

Family Court Reporting Pilot

Evaluation Report

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1. Executive Summary

The Family Court Reporting Pilot enjoyed strong support amongst court staff, legal professionals and media stakeholders. A minority of court staff and legal professionals expressed concerns about the impact of greater transparency in family courts. However, even amongst more skeptical participants, the ability to report on the functioning of family courts was viewed as an inevitability, due to the demand for greater transparency and accountability from the public and the media.

Confidentiality and ‘jigsaw identification’

One concern consistently raised by court staff and legal professionals regarding both the Reporting Pilot and the broader principle of reporting in family courts was the fear of jigsaw identification, by which details of cases contained within reporting compromise the confidentiality of children and their families. We found no evidence of notable incidents of potential jigsaw identification occurring during the pilot. The level of risk around unintentional disclosure of identifiable information is likely to sit at a lower level than anticipated by legal professionals or court staff. However, participants believed that additional training and advice may be necessary for courts serving rural populations where identification through reporting may be a greater risk.

Levels of interest from journalists and legal bloggers

Concerns were expressed that the ability to report could lead to sensationalised media coverage and that by focusing attention on a minority of high profile and controversial cases, the public are presented with a misleading impression of family courts. During the pilot, this did not occur. Media interest peaked at the beginning of the pilot and fell away more sharply than participants told us they had expected before the start of the pilot. There are practical barriers to overcome to facilitate media interest in reporting. However, a low level of media interest during the pilot may indicate that allowing greater transparency of the day-to-day realities of family court proceedings is effective in demystifying family courts through the absence of controversial or ‘newsworthy’ occurrences.

Communication, training and guidance

Despite presenting courts with a substantial change in procedures to manage alongside pre-existing responsibilities and duties, the administration of the pilot in the three pilot areas ran smoothly and presented no notable issues. Information sharing was timely and accessible, training widely available and the official guidance issued to courts was clear and direct. The presence of a dedicated member of staff with responsibility for the Reporting Pilot was highly valued by all participants. There is scope to provide media training tailored to pre-existing levels of legal knowledge and expertise. Information and advice may need to be tailored to the requirements of areas depending on the population. It may also be necessary to introduce clear accountability for ensuring court staff complete the available training, should take-up levels fluctuate over time or vary notably between courts.

Administration

Media participants struggled with judicial listings and in some cases found it hard to know whether to attend hearings when they had an interest in a case. A system of coding has been introduced for listings which should mitigate this. It is likely that greater experience over time will also help media stakeholders to interpret listings more effectively. The ability to remotely attend hearings is critical to enable accessibility for both journalists and legal bloggers but must be managed to prevent the focus shifting away from Judges and legal representatives onto media who are displayed on large screens in courtrooms when attending online.

The need for further research

The findings of this evaluation need to be interpreted with caution. It is possible that issues arise during expansion despite having not figured significantly during this small-scale pilot evaluation, such as incidences of jigsaw identification or sensationalised media reporting around high profile cases. The feasibility of expanding the pilot has been explored, and support for this was fairly consistent across participants. However, we would recommend a large-scale evaluation takes place, involving a larger, and more representative sample, conducted across multiple areas.

2. Introduction

Background

The degree of openness and transparency in family court has been the subject of debate in recent years, amid growing media attention and public interest following legislative changes.¹ Some concerns have been addressed, but perceptions of excessive secrecy have remained an issue for family courts. Enabling greater transparency requires balancing two key concepts - *confidence* and *confidentiality*. Confidence, which the public must have in family courts, and confidentiality, to safeguard the privacy of children and family members.

Although media representatives can attend family court hearings, including those that are ‘private’, they cannot generally report on proceedings. In addition to news gathering parties, lawyers who want to attend for journalistic purposes, referred to as ‘legal bloggers’ are allowed to attend hearings.²

In 2019, the President of the Family Division, Sir Andrew McFarlane, led a review panel to investigate transparency in the family courts. A report of the findings of the review was published in 2021.³ The central recommendation of the review was the proposal to give accredited media and legal bloggers the ability to report on what they see and hear during family court cases, subject to strict rules to preserve anonymity. A thirty-member Transparency Implementation Group (TIG) was tasked with carrying out the recommendations of the review.

Overview of the Family Court Reporting Pilot

To ensure reporting on family court proceedings is done safely and with minimum disruption to those involved in the cases and the courts, a pilot was established. The Reporting Pilot began on 30th January 2023 in Cardiff, Leeds, and Carlisle, providing both a representative geographical spread and inclusion of rural as well as urban areas. The resulting pilot enables accredited journalists and legal bloggers to report on what they see and hear in court under the ‘transparency principle’. This is done through judges in these courts making a ‘Transparency Order’, which sets out the rules of what can and cannot be reported. Initially, public law cases (largely care proceedings) before judges were included in the pilot (from January 2023). The pilot was extended to private law cases before judges (covering for example, child arrangements orders) in June 2023, and then to cases before magistrates in November 2023.

The Reporting Pilot was developed and set up by a subgroup of the Transparency Implementation Group (TIG), led by Mrs. Justice Lieven and assisted by TIG Secretary Jack Harrison. Input and advice were received from a subgroup of the TIG throughout this evaluation, consisting of Mrs. Justice Lieven, Jack Harrison, and Lisa Harker (Nuffield Family Justice Observatory). This was in the form of

¹ In part caused by legislative changes affecting family court; Children Act (1989); Child Support Act (1991)

² Under Practice Direction 36J extends r 27.11.

³ Transparency in the Family Court Report, Sir Andrew McFarlane, October 2021

practical support only, to ensure the independence of the research itself and the report was not compromised.

Overview of the Reporting Pilot Evaluation

The objective of the evaluation is to understand the experiences of various groups involved in the pilot across three regions in the UK, namely Leeds, Cardiff and Carlisle, for cases where Transparency Orders had been granted. The evaluation was carried out between March 2023 and December 2023. Interviews with participants took place between August 2023 and November 2023.

Evaluation focus areas

The areas of focus for this evaluation are listed below. The topic guides for interviews were structured around these focus areas to elicit relevant information from the participants.

- Initial perspectives on greater transparency and views on the relevance of the pilot
- Expectations of the pilot, including the volume of cases within scope
- Guidance, information and advice and training received for the pilot
- Processes and tasks behind selection of cases for the pilot
- Involvement of journalists, including liaison with courts
- Admin tasks and logistical work carried out for Transparency Order cases
- Facilitators and barriers for implementing the pilot
- Differences between the impact of the pilot on public and private law proceedings

Methodology

A qualitative approach was used for this evaluation to generate rich, detailed information from a range of perspectives on how the pilot had been implemented, delivered, and experienced. The original intention was to use a longitudinal research design to capture changing views and experiences over time amongst judiciary and court staff involved, as they grew familiar with the new processes. This approach was modified due to delays and challenges with recruitment. In-depth interviews were used, covering changes over time by including questions eliciting reflections on prior expectations, set up and implementation as well as delivery to date.

Recruitment and sampling

Purposive sampling⁴ and snowball sampling⁵ methods were used to select potential participants. The eligibility criteria for participants included involvement in the pilot across one or more of the three pilot areas. The research team worked with contacts on the project steering group to recruit eligible judges, lawyers, court staff, families, legal bloggers and journalists for interviews. These contacts were asked for their permission to securely pass on names and contact details to the NatCen project team. Potential participants were contacted to take part via email and sent recruitment materials including a privacy notice and information sheet. The research team subsequently asked Designated Family Judges (DFJs) and other participants, including judges and lawyers, if they were able to suggest eligible participants

⁴ A non-probability sampling method in which participants are selected to take part in research due to certain eligibility criteria.

⁵ A non-probability sampling method in which participants are identified and recruited for research via existing participants.

based on direct experience with the pilot and processes involved. For family recruitment, members of the steering group securely passed on names and contact details to NatCen, of solicitors for family members who had been involved in the pilot. These solicitors were asked to pass along the recruitment materials, including an information sheet and privacy notice to families, who were asked to contact NatCen if they wished to take part in the evaluation.

It was important to ensure potential participants did not feel compelled to take part in the research having initially been contacted by the steering group, which is comprised of members of the judiciary and lawyers, with whom there may be existing professional relationships. Recruitment materials clearly stated there was no obligation to take part and that participants would not face repercussions by opting out. The voluntary nature of the study was reiterated at the start of all interviews. It is worth noting that due to the recruitment strategy of going through contacts of the steering group, group members were aware of the identity of judges who may have taken part.

Despite making every effort to engage gatekeepers in this recruitment processes, we were unfortunately only able to interview one family member about their experiences of the Reporting Pilot as part of this study, as most family members who were contacted did not wish to take part. This was much lower than our target of up to 20 family participants (10 in-depth interviews, 10 short interviews with other family members/children). As a result, we do not have representative data for families on their unique opinions and experiences towards the transparency pilot. This reduces the range of findings that can be drawn upon for this evaluation.

We recommend that additional research is undertaken to understand the views and experiences of families. This could be facilitated through longer timeframes for data collection, offering incentives, and building relationships with families in advance. Families may be more willing to participate if they feel that their voice will be represented accurately and that their opinions will have an impact in improving procedures to serve them better in the future.

Data collection

Data collection was carried out by the research team at NatCen, over the period of August to November 2023. Interviews were semi-structured and took place online via Microsoft Teams, lasting between 30-60 minutes. All participants were sent the privacy notice and information sheet in advance. Before the start of each interview, participants were informed about the voluntary nature of participation. Confidentiality and anonymity were explained to them in detail. Data was recorded with explicit permission and transcribed by a secure transcription service. Data was stored securely in the system, accessible only to members of the research team.

Analysis

Data collected through interviews was transcribed with prior permission of the participants. All potentially identifying information from outputs produced from the research were removed. A case and theme-based approach to qualitative data analysis developed by NatCen was used to analyse the data. Key topics emerged from the data after familiarisation of transcripts, which were then used to identify themes. The final stage of analysis involved in-depth review of the charted data to elicit similarities and differences in opinions and experiences across participants. A key aim of this evaluation was to comprehensively represent the views of a broad range of individuals. Verbatim quotations and examples from the interviews are used throughout to illustrate the findings. Due to the limited pool of potential interviewees, we have not attributed verbatim quotes using profession or job title as labels, in order to

preserve the anonymity of participants. The labels used throughout the report are ‘media participant’, which encompasses journalists and legal bloggers, ‘legal participant’, which encompasses lawyers, judges, DFJs, and court staff, and ‘family participant’.

Further research

Further research has been commissioned by the Private Office of the President of the Family Division, the findings of which will be interpreted alongside the findings of the pilot evaluation detailed in this report. It should be acknowledged that national data on the family courts is required to achieve true transparency, as it will enable media reporting to be placed in context. NatCen are conducting this research, which entails investigating and mapping available data, with the overall aim of improving the transparency of the family justice system, using two core datasets from FamilyMan (Her Majesty’s Courts and Tribunals Service Management Information) and Children and Family Court Advisory Support Service (Cafcass).

At present, data about the family justice system is held across a network of government departments and it is likely that some of the required data is not currently collected. This research has been commissioned to map the available data and identify gaps. It will support the work of the data subgroup (DSG) and its commitment to improving data collection, which could benefit the professionals working in family justice systems, a court user or members of the wider society.

The research objectives were to (1) to identify existing data which aims to enhance the transparency of the family justice system; (2) to map where the existing data is held, by whom and for how long; (3) to assess the quality of the existing data (e.g. frequency, completeness, timeliness, and consistency); (4) to assess accessibility of the existing data and arrangements for aggregation and analysis (e.g., arrangements for accessing, aggregating and analysing the existing data); (5) to identify gaps in existing datasets.

NatCen will present the evidence on what data is available and missing in a coherent way (i.e., two tables, one for FamilyMan and one for Cafcass), while assessing the key barriers of accessing the data. A report will be drafted by February 2024, with a publication date yet to be confirmed.

3. Engagement with the Reporting Pilot

This chapter covers the views of participants on the need for the Reporting Pilot, their prior expectations, and their experiences of being introduced to the pilot.

Views on the Reporting Pilot

Participants were generally supportive of the pilot, for three main reasons. Firstly, due to the longstanding presumption against reporting in family courts, participants felt there was a need to test how the principle of transparency will work in practice. Since the pilot enables reporting to take place, the pilot could help bring about the necessary changes in attitude towards reporting amongst professional stakeholders by demonstrating that media involvement could be managed safely and effectively, without compromising the anonymity of families.

Secondly, participants believed the pilot could help to shift the perceptions held by the media and public towards family courts. They felt the public view the family courts as secretive and unaccountable, with little fear of consequences for their actions. More reporting in family courts was viewed as an opportunity to improve the understanding of both the public and media of family courts through reporting.

"I think it can be seen as a very good thing that there is some transparency around that so that hopefully the public and those who are involved in the family justice can get a better idea of the cases actually before the court and how they're dealt with."
(Legal participant)

Thirdly, participants highlighted a need for public scrutiny and improved accountability in family courts, opening the judicial process to valuable critique and scrutiny. There was a shared hope amongst most that greater transparency would enable family courts to build awareness of procedural issues and improve the public's perception of the courts.

"There should be a massive spotlight on what we do and there should be people watching and observing not just the decisions, but the processes, the authorities, the precedents - everything about the system - to be fair and to make sure that it's a type of system which is fit for purpose. It needs to be observed and it needs to be scrutinised." (Legal participant)

The family member spoken to largely supported the pilot and the move towards greater transparency in the family court. They mentioned that although other people involved in the hearing may be more reluctant to have media observing, they felt that it would lead to less biased and more appropriate behaviour on the part of the court system.

"I think it's really good, because otherwise it can turn into a bit of a judge, jury and executioner situation, where if there's not a third-party present at the time, anything can sort of go on. I know, because I've been in the court system a couple of times, that everybody seems to be eating from the same bowl, so to speak. The solicitors will know the judge, everybody will know each other, and they'll sort of pass off whatever it is they decide

amongst themselves regardless. With the BBC being involved, it's been put in the public eye and therefore they have to act properly. Yes, I believe it's the right way to go about it, personally.” (Family participant)

“Nothing should ever be behind closed doors in my opinion, especially when there's people's lives and futures at stake.” (Family participant)

A minority of participants expressed ambivalence or negativity towards the pilot. Amongst this group, although transparency was broadly seen as inevitable and potentially beneficial, the low take-up amongst reporters during the pilot was cited as evidence that there is not an urgent or pressing need for change. It was also noted that journalists can already attend cases and judges publish judgements.

“I think that journalists were able to attend hearings in any event. They may not have been aware of that, but they were able to attend hearings, provided they had permission. So I'm not so sure that a specific pilot was necessary. If it's helped to make them more aware of the fact that they're able to attend, provided that they keep to specific orders, then that's fine insofar as I'm concerned, but I'm not sure that we needed to have a specific pilot to enable that to happen.” (Legal participant)

Participants expressing this view appear to be unclear on the need for the pilot, as they felt there were unlikely to be differences between material published under the *status quo*, i.e., produced by media present at hearings as observers, and material published by media with the ability to report directly on proceedings. Reservations were expressed that a move to allow reporters to attend and report on family proceedings should not necessarily be applied to all cases due to the possibility of jigsaw identification⁶ and the danger therefore of breaching the principle of confidentiality for children, especially for high-profile, controversial cases.

“Would children be named? Would they be found out? For example, Deprivation of Liberty cases, there might only be one girl who was subject to a DoLS in [location], and even though she's not named, it only takes just somebody to read that to know that that's X, for example... So yes, I can understand why it was done, but initially I certainly had my reservations about it.” (Legal participant)

Introduction to the Reporting Pilot

Most participants were introduced to the pilot by their Designated Family Judge (DFJ). One DFJ mentioned that they became aware of the pilot through another court which decided not to take part. Other participants said they were introduced to the pilot by the Transparency Implementation Group (TIG), attending meetings, receiving official guidance and information and advice about the pilot through TIG.

Participants also heard of the pilot from external organisations, such as The Bureau of Investigative Journalism, The Family Law Bar Association and at a West Yorkshire Local Family Justice Board conference, where the pilot was announced. A minority of participants were involved from the outset in

⁶ Jigsaw identification refers to when two or more pieces of information are pieced together to identify an individual.

the process of creating the pilot and guidance documents. Participants also heard about the pilot on social media and in local and national media.

Information received about the Pilot

Participants received information about the pilot through various meetings, digital conferences, and discussions to explain how the pilot would work in practice and provide advice on what to do if something was not working as anticipated. Participants also had informal discussions with DFJs and attended online information sessions run by a DFJ informing court staff how the pilot would work. Participants also mentioned a website set up by a DFJ which listed documents and relevant information for court staff and legal practitioners to revisit when needed.

Various documents were received on the principle of transparency and the rationale for the pilot. Documents were distributed to judges to help with the legal framework of the pilot, to stakeholders and litigants, and to journalists and legal bloggers to provide an overview of current laws on reporting and specifically what can and cannot be reported under the pilot. Some received information and advice directly from the TIG, covering how to manage reporters attending hearings, whilst most participants mentioned receiving the President's guidance documents and his decision to allow the pilot in writing. This information was well-received and perceived as clear and useful.

Expectations of the Reporting Pilot

Expectations around administration

Concerns were expressed about the practical demands of the pilot and the potential impact on court staff. Some participants anticipated being inundated with journalists and legal bloggers attending hearings, and worried how they would manage this alongside their existing workload. Specifically, participants worried about additional paperwork and requests by email and phone from reporters for case information and updates.

“So, I think our expectation - or fear, as it were - was that we were going to be inundated with journalists, and how we were going to be able to deal with that in and amongst all our other work” (Legal participant)

Participants were also concerned the pilot would intrude upon court processes, possibly changing the dynamics of hearings. There were fears that the process of granting a Transparency Order at the beginning of each hearing would impact time management. A number of participants were also under the misconception that Transparency Orders would be made routinely once at the first hearing for any case that fell under the pilot, rather than being granted at each individual hearing of a case, as this may save time and reporters would be able to access relevant documents earlier. Another issue raised was allowing reporters to attend hearings remotely. There were concerns that this may place reporters and bloggers at the centre of the courtroom, on a large screen, as opposed to sitting discretely at the back of the court, and that this may change the focus and dynamics of hearings.

Expectations around anonymity and confidentiality

Pre-existing reservations that the principle of greater transparency may cause jigsaw identification of children, families, and professionals were reflected as a concern raised regarding the pilot itself. Some participants anticipated that confidentiality would be breached in some cases, and anonymity would be challenging to uphold during the pilot for both clients and professionals involved in cases.

“We were all a little bit scared maybe that our names might be included as representing a local authority who is seen as taking

children away, amongst the failings of local authorities. Or maybe representing a parent who, locally, people would know to be a bad person". (Legal participant)

Expectations around impact on interested parties

Some participants anticipated the pilot having an adverse impact on parents, court staff and professionals. Participants thought there would be some initial nervousness amongst court staff and some initial concern around the anxiety the pilot would cause whether taking part was the right thing to do. There were concerns that parents would not be aware of the pilot prior to hearings, and when they found out, would be scared away by the possibility of breaches in anonymity and privacy. One participant mentioned that a litigant did not attend their hearing after learning that press would be sitting in on their case.

"I think the clients weren't aware of it at all. With that, I'm not critical of because ultimately it's a process and has been advertised more in the legal press, but when you do go and explain it to a client and you say, 'A member of the press has asked,' or a blogger. They're typically, in my experience, the press rather than a blogger. You mention it to them; there is a bit of panic because they don't understand the process and there is an assumption - and I'll come on to professional assumptions as well - that that automatically means it's going to be in the next day's paper." (Legal participant)

Participants also expected the pilot would have an impact on the behaviours of people involved. For example, participants thought parents might dramatize their case in the hearing, try to contact reporters themselves or post about the case on social media because they think they can if it is also being reported on. There was also concern that local authorities may try to change the way they are perceived to manage their reputation.

"So, we were worried how parents would react, whether they would see it as a gross intrusion or a good thing. Would any parents or parties look to recognise, I suppose, this transparency project by using it as a tactic to interfere or to put pressure on other people? Look, if the press turned up would the parents run away? These are the types of things we were worried about, and how would the local authorities, etc., react?" (Legal participant)

Expectations around journalists and legal bloggers

Most participants anticipated a high level of interest from journalists and legal bloggers in cases within the pilot. Others took a more nuanced view, anticipating interest at the outset, which would reduce as the pilot continued as reporters realise that cases in family courts are not routinely as interesting as they expected.

"Lots of people thought, oh, we'll have a flood and I was saying, 'Look, we're not going to have a flood. It's too boring. It's just like watching paint dry coming to the family court. So, we're not going to have a flood. We'll have a flood to begin with and then it will slow down.'" (Legal participant)

Views were mixed in terms of expectations on the nature of reporting that would take place during the pilot. Some thought reporting would be informative and done sensitively, accurately, and fairly without

jeopardising the confidentiality or anonymity of the children or other parties involved. By contrast, others anticipated that the court may become sensationalised. Participants said it would be difficult for reporters to know what to report on, unless they were informed by a parent about a specific case. If this occurred, participants questioned how this would be managed.

Guidance, communication, and training

The guidance distributed provided an overview of the aims and principles of the pilot and information on how cases with a Transparency Order would work in terms of administration and in practice. Participants were introduced to a training programme and relevant training and guidance materials by their DFJ. This was accessed via the DFJs website, the judicial intranet, the transparency implementation group (TIG) website, or sent to HMCTS staff following internal training, depending on the court area. Likewise, for journalists and legal bloggers, the Bureau of Investigative journalism ran training courses on the pilot in Cardiff. Participants spoke about informal and bespoke support, training, and advice within the courts. Liaison officers and judges held meetings and training sessions with social workers and court staff to ensure they were aware of the pilot and to check the pilot was operating smoothly.

Overall views on the guidance, communication and training

Participants held positive views towards the official guidance, communication, and training received. They commented that communication worked seamlessly and TIG group and DFJs did well in preparing the courts for the pilot. The guidance was described as clear, helpful, and articulate, written in simple and inclusive language. The Transparency Order was viewed as being well-drafted and useful.

Participants found the training materials helpful in ensuring all court staff had the necessary information to understand the purpose and aims of the pilot. They noted that training materials were accessible and comprehensive. Participants found training they received helpful and interesting. Having a designated member of staff in each court to speak to when an issue arose was reassuring.

There were aspects of the guidance, communication and training that participants felt did not work as well. Communication issues with HM Courts & Tribunal Service (HMCTS) were reported, specifically the lack of a process for the pilot detailing how to identify issues or who to report them to. Though reporters have been allowed to attend, but not report on, hearings since April 2009, participants felt that front-facing court staff did not have a clear understanding of when a reporter does and does not have the right to attend a hearing and report. Likewise, it was suggested by some that there were not clear protocols in place for much of the pilot for dealing with media enquiries. There was also uncertainty amongst some on the exact roles of lawyers and journalists in the pilot.

“I don’t think there was ever any linked official document that was both for the purposes of the lawyers and for the purposes of the journalists. There was a sort of mismatch of expectation”
(Legal participant)

Although tailored training was provided for media, some questioned whether this was sufficient for all legal bloggers and journalists, as levels of knowledge and experience vary.

“Well, the Transparency Project really were the only people that delivered training that was specific to legal bloggers because the training that was rolled out to the legal profession was never put out and didn’t deal specifically with legal bloggers. We were aware of it because we’re also legal professionals, and where I could, I attended it as well, but the training, as I understand it, was mainly addressed to telling lawyers, who were going to be

at court, finding they had a journalist attending, how to deal with the pilot.” (Media participant)

A small group of participants, comprising legal bloggers but also court staff, said they did not receive any training. These participants found there was not an opportunity for active training where court staff, reporters and legal practitioners could discuss the guidance, information, and advice documents, and learn from feedback, playing out possible scenarios of where something may not work out as expected.

“We got no training really. It was more of a figure it out yourself how it's going to work. Luckily, we've got a good team here, we've got good judges so we were all able to do that together. But no, there was no real training except from again the packs that [name of DFJ] said on the law of it, making sure that we weren't going to make any errors in ignorance of not necessarily knowing how it worked. But in terms of HMCTS staff training, no [chuckles], we didn't see any. Any guidance, I haven't seen any. I don't know.” (Legal participant)

As the Transparency initiative is new, challenges around accessing appropriate training are heightened, but such concerns may be transitional, diminishing in significance over time, as experience is accumulated by reporters and parent publications. Given the wide availability of training in the pilot areas for court staff, establishing lines of accountability for the completion of training appears likely to be the more significant lesson for national roll-out than a need to increase the availability of training.

There were comments from participants on the timing of distributing the official guidance in pilot areas. In one case guidance was reportedly received right before the start of the pilot. Disseminating guidance late in the timeline provided a longer window of opportunity for amendments and comments as the guidance was developed, but it was noted that as a result it was difficult to ensure all court staff saw the guidance before the pilot begun whilst managing their usual workload. Similarly, there was uncertainty around administrative aspects of the pilot, specifically the legal criteria for creating a Transparency Order.

“I think there was a little bit of uncertainty amongst practitioners about what exactly it meant and what exactly the criteria for making a transparency order was going to be. I don't think that was ever set out very clearly. I think as lawyers, we like to have set rules and we like to have structure to know if we meet a test or something like that, and I don't think it was ever made that clear.” (Legal participant)

Some participants explained that they felt it had not been clearly set out in official documents causing them to rely on word of mouth.

Suggestions for improvement

Although some participants noted the considerable benefits of having a designated member of staff with whom they could raise questions, concerns, and issues regarding the pilot, those participants who did not have this resource strongly felt it would have been useful to have someone to talk to about the pilot rather than just having information in writing. For this reason, participants suggested that as pilot expands, there should be a guarantee of a designated member of staff with this role in each court.

Participants also noted that different groups, such as journalists and legal bloggers, have varying levels of familiarity with how family courts operate. It was felt that guidance must cater to varying levels of understanding. There appears to be a need for a more comprehensive requirement that those attending

and reporting on family court hearings under Transparency Orders have received training given the fact that some participants missed out on training during the pilot, with clear lines of accountability for completion rates.

Concerns were raised that a future national roll-out may not run as smoothly as the pilot, in which there were only three areas. Therefore, information, advice and training may need to be adapted to the specific courts where it is introduced. For example, there was a concern across participant groups about the possibility of jigsaw identification in less-populated, rural areas. Participants felt that training and advice that focuses on the makeup of a specific area rather than a national programme would be better able to mitigate the possibility of jigsaw identification.

Participants stressed that larger courts with higher head counts for their staff teams may need further advice with clear instructions to ensure all court staff have understood the administration and know what to do in the event something goes wrong, such as a breach in confidentiality. Participants explained that the pilot courts had small court staff teams, so it was easier to communicate and ensure all staff had a good level of understanding of the pilot. It was thought that new court areas will not have the benefit of the thorough communication and support that the pilot areas have had during the pilot. Therefore, additional advice specifically for larger courts may be needed.

4. Delivery of the pilot

This chapter outlines views on the overarching delivery of the pilot, including the selection of cases and tasks involved, processes and admin which helped to execute the pilot, facilitators or barriers to implementing the pilot and reflections on reporting to date.

Selection of cases and associated tasks

Listings and flow of information

Both legal and media participants referred to a lack of knowledge about cases due to limited information provided in the listings, which they explained are uploaded the evening before the case hearings. Some participants mentioned recent changes to the listing process, in which categorisation of cases had led to more informed decision-making about the selection of cases; however, this was not an experience shared by all participants. Reporters described feeling hampered in choosing a case to observe and report on due to the limited case information provided.

The flow of information was noted to be challenging due to misunderstanding about roles and expectations, and a lack of clarity about what information can be shared. Other participants felt that the flow of information was inconsistent and some queried whether information was coming from people other than those working in the court context; for example, parents in private law cases. Some participants noted that journalists should inform the courts and judges about their attendance in advance to reduce burden on court staff. However, it is acknowledged that this could be challenging to facilitate given that journalists already have the right to attend case hearings without giving advance notice.

The process of granting Transparency Orders

There were some initial concerns amongst participants as to how long it took to make a Transparency Order, and the potential for delays within the hearing itself or to other hearings. However, views were mixed. Others felt that the process was straightforward and automatic now, and Orders are easier to draft even if they are not always utilised. If Orders are granted at first hearing, journalists can attend all future hearings for that case, contrary to the expectations of some participants prior to the start of the Pilot.

The volume of cases

There was an initial flurry of journalist and legal blogger attendance at hearings, but participants reflected on there being even less interest overall than they had anticipated over the pilot. Views were mixed as to why interest appeared to be so low. Some suggested that journalists and legal bloggers had more interest in the pilot and seeing how Transparency Orders work rather than reporting on specific cases, and that there were still significant barriers in place (e.g., relating to capacity) or that due to anonymity, reporters struggled to make the reporting interesting.

“After the initial, wow, we can attend family hearings to see what's going on, they realise that there's nothing exciting particularly, and then they lose interest.” (Legal participant)

“I'm in court virtually three, four times a week - in all of that time, in the ten months, we've had one case. I've had one case that a journalist has wanted to attend. For all of the other matters,

there's been absolutely no interest whatsoever. The reasons are unbeknown to me. That's a matter, I assume, for the journalists looking at the court lists daily and identifying actually there's nothing on there I want to go and see or there's nothing of interest. 99.9 per cent of the time, that is the case, there's nothing of interest for them". (Legal participant)

One view among participants was that fewer legal bloggers attended than expected, particularly as cost and resource implications were deemed less of an issue for legal bloggers than for journalists. It was acknowledged that once the pilot expanded, uptake would decrease as there would be a wider range of courts for reporters to choose from. These participants suggested that journalists and legal bloggers would select cases at courts in a location that is more convenient for them to attend.

Involvement of journalists and legal bloggers

Some participants expressed that at the outset of the pilot it was difficult to decide which cases to attend due to the lack of information provided in listings. Decisions about which cases to attend were thought by some participants to be based on which cases reporters were able to receive 'tip-offs' for, and that journalists have a range of sources, including parents and other family members in private law cases.

There were differing views on patterns in media involvement, ranging from views that reporters were more interested in reporting on family court proceedings and the pilot more generally, to views that there would be more interest in complex, controversial, unusual cases, and those whereby there would be a judgment made about a niche topic (e.g., domestic abuse).

"Reporters or legal bloggers who come have a reputation for having a particular agenda if you like ...What I mean is they're there because the case involves their special interest. Apart from that, we've had very, very little interest frankly." (Legal participants)

Some participants expressed the view that cases relating to a failure in parenting or children's services would be of interest to reporters, for example, allegations of child neglect or parental alienation. One view was that some of the cases journalists were interested in included high-profile historic cases. It was noted that some reporters were interested in reporting based on an overview of all their experiences of family courts, across multiple issues, whereas some might prefer to deep dive into cases on specific issues. In a similar vein, some participants felt that private law cases were of more interest to reporters due to finding out how the court handles domestic abuse and parental alienation allegations.

Views were expressed that reporters are not interested in the 'average' family court case, and often would be more interested in cases they knew people would want to read, including those linked to criminal cases that were deemed newsworthy. It is worth noting that during the pilot, the most significant case in the family courts from a media perspective, that of the murder of Finlay Boden by his parents, took place in a Crown Court and had no linkages to family courts in the three pilot areas. Views were also expressed that reporters fail to report on the more 'important' topics, such as legal aid.

Facilitators and barriers to the attendance of journalists and legal bloggers

Facilitators

Participants cited various facilitators to journalist and legal blogger attendance in court. Support and engagement from court staff, lawyers and judges made the process more efficient and enabled reporter attendance in court. Those participants who referred to court staff, lawyers and judges being supportive and welcoming to reporters also felt that this made the pilot a more collaborative experience.

Similarly, some participants viewed good communication from court staff and judges, and the provision of access to case-related documents prior to the hearings as a key enabler for reporter attendance in court. This was seen to be particularly helpful as it enabled reporters to understand the context of the case before attending.

The remote attendance of journalists, as the availability of remote, video links made this possible, and meant that any geographical barriers had been removed, although as previously stated, this was not welcomed by other participants, due to a belief that remote attendance changes the focus and dynamics of the courtroom, away from the Judge, lawyers and family members, towards media displayed on large screens.

Reassurance and trust regarding confidentiality and anonymity was cited by a family member as a facilitator for journalist and legal bloggers' attendance in court. The participant noted that they could not see any disadvantages of the pilot and greater transparency in the family court more generally if the complete anonymity of people taking part could be ensured. Additionally, the participant saw the process as an opportunity to have their voice heard on their experiences, which they appreciated.

"They really did drive home that there's no way that anybody can identify us from the information the BBC would be disclosing, which was reassuring" (Family participant)

Barriers to journalist / legal blogger attendance in court

A range of barriers detailed by participants. For example, some referred to the quality, quantity and timeliness of information provided in listings, and a lack of communication with some court staff and lawyers, which they felt presented difficulties finding out about and identifying interesting cases to attend. Some participants were surprised by the lack of lawyer and court staff support for the pilot and felt that more engagement and willingness to provide relevant case information to reporters would inform case selection.

"In the past when I've done reporting on family cases, at times I've been tipped off by lawyers representing families who've had a significant decision made for or against them in the family court, which is, you can't, if you don't know about a case then you can't report it, you can't go into the hearing to find out about it. It has been one of the biggest disappointments actually of this pilot so far, that lawyers haven't felt able to communicate with journalists. I'm not quite sure why that happens. Certainly, lawyers who I've worked with in the past have seen reporting because it is anonymised, as a positive thing for their clients often." (Media participant)

There were differing views among participants about whether court admin staff were helpful in providing information about cases. Some participants felt that court staff were less aware of the processes involved in the pilot, whereas others expressed views that court admin staff had supported in identifying interesting cases to attend and whether journalists would be attending at a significant moment in the case. By comparison, one view shared by legal participants was that the lack of resource and money meant that it was difficult for court staff to be able to inform reporters which cases to attend via listings.

Barriers arising from lack of engagement from court staff and lawyers may be cultural and behavioural factors, which may change for the better as they become more familiar with the transparency processes over time. As in criminal trials, it is reasonable to expect different staff and lawyers to be more, or less communicative or helpful depending on their personal approach and the nature of the case in question. Therefore, direct interventions to require or encourage greater engagement are unlikely to be the best approach.

Judicial listings were commonly cited as a barrier. It was noted that listings were generally uninformative and often put up very late which presented further difficulties for selecting cases to attend. Relatedly, some participants were of the view that listings provide incomplete information, and consequently, journalists were not informed of serious developments in cases they wanted to report on.

Capacity and resourcing issues were flagged as a key barrier to journalist and legal blogger attendance in court, including the pressure and current demand on newsrooms meaning that they have less capacity to attend. This was mentioned by participants as a barrier for both local and national newsrooms, and it was also noted that as cases are sometimes delayed or rescheduled, it can take a long time to produce reporting on the case which can prove costly.

“...if there is an element of travel involved, so London journalists for instance having to come to Leeds to sit on a case, then that might be a barrier because that's a lot of time and resources that you're putting into an ad hoc trip up to Leeds to hope that this matter might be an interesting one today. So, I think as much as we want to be able to provide as much information as possible, there are resource limitations...” (Media participant)

“There were a handful of public law cases on the day when I was free and not working to be able to go and legal blog. I didn't know until I went all the way to Cardiff, for free because I don't get paid, whether any of those cases were cases that were going to be capable of a transparent family court being made, whether I'd be able to report them, so I went at risk. You can understand that other people who are also doing it for free or working for a newspaper, who has to... It costs time and money to send someone to court. If they're not sure whether they're going to be able to report anything, it's going to be difficult for them to go.” (Media participant)

Moreover, some participants highlighted that there were a lot of disincentives for newsrooms and editors regarding coverage of the family court system within the current framework. Specifically, these participants felt that there were issues of anonymity which limited reporting options, uncertainty around whether reporting would be allowed, and additional legal complexities, all of which would act as a deterrent for editors when considering journalist attendance in court. One view was that practical and economic barriers had only partially been resolved by the pilot, so some were still in place when the pilot was launched.

Participants raised the interplay between reporting on family court cases and reporting on criminal cases as a specific barrier – unable to report on cases involving criminal proceedings until they have concluded or police decide to take no further action.

One view expressed by participants was that the pilot was more difficult to implement in private law proceedings due to an increased absence of legal representatives. It was noted by some participants that this can create more admin work for judges and court staff if there are no lawyers present, as they would be responsible for picking up those tasks (e.g., informing clients about journalist attendance, providing case summaries ahead of case etc.)

“In private law, there are lots of litigants in person who don't have legal representatives, who aren't sure what to expect, and then panic when a member of the press turns up I suspect.” (Legal participant)

Participants in general felt that there was little reporter interest in private law cases, and that there should be more of a push to have reporting on these cases as it would help change the narrative about how the family courts deal with domestic abuse.

Other logistical barriers mentioned by participants included:

- Lack of secure emails for journalists / legal bloggers which leads to technical issues when sending Transparency Orders.
- Press cards initially a barrier, as not all reporters had obtained these as expected (although resolved quickly).
- Disorganisation and a lack of knowledge about what information can be provided to journalists / legal bloggers.
- Transparency Orders are only produced at the start of the hearing so journalists can't request documents in advance, making it difficult to follow proceedings.
- Unlikely to get a hearing link (for remote attendance) prior to hearing as listings are released at 5pm and court staff often don't check the generic court email until the next day.

'Family engagement' barriers for journalists and legal bloggers attending outlined by participants:

- Families were not always informed about the pilot or that the reporter will be there before the hearing.
- Families not feeling like they can fully participate in proceedings due to being observed.
- Families performing or acting differently in court due to journalist attendance.
- Families not attending because a journalist was attending.
- Concerns around jigsaw identification.
- Inconsistencies in the approach across pilot areas. Participants had different experiences between areas (i.e., some were more supportive of their involvement than others).

Impact on families

Both legal and media participants noted that there was a lack of family engagement and support for the pilot, as this was seemingly a source of stress and pressure for them. For example, for some participants there were difficulties with explaining to families and their children that journalists wanted to attend hearings, which has been met with reluctance and upset families as a result. It was also noted that a lack of understanding of the pilot among family members was a difficulty for implementing the pilot. For example, some participants referred to the challenge of explaining the purpose of the pilot and journalist attendance to parents / families who don't speak English, particularly due to time and language constraints. In general, participants reported that a lack of understanding of the pilot resulted in initial panic and concern from families that their anonymity would not be protected in reporting.

There was some concern from participants that the pilot was not 'parent-friendly' as it was unclear how parents would be informed in advance. Additionally, there had been instances of families not wanting to attend hearings they were involved with due to journalist attendance.

"I think for the families it is nothing but a disadvantage. I think you can understand yourself, it's hard enough having your private life discussed in a courtroom setting, without thinking that that might be in the newspaper the next day as well." (Legal participant)

“I think what we have to grapple with is, if the main beneficiary of transparency is meant to be the lay parties who are at the sharp end of the process, then anecdotally our experience here is that they have not welcomed the press intrusion” (Legal participant)

Related to this, some participants noted that there was an initial obstacle with advocates challenging Transparency Orders and saying children involved in cases did not want to be reported on and had also not informed parties in advance. There were mixed views on whether this issue had been resolved.

One view among participants was that families who have reached out to journalists are often not representative (e.g., may be campaigners or come with another agenda), which means that in general families are not fully represented. Some expressed frustration that lawyers had been telling clients that they did not have to speak to journalists during case hearings. Lack of buy-in and support from professionals (court staff, lawyers and judges) was seen to be another barrier to implementation of the pilot, as participants felt that encouragement for family engagement should come from lawyers, who seem reluctant to explain the benefits of the pilot to their clients.

“[A] lot of clients are super-anxious, of course, about family courts. They wouldn't go against anything their lawyer says. So I think it's got to come from the lawyers, the encouragement to families” (Media participant)

For some participants, the administrative burden of the pilot was noted to be a key barrier in its implementation, e.g., administration infrastructure not supporting pilot aims. Some participants reported other administrative barriers, such as journalists not being able to obtain all relevant documentation prior to the hearings. More administrative burden due to lots of reporters wanting to attend online.

Suggestions for improvement

Suggestions to follow a structure like CATH (Court and Tribunal Hearing service) were made by some participants, so individuals can receive listings via email automatically once they have subscribed, which would remove some of the admin involved. Related to listings, other participants suggested that more detail be provided in listings; for example, including information about what type of hearing it is, what the subject is, whether it's a high-conflict case etc.

Other participants made suggestions relating to resourcing, such as clients receiving information about what a Transparency Order is in advance of the hearing in clear terms and what this means, to reduce the burden on judges to do this at the start of hearings.

The family member spoken to noted that they did not know in advance about the media attendance at their hearing, and that this would have been appreciated so that they could make an informed decision about their own attendance. Although they personally were happy with someone from the press being present at the hearing, they highlighted that this could have a detrimental impact on a family member who is less happy for media involvement, during what is already a potentially traumatic period. With this in mind, the family member suggested that if the pilot were to be expanded to other court areas, it would be useful to let families know in advance about media attendance at hearings.

“Maybe giving people notice before they go into the courtroom. Then I suppose the only option they'd have is to decide whether or not to attend, but everybody knows the negative impact of not attending. I think just giving people the reassurance before they get into the room, letting them know

who's going to be there and stuff like that. Then at least giving them an informed option of whether or not they want to take part in that [...] When you're going through such a pivotal point in your life as it is, to then just have that sort of dropped. I was quite happy with it, like I say, but I can imagine some other people being quite, in an already stressful time, going through quite a traumatic experience, I think trying to ease that trauma or trying to put people at ease throughout the process is the best thing you can do.” (Family participant)

5. Expansion

This chapter covers participants' views on expanding the Reporting Pilot to other court areas, including roll-out in private law cases, cases before magistrates and other family courts across England and Wales.

Perceived impacts of the transparency pilot

Perceived positive impacts reported across the participants groups fed into an overarching belief that reporting on family court proceedings will help improve transparency and trust in the system, ensuring that safe and sensible decisions are made to support families and protect children.

Participants spoke about the misconceptions and misinformation held by the public and the press that surrounds the family courts. For example, participants mentioned that the public view the family court as being secretive, unaccountable for its actions, and having no fear of consequence. Participants thought that pilot will help to dispel these misconceptions and misinformation because newspaper editors will be more willing to invest their journalists' time in reporting on family court cases when there is a certainty that reporting can take place. This will lead to an increase in the number and quality of reports published by local and national newspapers and media outlets. Participants hoped that increased reporting would result in more accurate information being available to the public, which would challenge the negative perceptions and beliefs held, and lead to greater awareness, and understanding of what the courts do and a renewed confidence in the family court system.

“People think that horrible things are going on behind closed doors, especially people who are sadly having their children removed... It can show that, actually, these judges do know what they're doing, and decisions are being made fairly and in a balanced way.” (Legal participant)

“On the one hand, it could show editors there's a huge range of stories, and that they should engage with this because it's really important. On the other hand, journalists should show the judges and lawyers that they can be trusted to do their job properly. That would be what I would hope for from the pilot, so that it becomes a normal part of reporting.” (Media participant)

In a similar manner, some participants thought that the introduction of transparency and reporting in the family courts could open the judicial processes in family courts to helpful critique and scrutiny on a national level. Participant viewed this positively, as it means the courts would become more aware of procedural issues, perceptions of the courts held by the public, and reactions towards transparency by practitioners and clients, and would have to address these concerns and issues.

The family member spoken to expressed positive reflections about the pilot being rolled out to other court areas. They felt that encouraging transparency in the family court is important, particularly when this decision-making has such a big impact on the lives of those involved.

“Yes, I think it should be to every court in the land. I think every court should be in the public eye, especially when it's families and things that are in the firing line. It's people's entire futures,

so like me and my son, getting my son back was literally the biggest thing to ever happen to me in my life. I'm really glad that it was in the public eye and that it wasn't behind closed doors with a select group of people deciding on my future. I thought it was absolutely brilliant and I think it should be shared everywhere.” (Family participant)

Negative impacts were also reported by participants. It was challenging for some participants to attribute impacts during the pilot, due to the small number of cases that had been granted Transparency Orders and attended by reporters. The concern here was that there had not been enough reporting during the pilot to expose the public to the new procedures and therefore change their opinion of the system.

Participants reported concerns about the potential loss of privacy for families and children involved in the case. Whilst participants acknowledged that the pilot provided the public the opportunity to gain insight and understanding into the processes of the family courts, it also removed the privacy typically safeguarded in family courts.

Along similar lines, participants worried about the risk of identification for different parties involved. For instance, there was a certain fear among legal professionals interviewed that transparency in family courts could result in them being reported on negatively.

“We were all a little bit scared maybe that our names might be included as representing a local authority who is seen as taking children away, amongst the failings of local authorities. Or maybe representing a parent who, locally, people would know to be a bad person.” (Legal participant)

Another significant concern was the risk of identification for vulnerable children at a later point in time. Other participants questioned the necessity of family courts in cases which involve children, who do not have a choice in the transparency process and where there could be a risk of identification later in their lives (through jigsaw identification⁷) as Transparency Order reports are made available to the public online.

Finally, participants thought the impacts of the pilot will differ according to geography and the makeup of the specific area. For example, participants spoke about how identification could occur more easily in close-knit communities in rural area and small towns than in bigger cities or towns. Therefore, participants advised that a blanket policy of transparency would not work in all areas and could quite easily lead to identification depending on the location.

Expansion of the transparency pilot

During the interviews, two kinds of expansion were discussed. Participants spoke about expansion of the existing pilot into new courts in England and Wales, and about expansion of the transparency model into other parts of the justice system, namely private law proceedings and cases before magistrates.⁸

Overall views on expansion were mixed; some felt that increasing transparency across the system and geographically would be ultimately beneficial, while others raised concerns about how this might work

⁷ Jigsaw identification refers to when two or more pieces of information are pieced together to identify an individual.

⁸ The pilot opened to private law cases in Spring 2023, and cases before magistrates later in the year in October 2023.

in practice, alongside suggestions for improvements (more detail on this is provided below). Key considerations for both expansion programmes are also outlined below.

Expansion of transparency into new family courts across England and Wales

Participants who had largely positive views of the pilot were more likely to be supportive of extending the policy to other courts across England and Wales after the initial pilot year. This group of participants comprising judges, journalists, barristers, court staff and a member of a family justice board weighed up concerns they may have had alongside potential positives and ultimately concluded that giving greater access to family courts across England and Wales could help increase transparency and trust in the system. Participants thought the pilot helps to limit speculation and false impressions held by the public through stopping the spread of misinformation about family courts.

“I would absolutely advocate this needs to get rolled out as far and wide, as quickly as possible, because the burden on the courts and the judges is nothing compared to the value of having oversight in what we do.” (Legal participant)

Participants made several suggestions for how transparency could be extended to new family courts in England and Wales. These centred on raising awareness among the reporting profession and allowing ample time for courts to learn from each other and share best practice.

Many participants recommended the pilot should expand nationally. Some participants suggested rolling the pilot out first in London. London was perceived as being a bigger cluster with more opportunity for reporters to attend.

However, for other participants, there was a concern that if the pilot was expanded, it would become London-centric by default due to being easily accessible to reporters and close to their workplaces. This would mean courts further away from London would receive fewer reporters, and therefore be reported on less. This was particularly seen to be the case if there is not the option to join a hearing remotely.

In terms of the practicalities of roll out, participants held the opinion that the pilot should be rolled out in a staggered manner, in which this occurs when each court area is ready to be involved. Participants thought new courts will have similar experiences to the pilot courts, where there would be a lot of interest in reporting at the outset, but it would quickly reduce. Therefore, it was thought that with the necessary information, advice and training, joining the pilot would not be overwhelming to cope with for new courts.

Judges and lawyers held more mixed views towards further expansion to family courts across England and Wales. These participants questioned the extent to which the pilot could be viewed as being successful due to the limited amount of reporting that took place. As only a small amount of reporting occurred during the pilot, it would be difficult to anticipate how transparency would operate if the pilot were expanded beyond the pilot areas. Participant also felt torn between the positive outcomes gained from expansion and the opinion that family courts should remain as private proceedings. This is because it was felt that the topic discussed in these proceedings should not be in public domain nor be of media interest.

Expansion of transparency across the justice system

Although participants thought it was important to include cases before magistrates and private law proceedings in the pilot, there were some concerns voiced. Participants thought that expansion into private law and cases before magistrates occurred too slowly and were included too late into the one-year pilot. This meant there had been few private law cases in the pilot for participants to feel they could comment on. As private law had been introduced later during the year, participants felt there had been little communication about roll out, which resulted in less preparation and many questions about how it would work.

Participants noted logistical issues with expanding into private law. Private law proceedings tend to be shorter, and therefore the process of considering whether to make a Transparency Order at the beginning of each hearing takes up more time than in public law cases. This was discussed as being problematic, as it would take up valuable time during each hearing.

Similarly, participants thought it might be more difficult to expand into private law than public law since clients may not have legal representation in private law proceedings. Participants felt a lawyer could explain and answer any questions about the pilot the client might have. This would not necessarily be possible in private law if the client does not have legal representation.

Participants thought it was important and reasonable to include cases before magistrates in the pilot when it had been introduced to public and private law as well, and practitioners in cases before magistrates would already be familiar with transparency due to also sitting in on crime cases.

“It would make no sense, to my mind, to have High Court circuit judges and district judges open to that level of scrutiny, but for the magistrates to remain otherwise. No, we do the same work; we must be open to the same level of transparency.” (Legal participant)

Key considerations for future roll-out of the transparency pilot

In considering further roll out of transparency beyond the pilot areas and to other courts, participants identified a range of improvements that they felt might support delivery and ensure transparency is implemented as safely and smoothly as possible. Feedback can be grouped into three overarching themes: communication, guidance and training, court processes and administration, and issues of privacy and confidentiality.

Communication, guidance, and training

Participants felt that the insights gained from the pilot should be used to refine and tailor training and guidance to ensure it is suitable for future roll out. This involved including a summary of current laws around transparency, and what judges and lawyers are legally expected to do when it comes to making Transparency Orders. Likewise, participants thought the written advice, information and training could be more clearly worded and written from the perspective of specific groups, such as journalists and legal bloggers to ensure all parties have a full understanding of what to expect. Lastly, participants suggested more detailed public guidance on the advice around making a Transparency Order in ongoing criminal proceedings.

“It would be really helpful to have some public guidance on when the president says that the court needs to be more cautious in these cases, what does that actually, what does that caution actually look like? What’s the legal test that the court should be applying? It was quite difficult to work that out in the case that I’ve been involved in. It would be really helpful to have some guidance on that that’s more detailed.” (Media participant)

It should be noted that the term ‘guidance’ was used by some participants as a term which encompasses written advice and information rather than specifically referring to the official guidance issued by the Judicial Office. The official guidance must necessarily be consistent and cannot omit information or include additional information in alternative versions for different groups, to avoid the risk of causing confusion. Accessibility considerations such as plain English versions are a consideration for any public-facing public body and may be an area for future focus in this case, but in general the official guidance issued was described as clear and straightforward by participants.

Participants thought there needed to be more communication and training, through for example, local training events and seminars for different groups involved in the courts to provide an opportunity to review the guidance and ask questions as a group. Participants generally felt it was important for the training and information to be clear and preferably given well in advance of the pilot being rolled out, to provide plenty of time to be briefed and ask questions if needed. Some participants found there was a lack of clarity in advice and information regarding certain aspects of the pilot, which meant different colleagues within the court held different understandings of how processes should work within the pilot.

“Quite often, you would have a scenario where one person would say, ‘Oh, yes, they’re allowed to do this,’ and someone else would say, ‘Oh, no, my understanding is they’re not allowed to do that, but they’re allowed to do this.’ I think there was a lot of - there was a lack of clarity about what could and what couldn’t be done.” (Legal participant)

For new courts joining the pilot, participants thought it would be helpful to provide operational information and advice on how the pilot had been implemented and delivered in other areas. It was thought that this could help provide them with an understanding of how transparency might be embedded locally and the extent of the potential additional administrative workload that courts and partners should expect. Participants thought this could help new courts not feel overwhelmed, as there were only a small number of Transparency Orders made during the pilot year.

Many participants held the opinion that there needed to be more communication and publicity around the pilot so different parties, such as lawyers and clients, are aware of the pilot and what it entails. Along similar lines, participants felt that families and clients need to be made aware two or three days in advance of the hearing that a journalist or legal blogger will be present. Participants felt this would help ease any anxiety participants have around the presence of a reporter and the reporting of their case. Participants stressed that clients need to be made aware of the pilot outside of the court setting, using accessible language and providing the opportunity to ask questions.

Participants comprising judges, journalists and legal bloggers mentioned that it was difficult for reporters to find out what hearings were coming up. It was suggested that there should be a central hub or contact at the court that reporters can get in touch with to find out further information and ask questions. This would help to inform reporters about the details of upcoming cases, enable them to give advance warning if they can report on cases, and allow reporters to indicate if they want to attend a hearing.

Participants also thought there needed to be further and clearer information and advice provided to reporters on what they can and cannot report so they do not inadvertently breach confidentiality and reveal the identity of an individual involved in a case. Some participants suggested the wording of Transparency Orders could be more precise, so reporters know if the order pertains to one or more hearings.

Court processes and administration

Participants suggested considerations around court processes and administration, particularly in relation to how the listings and Transparency Orders are administered with further roll-out. Participants noted issues with court lists being too vague for journalists to know what the case is about. However, participants noted that it is difficult to determine how much information should be included, as there is a worry that it could head to identification of parties involved.

“So, for example if you go to court and you’re - is the list going to say, ‘non-accidental head injury case’? [...] If you’re a mum and you’re sitting outside a court, parties will know you’re the

mum in that case and it relates to sex abuse...” (Legal participant)

It was felt that this needs to be navigated carefully with roll out. One participant suggested the use of the new Court and Tribunal Hearing (CATH) system for listings when the pilot is rolled out in other court areas. The CATH system alerts reporters by email as to when the lists are updated. Likewise, participants thought that the listings needed to be released earlier, as well as include more information about the case, case documents and the contact details for the lead solicitors or local authority. It was felt that this would help journalists and legal bloggers understand what the hearings are about and determine what hearings to attend.

“...it means that until you're at court and you're halfway through the hearing and the Transparency Order is settled, you can't get access to documents, which was another one of the main barriers. The pilot says, 'Oh, you're entitled to documents,' which is great, but you aren't entitled to documents in advance...The idea was that you'd have them before the hearing, so you'd be able to select which hearing to attend.” (Media participant)

There was also concern about the time it takes to approve Transparency Orders at the beginning of cases, particularly in private law where hearings are shorter. Participants indicated that it takes about twenty minutes to review and decide on the Order, discuss, and take into consideration any amendments that are requested, and explain the Order to reporters and clients and answer any questions.

“One of the concerns that started at the beginning was that it took a while to make the order and you have to do it right at the beginning of the case. So, the journalist comes in and says, 'I want a Transparency Order.' Then you have to discuss, 'Okay, well, does anyone object to it? What are the terms going to be? Shall we change some of the terms from the standard form, and shall I allow it?' You have to give a judgement about whether you're allowing it or whatever. In particular if you're not allowing it, I suspect, you have to give a judgement...If you've only got an hour, if you take out 15 or 20 minutes on dealing with a Transparency Order, that can create difficulties.” (Legal participant)

The process of granting Transparency Orders at the outset ultimately takes time away from the hearing. It was instead suggested that Transparency Orders should be approved once for all hearings in a case and should be performed a day before the hearing, so reporters have access to the documents in advance.

Another administrative concern raised by participants was the time it took to draft and send out additional documents, such as the index of the documents that are on a case file. However, overall, it was agreed that the insight gained through the pilot outweighed the additional administrative burden of preparing and making available this documentation.

Finally, some court staff interviewed felt that journalists and legal bloggers should not be allowed to join hearings remotely. This was for a few reasons; firstly, one participant thought that if other parties involved were required to attend in-person, it would be unfair to allow a journalist or legal blogger to do so remotely. Court staff were also concerned about the additional administrative burden it would place on court staff, such as having to collate and send documents by email and setting up the video link. Participants across interviews voiced concerns about the additional workload the pilot has caused court

staff due to liaising with reporters by phone and email and organising additional documents. There was also a concern that court staff would receive criticism from reporters if documents and video links were not sent promptly. Lastly, participants took issue with reporters joining hearing remotely due to where the reporter would be positioned in the courtroom. One participant explained that if a reporter were to join remotely, they would be in the placed at the centre of the courtroom on a screen instead of sitting discretely at the back of the courtroom as when observing a hearing in-person. This participant felt this difference in positioning changed the dynamic and set up of the hearing.

“Well, because say for example in my setup, the big screen where the person will be on, looms over everybody. So, whereas you would expect the legal blogger to be sitting in the back of the court making quiet notes, they're going to be there front and centre because that's the setup in the court for CVP. It's there front and centre.” (Legal participant)

Issues of privacy and confidentiality

Another consideration for roll-out involved how privacy and confidentiality would occur when many clients have not and will not want their cases reported on, even if anonymised, due to the sensitive nature of the case. There was also a concern about additional thought would be required to ensure anonymity is protected and upheld when expanding to small, and rural areas, where jigsaw identification can occur quite easily. Moreover, participants stressed that judges should not speak to the press about cases since they do not receive media training, and what they say could be reported. Participants held the opinion that transparency should not be the default, but rather decided on a case-by-case basis.

6. Conclusions

Overall, there is strong support amongst participants for greater transparency in family courts, and this is reflected in general enthusiasm for the pilot. Those expressing skepticism on the need for greater transparency accept that there will be benefits, and view expansion as inevitable. No major issues arose during the Reporting Pilot, although it should be noted that the level of media interest and involvement in cases covered by family courts was low. Future research on transparency processes in courts should build on learning from this study and attempt to involve more family views and experiences in the data collection.

Pre-existing concerns raised by participants have not manifested as problems during the pilot. No significant issue around potential jigsaw identification occurred. Many of the challenges arising during the pilot appear to be transitional, such as completion of training and familiarity with new processes; or behavioural, such as the attitude of lawyers or court staff in dealing with media interest. These challenges could reasonably be expected to diminish in significance over time.

Considerations for expansion

- It may be necessary to establish clear accountability on completion of training by court staff to address fluctuations in rates of training completion over time and variation between courts.
- Concerns around the opacity of listings as a barrier to the interest and involvement of reporters presents a fundamental problem requiring further attention during the process of expansion. The coding system introduced may mitigate this challenge for media.
- Remote attendance at family courts is challenging and requires further thought. If reporters are too prominent visually on large screens, there is a real risk that the focus and dynamics of the courtroom are skewed away from the Judge, Lawyers and families towards journalists and bloggers.
- The views and experiences of children and their families presents a significant gap in the evaluation of the Reporting Pilot and should be a priority for future research.

Appendix

References

- Family procedure rules 2010*. Ministry of Justice.
https://www.justice.gov.uk/Courts/procedure-rules/family/rules_pd_menu
- Doughty, J., Reed, L. KC., & Magrath, P. (2018). *Transparency in the Family Courts: publicity and privacy in practice*. Bloomsbury Publishing.
<https://www.bloomsburyprofessional.com/uk/transparency-in-the-family-Courts-publicity-and-privacy-in-practice-9781526525789/>
- McFarlane, A. (2021). *Confidence and Confidentiality: Transparency in the Family Courts*. <https://www.judiciary.uk/wp-content/uploads/2021/10/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final.pdf>
- McFarlane, A. (2019). *President's guidance. Guidance as to reporting in the Family Courts*. Courts & Tribunals Judiciary.
<https://www.judiciary.uk/wp-content/uploads/2019/10/Presidents-Guidance-reporting-restrictions-Final-Oct-2019.pdf>
- Statute Law Database. (1989). *Children Act 1989*. UK Public General Acts.
<https://www.legislation.gov.uk/ukpga/1989/41/contents>
- Statute Law Database. (1991). *Child Support Act 1991*. UK Public General Acts. <https://www.legislation.gov.uk/ukpga/1991/48/contents/enacted>

