the privacy of the child and family concerned and an increased potential for jigsaw identification. For example, they said social workers may be known in local areas where they work in teams/area offices; naming family assessment centres and clinics also indicated a likely catchment area.
- Issues regarding judicial comment on the work of work of professionals/agencies did not determine whether young people thought their names should be published; concerns focused on the contribution of this information – whether critical or complementary – to jigsaw identification of children.

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<sup>18</sup> A McKenzie friend assists a litigant in person in a court of law in England and Wales. This person does not need to be legally qualified. The key point is that 'litigants in person' are entitled to have assistance, lay or professional, unless there are exceptional circumstances.

## SECTION D

### 11 INFORMATION YOUNG PEOPLE THOUGHT SHOULD BE PUBLISHED AND WHAT THEY LIKED

11.1 Three judgments contained some information young people thought should be published:

- In one judgment the judge discussed risks to the child of public identification from the judgment
- In another, the judge acknowledged that a parent's housing problems were implicated in her inability to protect children
- In a further judgment the judge castigated a local authority for lack of diversity awareness, a poor assessment and treatment of a parent from another culture

11.2 About a quarter of judgments (5/21) contained information which investigators said they liked, for example:

- one demonstrated fairness in the approach of the court
- one discussed issues of long term harm to a child
- one judge severely criticised a local authority for ignoring relevant cultural and language contexts; the authority needed to look at its diversity training
- a further judge noted there were conflicts regarding privacy issues and risks were involved in publishing a judgment.

#### 11.3 SUMMARY

- While there was information in some judgments (about 25%) which young people liked, there was very little that young people felt should be in the public arena.
- In identifying features they liked in judgments, young people focused on giving wider debate to the risks to children of publication of judgments, the need for diversity training in a local authority, and the contribution of socio-economic factors to a failure of parenting.

## SECTION E

### 12 OVERALL, DID INVESTIGATORS THINK CHILDREN/YOUNG PEOPLE DESCRIBED IN JUDGMENTS COULD BE IDENTIFIED BY FRIENDS, PEERS/OTHERS AT SCHOOL AND IN THEIR COMMUNITIES?

12.1 As indicated above (Sections A – C) when discussing the detail of ill-treatments of children and the failures of parenting and when coupled with certain area 'indicators' in judgments, young people said some children could be identified.

12.2 In addition to the overall potential for 'jigsaw' identification (see Para 15.1 below), young people said 13/21 judgments contained specific information which would permit children to be identified. For example:

- One judgment identified the number of children in a family [several] not subject to proceedings but a teenager who, amongst other things, was described as resistant to religious/cultural pressures. The judgment detailed this resistance (e.g. in choice of clothes). The investigator said her peers and community would easily recognise her from the details.
- A further judgment gave the address of a party and described work and living arrangements.
- Another gave named a town, gave information about a half-sibling [with age]. It also identified that she lives with grandparents and a further sibling, also giving her age. This household will be known locally.
- Another stated a child's specific period of absence from school. The investigator said 'peers at school will know this child'.
- Another identified that a mother went to a [named] prison for [specified number of] days: the investigator said the local community would know this.
- A further judgment stated the family originated from [African country] with other very specific information about their history; this made them identifiable locally.
- Another gave the children's initials, dates of birth, the name of two towns where they had resided, details of an accident in which a relative died, and the names of towns where mother and children were placed in refuges.
- Another states the mother is from [town] and the grandmother is from [town].

- A further judgment contained extracts from a social worker's statement which the young person investigating described as '...far too personal'
- Another gave the name of a grandparent and actual initials of a child
- And another gave the address of a grandparent.

12.3 A further four judgments contained information young people thought *might* permit children to be identified, for example:

- One judgment contained information about the 'race' of children, adoption issues and likely problems: these were older children who could be identified locally: 'their friends would recognise them'

## 12.4 SUMMARY

- While there was information in some judgments (some 25%) which young people liked, there was very little that young people felt should be in the public arena.
- In identifying features they liked in judgments, young people focused on giving wider debate to the risks to children of publication of judgments, the need for diversity training in a local authority, and the contribution of socio-economic factors to a failure of parenting.
- Young people identified some specific information in judgments which identified the county and area where children/families live; investigators said this information put children at risk of identification.
- While some of these 'identifiers' are arguably errors in the anonymisation process, indications for the 'direction of travel' for such errors in a larger sample are worrying.
- Some information which young people saw as problematic however has been routine in the construction of judgments and law reports and is seen to serve key purposes in the delivery of fair, impartial and accountable family justice. This presents some challenges to judicial and other thinking.



## SECTION F

### 13 COVERAGE OF CASES/JUDGMENTS BY THE MEDIA AND ON SOCIAL NETWORKING SITES

#### 13.1 Searching for coverage of cases: words, phrases and information used to explore whether any details from judgments appear on the internet

- 'Indecency against stepfather' [town]; [X] year old girl makes indecency allegations; sexual abuse allegations. Listings 'who's been in court'
- [Header for local newspaper column].
- Sexual offences, Mr [name], Lucy Faithfull Foundation, [child's date of birth].
- Address [of a father] where sexual abuse took place.
- Man given six years for sexual assault; Purple Residential Centre and [named professional]; court case number and dates, name of court.
- Court date and number, domestic violence, MB [name of town] Case Reference [covered in Family Law Week by an advocate].
- Dog attacks [named person] plus [name of town] plus [name of mother] and memorial page.
- 10 year old [gender] [dancer] from [town] date.
- Mother of two [name of town] [name of Prison – [Dad]
- Death in [name of town]; father assaults and criminal damage in [towns]
- Searched by name of all professionals and agencies named in judgment; [African] mother leaves children alone in [town]; Mother arrested for leaving minors with older sister in [town]
- [Name of mother] – party to proceedings
- [Name of mother] and by newspaper column headed: 'Who's been in court'

#### 13.2 What did young people find: reporting in local, national and on-line newspapers/magazines sites?

Young people found evidence that some 24% of judgments (5/21) were reported in the mainstream media (local, national newspapers, on-line newspaper sites, news programmes, professional journals):

- Two judgments found on commercial family law sites which also cover law reports in the family jurisdiction
- BBC News and National Newspapers (e.g. The Daily Mail, The Sun)

- Small piece in a commercial on-line law site (eulaw.co.uk/news/children-returned-to-mother's-care-following-local (under 'related news'), placed by [named] representative.
- Extensive coverage of this case on the web and on-line print media sites (The Daily Mail, The Mirror, and The Telegraph).
- Coverage on online newspaper sites.

### **13.3 What did investigators think about any coverage in the mainstream media (e.g. was it fair, accurate, helpful/informative)?**

- Bailii judgment was also published in an on-line law journal: it repeats the judgment – with an added Head Note.
- Coverage of any criminal proceedings found did not actually mention care proceedings but coverage gave indications of children, for example: one said the case 'involved four children' and another, '...the accused has children'.
- Some on-line newspaper coverage was 'very biased' [towards mother].
- BBC coverage was 'more balanced'.

### **13.4 Did young people find evidence that information from judgments was shared on social networking sites?**

- Young people found information on social networking sites from about 33% (7/21) judgments.
- Coverage on Facebook page included details from the judgment and a picture of the child.
- Coverage on a grandmother's Facebook page included images and a name – 'the child can clearly be identified'.
- Google search highlights information on the family, names of judges, the solicitors acting for parents and involvement with the police.
- Case details on a Memorial Facebook page and on eldest daughter's Facebook page.
- Coverage on grandmother's Facebook page; she gives the name at least twice; she also 'published a name and photo three months after a judgment in which she was ordered to remove the materials'.
  - The young investigator reviewing this judgment, matched by local authority area, discovered she also knew this grandmother.
- Substantial coverage of this case appeared on social networking sites, for example, the website of a McKenzie friend, several Facebook pages, twitter feeds, websites of friends of a party. One site set out text claiming

it to be police transcript of an interview with the child following allegations of sexual abuse.

### 13.5 What did young people think about what they found on social networking sites?

- Coverage breached children's rights to privacy; in some instances they were named, family members were also named and photographs of children were posted.
- Coverage on a social networking site includes materials which put a child at serious risk following allegations of sexual abuse; intimate details and what appears to be a photograph of the child are posted remaining there indefinitely.
- Coverage was very biased towards [mother].
- All this information will now be available to anyone searching the net; further and more specific details can then be accessed by searching Bailii for the full judgment giving details of the abuse of children, failures of parenting and their background and health, along with some details of other extended family members.

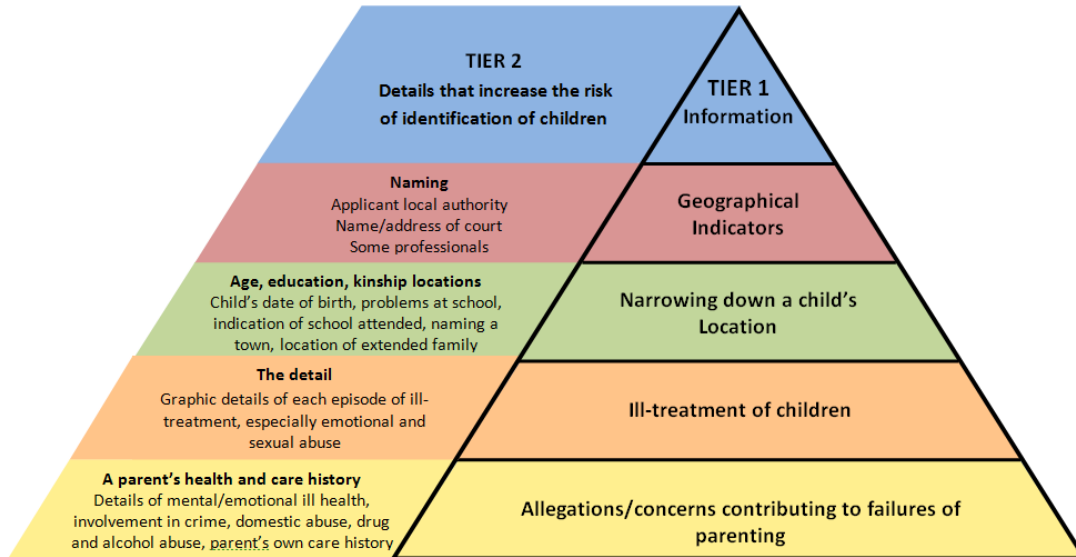
### 13.6 SUMMARY

- Information from judgments (terms, towns, dates, ages, types of abuse, some names, some failures of parenting/parenting behaviour) enabled young people to find coverage in on-line local and mainstream newspaper sites and on social networking sites:
  - they identified coverage in local and national mainstream newspaper/media sites from 24% of judgments (5/21);
  - they identified coverage on social networking sites for 33% of judgments (7/21). Materials on social networking sites (e.g. Facebook pages etc.) identified children and other family members and some also contained photographs of children.

## 14 CONCLUSION AND RECOMMENDATIONS

### 14.1 Geographical 'indicators' and sensitive information

- It might be helpful to think about the ease with which children and families in a Bailii judgment can be identified in terms of 'tiers' of information each with 'layers' of detail which pose risks and can contribute to 'jigsaw identification':



- Tier 1 information** (the right hand pyramid above): naming the applicant local authority provides geographical boundaries within which a child and family usually live.
- Naming social workers can narrow down the area.

### 14.2 Tier 2 information (left hand column above) supplements Tier 1 with a series of 'layers' of information from the judgment

- Naming the court hearing an application (the trial court) in many (but not all cases) confirms the child's county boundaries. When coupled with naming the trial court this increased anxieties about loss of privacy and safeguarding concerns.
- Indications of the location of a child(ren)/families 'within county', for example, where a town is specified and/or when the location of extended family members is mentioned increased risk.
- School issues/problems and school type/preference, and where this is supplemented with a date of birth, enabled both the school and the year of a subject child/young person to be identified; this was especially problematic and deemed high risk for children.

### 14.3 Substantive information about ill-treatment of children and failures of parenting

- It is fair to say that in endeavours to protect the reputation of family courts and in exerting pressure on judges to increase the number of judgments posted on Bailii, the views of subject young people (and indeed other professionals in the family justice system) were not sought.
- It is perhaps therefore not surprising that few young people had any idea of what was contained in judgments on Bailii and were shocked by the level of detail found. Judgments contain difficult, deeply embarrassing, shaming and damaging information about children's lives with details which reflect aspects of their own background; that such information was effectively *already* in the public arena for anyone to read was distressing – many felt let down by judges.
- **Tier 2 information** (left hand column above) focuses on details of ill-treatment of children. In particular young people questioned the necessity of so much detail on the sexual and emotional abuse of children/young people – and a seeming lack of thought by judges about how details might be used. They questioned whether judges really were aware of the amount of material circulating on the internet about the sexual abuse of children and targeting and grooming of children – especially those in the care system, and thus how such explicit details from judgments might be stored and used.
- **Tier 2 information** also focuses on the history, problems and failures of parents. Most cases were complex; so for example, where a parent has a mental health problem most judgments also addressed involvement in crime, domestic abuse and drug/alcohol abuse. Young people said these **layers** of detail made families all the more vulnerable to identification. For example:
  - Reporting of criminal proceedings has potential to put children at risk of identification: while children were not named coverage could identify the defendant as a father – perhaps with the number of children.
  - Male violence and placement of children and mothers in refuges (in named towns) increases further a child's vulnerability to identification.
- When features in the profiles of parents and children are 'jigsawed' with geographical indicators, potential for peers, communities and others to identify children increases substantially.

### 14.4 'Necessary' and 'appropriate' information for Bailii judgments

- Young people were well aware of debates in this field including concerns to demonstrate why a court may remove children from parents and that it has

held applicant local authorities to account for their actions. What they questioned was the degree of detail on child ill-treatments and failures of parenting in public judgments and how much of that 'story' was *necessary and appropriate*.

- Relevance, context and *necessity* of information being published, were central to views about information on child abuse in Bailii judgments, and always with a view to the potential impact on the child, and given modern media and social networking sites – how appropriate it was.
- Overall, young people felt judges had lost sight of the child and their immediate *and* long term needs: they felt that for general public consumption certain details regarding child ill-treatment and failures of parenting should be covered in a summary.
- In particular they said the test of 'necessity' should be applied to coverage of a parent's background and health history.
- As with previous work in this field, young people indicated children require a chance to address these difficult issues privately and therapeutically, not through the media or social networking sites.

#### 14.5 The format and detail of judgments for Bailii

- Given that the judgments published on Bailii are not official law reports and do not create legal precedents, can and should they be different with regard to the level of certain details, to law reports?
- Would a summary of certain areas suffice, at least for initial publication, perhaps with a full judgment left on file for future reference? Would a carefully drafted summary reduce the capacity of people reading it to understand how decisions are made in the vast majority of cases? In view of the magnitude of the issues raised by young people, that would make a very useful pilot exercise: such work also to address the resource implications therein.
- Judges, of course, are acutely aware of the need to give detailed judgments to demonstrate how a decision is reached – and with an eye to potential appeal. The increase in cases involving litigants in person and appeals therein has arguably increased that pressure: that is perhaps inevitable in a system that fails to hear from the trial judge (other than in the form of the first instance judgment) but there may be other options that could usefully be explored in this regard.

#### 14.6 Law reports

- Findings also raise questions as to whether law reports would also benefit from a review of anonymisation practices. This is a complex issue and as indicated above, law reports serve a different primary purpose. It is the case that such judgments, in some key respects, are not representative of

the majority of children cases heard in family courts but it is also fair to say that such reports have not been considered in the context of media and social networking technologies and reporting, and the potential impact on children where anonymity, however inadvertently, is breached.

#### **14.7 Coverage of Bailii judgments in mainstream media outlets**

- The implication or 'direction of travel' is that just under a quarter (24%) of Bailii judgments are likely to be covered in some way by local/national media outlets. Some may also be repeated on on-line legal professional websites but reproduction here was small.
- Coverage of related/concurrent criminal proceedings did not mention care proceedings as such but could indicate the accused has children. Even without children's names, young people said local people would know the accused – and thus their children.
- Some young people said some newspaper coverage was 'very biased'; some BBC coverage was thought to be 'more balanced'.
- It should be noted that the 'educational' content of mainstream media coverage was at best, very limited. It might be argued that limited coverage is due to the limitations on what may be published – at least from a commercial perspective. However this rather misses a key point made by young people: even where the detail of some intimate and shaming information is not published in newspapers at the time, it remains available (on Bailii and other websites and PCs – since judgments can of course be downloaded) – indefinitely, rather like the 'sword of Damocles' hanging over children for the remainder of their lives.
- With regard to any further relaxation of the rules on what may be published from cases, the above exercise indicates this will be at best a complex undertaking; it is likely to present yet further risks to children. As indicated herein, details already published by Bailii permit some jigsaw identification of some children and families. This presents the President – and Parliament – with a dilemma as to whether to revisit the rules and if so why.

#### **14.8 Coverage of judgments on social networking sites**

- Young people identified slightly more coverage of judgments on social networking sites; the 'direction of travel' suggests about one third of cases (7/21 cases).
- Young people were clear that the sites they found and information contained therein, breached children's rights to privacy and presented safeguarding risks. In some instances children were named, as were some family members and photographs of children appeared. In one case intimate details of the case were also posted posing safeguarding concerns for the child concerned.

- Children can be identified locally, and with public access to the Bailii judgment (albeit not suggested by authors of Facebook pages /Tweeters or indeed mainstream media) further details can easily be found therein. Details on sites remain available indefinitely.
- Some postings appear to result from/coincide with newspaper coverage; many were posted by a parent/family member/friend, some a combination of sources.
- This is a pilot exercise with 21 judgments and web searches, and within a limited time frame, but the 'direction of travel' is worrying:
  - Results confirm the views of young people in research and consultation exercises: vulnerable parents (and others) in family proceedings cannot be trusted to put their children's needs for privacy and safety before their own views/concerns in times of crises. Children therefore look to family courts to protect them; indications are despite best intentions, anonymisation of some judgments posted on Bailii can fail in that endeavour.
  - The concern of young people about the sharing of intimate identifying information about children from judgments and media coverage to social networking sites is justified. Some information in judgments permits a narrowing down of the area where child/families live, some details about child maltreatment and failures of parenting may further reduce their privacy, and they say the detail is deeply shameful and damaging to the children concerned, some raise serious safeguarding issues.

#### 14.9 Increasing debate, information and remedies for children

- While publication of some information identified herein may be contempt of court, in practice as a disincentive, the indications are that it is not working well. It is also of little value to young people and the dangers they face. Once the information is published, the damage is done.
- It should also be noted that in practice people face difficulties in securing legal aid for such matters, as well as increasingly limited local authority legal budgets for such measures.
- A key question is how are young people to know that there is a legal remedy for breaches of confidentiality in relation to sensitive information and how to pursue that remedy – however limited it is in terms of their own concerns and fears? How is any damage to be remedied if young people only realise later in life, that any damage has been done, for example, in relation to information emerging in the context of a job application.
  - It should be noted that indications (from local authority policy and practice to that of Cafcass, and feedback from child care lawyers and social workers) are that young people in proceedings are simply not



told about the potential for written judgments to be published, what they will contain or about media attendance and reporting of cases.

- As indicated by young people, this is a breach of their rights to information under Article 12 of the UNCRC.
- With regard to the mainstream media, the content and control of reporting in national newspapers is often governed by multi-national corporations where viewing figures and advertising revenue play a substantial role. Moreover, many news organisations regard themselves as 'digital first' media (i.e. websites that also print newspapers, rather than the other way round); and the articles published on their websites are 'searchable', available to read indefinitely. Stories have to attract high levels of readership, in print or online, in order to sell advertising space. It is a different industry to that of some forty years ago regarding the type and content of reporting. Despite early claims made by some lawyers and politicians about a public education role for the media, it is now broadly acknowledged such claims are at best limited. And some now argue that it is not the role of the press to 'educate' the public, nor is it the role of judges to demand accuracy in reporting.
- It has also been argued that courts have no options or control over what people place on social networking sites. And in the case of litigants in person there are gaps in information as to whether/how parents are informed as to rules regarding information sharing during proceedings, and potential dangers for their children of placing information social networking sites once proceedings are concluded.
- Many if not most people's lives are shared (some argue dominated) by smartphones facilitating high quality digital options for sharing information, photographs and videos – not simply with family and friends but with the general public – and at a single swipe.
- As others have argued<sup>19</sup>, this technology has created a new dynamic to how information is shared which increases the scope for abusive, controlling, vengeful behaviours. So for example, with regard to what has been termed 'revenge porn'<sup>20</sup> lawmakers around the world are said to be scrabbling to play catch-up with technology in the face of intimate photographs shared with strangers – and with a potential for these to re-surface years later.
- Some states have moved to outlaw so-called 'revenge porn'; England and Wales joined this movement with s.33 of the Criminal Justice and Courts Act 2015 (CJCA 2015) (disclosing private sexual photographs and films with intent to cause distress).

<sup>19</sup> See for example, Ricci A, Pinborough J and Rideout F (2015) Malicious use of intimate images: the problems and some practical and legal remedies. Family Law Week, 31 July

<sup>20</sup> Generally taken to mean the growing problem of sharing sexually explicit images and information without the subject's consent and with the aim of causing embarrassment, shame or distress; it can also be used to threaten and control people.

- In the family jurisdiction young people demonstrate that the scope for abuse of intimate information derived from cases is wide and its effects can be devastating, creating opportunities for bullying and humiliation. For victims of emotional and sexual abuse, fear of further sexual exploitation may make it difficult if not impossible for them to speak out. As with 'revenge porn', materials relating to abuse in childhood can be distributed years later (or threatened to be distributed) causing young people to re-live painful memories and experience a different form of abuse.
- There are some apparent contradictions in that Parliament has introduced provisions to protect adults where materials are circulated on social networking sites and in circumstances where many may have consented, at least in the first instance, to the making of sexually explicit materials, while judges in the Family Court are potentially publishing sensitive information that is equally damaging to children who are subject to care proceedings.
- These data – albeit based on a pilot – indicate some rethinking about would be helpful. This is not to argue that s33 of the CJCA 2015 easily lends itself to the circumstances of children in proceedings as described above: it does not and there are some obvious difficulties, not least regarding issues of prior 'consent' and 'defence to charges'<sup>21</sup>. However, the potential impact is the same: bullying and humiliation in the short and longer term, and for victims of emotional and sexual abuse, fear of further targeting and sexual exploitation – perhaps years later.
- With regard to 'revenge porn' attempts being made to assist adults to have certain images removed;<sup>22</sup> there is also an initiative aiming to block some images (e.g. those held by sexual offenders) identified by a 'hash code' and to prevent them from being uploaded<sup>23</sup>. It is surely important that in these endeavours the issues and risks to children arising from materials posted from family proceedings should not be left out of policy remits and technological developments in this field.
- Ideally, had resources permitted, it would have been useful also to review relevant case law regarding s12 of the Administration of Justice Act 1960 and s97 (2) of the Children Act 1989. In the absence of that 'luxury', it might be helpful at least to speculate on how some of the findings to date 'engage' with current thinking and guidance on restrictions that can be placed on reporting cases at the conclusion of proceedings.
- Two important early judgments were *Clayton v Clayton* [2006] EWCA Civ 878 and *Norfolk County Council v Nicola Webster and 5 Others* [2006]

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<sup>21</sup> For example, prior consent – without the consent of the individual, and with the intention of causing that individual distress (s33 (1) (a) and (b)); defence to a charge - disclosure made in the course of, or with a view to the publication of journalistic material and a reasonable belief that in the particular circumstances, publication of the journalistic material was, or would be in the public interest (s33 (4) (a) and (b)).

<sup>22</sup> Ricci et al (2015) (note 19 above) helpfully set out developments such as the National Revenge Porn Helpline and developments from Google regarding swift removal of non-consensual images from internet searches. As young people identify, the success in the latter exercise remains to be tested.

<sup>23</sup> Claire Lilley, Safety on Line, NSPCC: new 'hash list' initiative, Today, Radio 4, 14 Aug 2015.

EWHC 2733. In the former case the (then) President (para 51) and Wall LJ (as was) were sceptical about a need to protect the child's identity post proceedings. As to this issue in more general terms, Wall LJ said (para 145):

'...it would plainly be sensible for every court, at what it perceives to be the conclusion of proceedings under CA 1989 to take a few moments to consider whether there are any outstanding welfare issues which require a continuation of the protection afforded during the pendency of the proceedings by CA 1989, section 97. My impression is that there are **unlikely to be many cases in which the continuation of that protection will be required** [emphasis added]: such considerations are, however, in my view best addressed at the time when the parties and their advisers are still before the court at the final hearing'

- In the latter case Munby J (as was) argued Wall LJ was referring to the harm that would result from identifying a child as having been involved in proceedings and asks:

'Why it should be assumed to be harmful to a child to be identified as being currently involved in proceedings? The court will in future need to be satisfied that harm is a likely consequence of identification'.
- Advocates in turn have argued that some may be deterred from making applications for protection of privacy, which may be viewed as speculative in nature and by the risk of having to pay the costs if unsuccessful<sup>24</sup>.
- A number of issues should be borne in mind:
  - Social networking sites (e.g. Facebook) were not commonplace at that point (the network being extended beyond academic institutions to anyone with a registered email address in the autumn of 2006).
  - Courts in those early cases did not have the benefit of access to research on children's views and experiences about loss of privacy and likelihood of bullying and humiliation or some of long term fears and risks where, for example, children have been sexually abused. Equally the extent of cyber bullying of young people was not well known.
  - In 2006 there was also little hard information on organised targeting, grooming and sexual abuse of young people in the care system. That is no longer the case and concerns therefore no longer simply speculative.
- Equally research demonstrates that vulnerable angry parents do not/cannot always put their children's interests before their own or think about the immediate and longer term impact on children of breaching their privacy. In

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<sup>24</sup> It is worth noting that we lack data on whether change of practice in interpretation of s.97(2) CA 1989 is putting some young people at serious risk or the number of applications for extended protection which are refused.

the interceding nine years the scope of new technologies facilitating the sharing of materials (text, photographs, videos) with family, friends and others has expanded beyond most people's expectations.

- Young people have done sufficient herein to demonstrate how children can be identified even when judges aim to protect them. They demonstrate that issues for them go far beyond simply being identified as being involved in proceedings but rather to deeply personal, damaging details about their lives being placed in the public arena – whether by the press, parents or others.
- In 'rethinking' some of this and ongoing protection for some children, it might be helpful in policy development and in everyday practice, for judges to reflect – as the President himself did recently (Re X (Children) Re Y (Children) [2015] EWHC 2265 (Fam)) – on the observations of Lord Eldon LC (on Wellesley v Duke of Beaufort (1827) 2 Russ 1, 18):

*'It has always been the principle of this court, not to risk the incurring of damage to children which it cannot repair, but rather to prevent the damage being done.'*

- For the avoidance of doubt, this is not about blanket decision making in all circumstances but rather that the court remains open to the available evidence – including research evidence, on the real risks to children and young people in the media and social networking realities of today.

#### 14.10 Ways forward

- Providing a **summary** of certain sections of certain judgments - at least for the public arena - presents a challenge, at least for ideological shifts towards making all information in children cases publicly available.
- However this is not an argument about protecting judges or professionals. Rather it is about finding ways of informing the public about the work of family courts and subjecting the work of judges to reasoned scrutiny, while at the same time protecting children and safeguarding their future (that is, as a primary, not a secondary consideration).
- Results indicate that alongside exploring other options for accountability in family courts as public bodies, and in the context of Article 10, ECHR issues, a careful and evidence-based way forward with potential to meet the needs of several viewpoints would be:
  1. A **pilot evaluation** of a sample of judgments posted on Bailii in which a summary of certain sensitive information is provided; the pilot to also indicate the grounds on which a summary of such information is likely to be inappropriate.
  2. A **review of anonymisation practices in law reports** and potential for jigsaw identification of young people in the context of contemporary media and social media technologies.

- Both exercises to explore whether in children cases:
  - **guidance in anonymisation of judgments** would be helpful to judges;
  - **the options and resources required for better anonymisation practices**, this to include guidance/formats and dedicated teams utilised for this work in similar common law jurisdictions, and the corresponding **training requirements** likely to be necessary;
  - whether policy debate might be assisted by a consideration of s.33 of the Criminal Justice and Courts Act 2015 (disclosure of private sexual photographs with intent to cause distress) and whether this might be helpful in thinking about the way forward in children cases.

## APPENDIX I – METHOD AND SAMPLES

### The young people (the 'investigators')

- A.1 Eight young people (five females, two males, one 'mtf' transgender) aged between 17 and 25 years undertook two exercises reading, discussing, marking up and analysing a total of 21 judgments posted on Bailii.
- A.2 Almost all the investigators are members of the NYAS young people's participation group, almost all have participated in previous consultations regarding media access and reporting of family proceedings; almost all have experience of care proceedings.

### Judgment selection procedures

- A.3 As identified above (paragraph 5.4), a key issue for young people is the capacity of people in a local area to identify children from the information in judgments. Judgments were therefore selected according to a potential geographical link to the young investigators in terms of the named applicant local authority.
- A.4 Twelve judgments were selected, matched to the geographical location of six young people. Each investigator took two judgments and with a support person read and discussed the judgment, and completed a semi structured schedule (see Appendix III). This exercise took place on 16 April 2015.
- A.5 A second exercise with a further nine judgments was undertaken on the 13 May 2015. For this second *tranche* it was not possible to select by geographical location matched to that of the investigators simply because there were insufficient judgments for the respective local authority areas. Selection criteria were therefore as follows:
  - (a) 20 most recently rendered judgments concerning children for each family
  - (b) court database on Bailii as at 1 May 2015;
  - (c) cases concerning at least one young person aged 8 years given priority;
  - (d) judgment issued between 2010 and 2015; and,
  - (e) judgment ideally limited to about 30 pages.
- A.6 The second tranche of judgments was supplemented by a third search using search terms: 'London Borough of' (1-50 cases) then 'Borough of', 'Borough Council of' (51-70 cases); selection from the results of this search was according to criteria (a)-(d) above.

## Courts and sample size

- A.7 The selection process resulted in 21 judgments from family courts in England and Wales for the period 2010 to 2015. Twelve judgments came from County Courts (or, post 2014, the (single) Family Court)<sup>25</sup>, four from the High Court of the Family Division and five from the Court of Appeal. Appendix II (Table 1) sets out the judgments by age and number of subject children and young people, the relevant selection process (geographically matched, and second and third tranche sampling), and by the young investigator. The judgments concerned the welfare and care of a total of 40 children and young people aged between 18 months and 16 years: 17 young people were aged between eight and 16 years.
- A.8 The review of judgments was followed by a search on the internet for coverage of judgments/cases by the media and on social networking sites. Each young person selected their own words, terms, statements etc. from the judgments they had read and analysed, and working alone on laptops they searched for coverage of the judgment/case on media and social networking sites.

## Data analysis

- A.9 Details from judgments were added to a semi structured schedule (Appendix III) developed according to information from previous research on the profiles of children and parents subject to care proceedings and in the light of existing findings about the issues and details which concern children and young people – and from examples of legislation in other common law jurisdictions (e.g. Australia) regarding information, which, if published, will be deemed to permit the identification of children.
- A.10 Completed schedules were read and analysed; some were checked against judgments, some gaps were identified and schedules were returned to a subgroup of young people to re-check against judgments and data entries.
- A.11 Views were then presented in tables constructed according to the main themes and questions in the schedule.
- A.12 A report was then drafted by the lead researcher, read by the NYAS Participations Officers who supported young people in both exercises; it was also then circulated for comment to a sub-group of investigators. The final draft went

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<sup>25</sup> Crime and Courts Act 2013, s17 commenced 22 April 2014. The single Family Court is a national Court for all family proceedings in England and Wales. Family cases will no longer be heard by the County Court or the Family Proceedings Court, and will instead be heard by a court called the Family Court. Local jurisdictional boundaries will disappear. In this respect, the Family Court will be similar to the Crown Court, which is also a national court that sits at many locations in England and Wales. The Family Court will be able to sit anywhere. In reality it will usually sit at County Courts and Magistrates Courts buildings where family work is currently heard. Proceedings will be issued by the Family Court rather than by the County Court or Family Proceedings Court, and will be allocated to a level of judge according to their type and complexity. Over time, indications are it will be more commonplace for judges to hear cases at buildings that are currently Family Proceedings Courts, and for magistrates to hear cases at buildings that are/were County Courts. The Family Court will sit at both locations and any level of judge will be able to hear cases at any location where the Family Court is sitting. However, the way that family cases are managed, heard and administered on a day to day basis will remain largely the same as currently. The single Family Court is a single jurisdiction aiming to ensure that cases are heard by the right type of judge (for complexity etc) and to remove delays caused by transfer of cases between jurisdictions.

to all those who participated in the pilot for comment and prior to a final version for publication.

### **Evaluation of the methods and sample**

- A.13 This is the first time an attempt has been made to assess risks to children by information in judgments: the method is innovative and we are not aware of any similar exercise in comparable jurisdictions but that might benefit from investigation. Equally, what is proposed in terms of increasing media access to and reporting of children cases in England and Wales offers less protection to children than that applied by similar common law jurisdictions (e.g. see Brophy with Roberts (2009).
- A.14 A strength of the method – also identified by the President, is that it enables young people with the right experience and skills (of proceedings and the culture and capacity of media and social networking sites, and with internet skills beyond those of most adults) to undertake a holistic analysis of judgments, identify details which they say put the children/young people therein at risk, and then search for coverage of judgment details in media and on social networking sites.
- A.15 A limitation of the method was that of time: this exercise was limited by the logistics and cost of bringing together young people from a national group (based throughout England and Wales) and a need to have some results in a timely manner so that it supported the timetable of the President in this difficult field of law and practice. For the internet search exercise young people had just two hours and mostly two judgments each on which to search for any coverage; ideally they should have had more time. In the time available however the pilot indicates their concerns to be valid; the 'direction of travel' suggests that with a larger sample matched by geographical location with young investigators – and with more time for the internet search – concerns are likely to be further validated.



## APPENDIX II - TABLE 1: SAMPLE JUDGMENTS

<b>JUDGMENTS ON BAILII (2010 - 2015) (N=21)</b> <b>MATCHED WITH INVESTIGATOR BY GEOGRAPHICAL AREA</b> <b>(FIRST <i>TRANCHE</i> EXERCISE)</b>			
<b>JUDGMENT ID</b>	<b>Number of children in case</b>	<b>Age of child(ren) in case (18mths to 16 years)</b>	<b>Young Person Investigator</b>
1	1	16yrs	Female - 19 years
2	5	8 yrs, 7yrs, 5 yrs, 4 yrs 2.5 yrs	Female - 19 years
3	1	15 yrs	Female - 17 years
4	1	1 yr	Female - 18 years
5	1	1 yr	Female - 18 years
6	1	2 yrs	Female - 17 years
7	1	3 yrs	Male - 22 years
8	2	10 yrs , 4 yrs	Male - 22 years
9	1	18 mths	Male - 18 years
10	1	7 mths	Male - 18 years
11	1	2 yrs	Female - 25 years
12	1	1 yr	Female - 25 years
<b>SECOND AND THIRD (NONMATCHED)<i>TRANCHE</i></b>			
13	3	8 yrs, 6 yrs, 15 mths	Female - 19 years
14	1	10 yrs	Female - 17 years
15	4	8 yrs, 7.5 yrs, 3 yrs, 8 mths	Female - 18 years
16	2	8 yrs, 10 yrs	Female - 19 years
17	3	13 yrs, 7 yrs, 5 yrs	Female - 18 years
18	4	15 yrs, 13 yrs, 11yrs, 5 yrs	Female - 18 years
19	4	12 yrs, 11 yrs, 4 yrs, 7 mths	Female - 19 years
20	1	10 yrs	Female - 17 years
21	1	8 yrs	Female - 17 years

## APPENDIX III – SCHEDULE FOR RECORDING INFORMATION AND VIEWS

REVIEW OF JUDGMENTS ON BAILII BY YOUNG PEOPLE - 2015 'WHAT I THINK ABOUT THE INFORMATION IN JUDGEMENTS'				
INFORMATION IN JUDGMENT				
Does the Judgment contain:		Yes/No	Should this detail be published on Bailii?	Why do you think that?
Q1	The area in which a child/young person lives/lived?			
Q2	(a) The school the child attends (b) Any clubs/activities they attend?			
Q3	Information about other family members (E.g. a sister/brother stepsister etc)?			
Q4	Any issues/problems children experienced at school?			
Q5	Information about parent/children's religion?			
Reasons for application for a court order:				
Q 6.1	<b>Details of the harm or likely harm a child has suffered? That is:</b>  (i) Physical neglect (ii) Emotional neglect (iii) Physical injury (iv) Sexual abuse (v) Any other harms	Yes/No	Should this detail be published on Bailii?	Why do you think that?
Does the Judgment contain:		Yes/No	Should this detail be published on Bailii?	Why do you think that?
Q6.2	<b>Information about a parent's problems and failures of parenting?</b> For example: (a) Mental/emotional health problems			
	(b) Drug/alcohol misuse			
	(c) Involvement in crime			
	(d) Inability to protect a child			
	(e) Housing problems? (e.g. parents could not provide stable home/constant moves/chaotic lifestyle)			

A review of anonymised judgments on Bailii: Children, privacy and 'jigsaw identification'

	(f) Information about conditions in the child's home? For example, It was clean/well kept, or not clean, warm, little/no proper bedding, lack of furniture, no food in cupboards, pets not cared for.			
	(g) Male or other violence/abuse in family?			
	(h) Frequent changes of carer for a child?			
Q7	The name of the court hearing the case?			
Q8	The name of the local authority?			
Q9	The name of social workers?			
Q10	The name of the child's guardian?			
Q11	The name of any doctors in the case?			
Q12	The name of any other professionals (for example, a health visitor, teacher etc.)?			
Q13	Does the judge criticise any professional or agency by name - if so, who?			
Q14	Does the judge name any professional/agency that had acted well - if so, who?			
Q15	Does it contain information that you think <b>should</b> be published on Bailii – if so, what details and why?			
Q16	Is there any <i>other</i> information in this judgment that you think should <b>not</b> be published – if so, what information and why?			
Q17	Is there anything you liked about the judgment – if so, what did you like and why?			
Q18	Do you think the child/young person in this case could be identified by friends, people at school/college or within their community reading the Judgment or newspaper reports from it?	Yes/No/ Possibly		
Q19	What details from this Judgment will you use as 'search words' to see if any details appear on the internet?			
Q20	Can you find any reporting about this case in local or national or on-line newspapers?	Yes /No	If yes (i) where was it reported?  (ii) What do you think about the coverage? (was it fair, accurate, helpful/informative):  (iii) If it was reported on a newspaper online site (e. Mail on-line) what did you think of any reader comments that were added?	
Q21	(b) Can you find any evidence that this case has been shared on social networking sites?	Yes /No	If yes, (i) What did you find?  (ii) What do you think about what you found?	
Q22	Are there any details in the judgment itself, or any reporting of it, that might identify the locality where the family live or spends time?	Yes/No/ Possibly	If yes, what details?	

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## Recent legislation and relevant Practice Direction

The Children Schools and Families Act 2010 – Part 2, see:  
[http://www.legislation.gov.uk/ukpga/2010/26/pdfs/ukpga\\_20100026\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/26/pdfs/ukpga_20100026_en.pdf)  
[http://www.legislation.gov.uk/ukpga/2010/26/pdfs/ukpgaen\\_20100026\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/26/pdfs/ukpgaen_20100026_en.pdf)

For the original provisions of Schedule 2 (uncommenced) and the protections proposed for children and families see - <http://www.legislation.gov.uk/ukpga/2010/26/contents>

President of the Family Division (2014) The Next Steps: A Consultation Paper  
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