

Equal Parenting Alliance Party Briefing 1

Government Consultation on Openness of Family Courts

Background

This Consultation : The Department of Constitutional Affairs (DCA) – the Government department responsible for the family courts – have issued their proposals for opening the family courts to public scrutiny, together with a consultation document and questionnaire. Members of the public and other interested bodies are invited to submit responses by 30th October 2006.

Government Proposals In Brief : The DCA consultation document, despite running to ninety pages in length, really only manages *one* substantive proposal for increasing openness and transparency of family courts.

Their main proposal is that journalists should be allowed to attend family court hearings as a right, (although this can still be denied by a judge giving reasons for the refusal).

They also propose extending the current laws so that identifying the *adults* involved in a case is also an offence (currently, it is an offence to identify a *child*).

The Current Law : The press are not allowed into family court hearings. It is an offence to reveal details of a case to anyone, including the press.

What do we think of the Proposals?

If the government proposals were implemented in full, we believe they would bring a very slight, but mostly negligible, improvement to the openness of the family courts in England and Wales.

But why do we say this? Surely allowing the press in to family courts lays waste to claims that family courts deliver secret, unaccountable justice? Free press access *must* finally offer the nirvana we have been searching for?

Well unfortunately, we don't believe it would.

Firstly, the DCA, in their consultation document, admit that other countries where similar measures have already been taken (namely British Columbia and New Zealand) report minimal court attendance by the press¹.

Indeed, why should they attend? Apart from the difficulty of selecting (from the large number of family cases in court) which case to attend, what value would the press get from observing a hearing without any prior knowledge of the case or the proceedings? How much would they be able to understand the proceedings without that?

It's not as if the DCA proposals extend the right of the press to ask questions or seek information from the attendees, who would still be most likely committing a contempt of court if they spoke to the journalist outside the court.

The fact is, the greater part of a family law case does *not* take place behind the 'closed doors' of

a family court room (where the press are proposed to be able to attend) but in the homes of the participants when they are interviewed by a CAFCASS officer. These court appointed officers usually speak to both participants and write a report which is then submitted to the court.

Most of the real decision making and consideration of any evidence is done by the CAFCASS officer and presented – along with recommendations – in their report. Very often, the court hearing itself is little more than a cursory judicial rubber-stamping of any recommendations in the report.

However, under the DCA proposals for openness, the CAFCASS report will still not be available to the press.

Consequently the most important part of the court decision making process will remain secret, unchallengeable and unaccountable.

So how *could* a journalist decide – by simply listening in court, and without seeing most of the evidence – whether what they are seeing is a *fair* hearing, or whether the *best interests of the child* are being properly promoted?

The truth is they would *still* have no way to judge, despite the DCA proposals.

So unfortunately, we believe the very thing that the government says it wishes to promote – openness and confidence in the family justice system – will still not be available, in any meaningful sense, even if their current proposals were implemented in full.

¹ Principal of the Family Courts of New Zealand, Judge Peter Boshier: "Since the Family Court was opened, in this limited fashion to the media, very few have attended the Court." DCA consultation document, page 27

The DCA consultation document and questionnaire can be downloaded from:
<http://www.dca.gov.uk/consult/courttransparencey1106/cp1106.htm>

If the Government truly wishes to increase the openness and accountability of the family courts, then it must come up with workable and effective proposals. So how can this be achieved?

Although we broadly welcome the limited DCA proposals, we believe they do little to address the *real* issues which hide the decision making processes within the family justice system. Any attempt to increase openness *must* address these areas.

In the majority of private law cases, a decisive factor is the interview of the participants by a CAF/CASS officer and the subsequent CAF/CASS report. (Indeed, our ongoing survey of family law suggests this as one of the areas of greatest dispute and dissatisfaction).

Our simple proposals extend the DCA proposals and – for relatively little cost – we believe they provide a real level of accountability and openness that is vital if the government's objectives are ever to be reached.

Our Proposals

A major weakness of the DCA proposals, in our opinion, is their failure to acknowledge the importance of accountability and openness *throughout the entire court process* - and not just in the court hearing in front of a judge.

We propose, in addition to the DCA proposals, that¹ :

- Interviews between CAF/CASS officers and participants should be taped by the CAF/CASS officer (with the interviewee also being invited to make their own recording if they wish).
- The CAF/CASS recordings should be made available to *either* participant on request, for a nominal copying fee².
- A participant may reveal the contents of a court hearing, a CAF/CASS report or an interview recording to a journalist at any time during or after the proceedings.
- Tape recordings of court hearings (that are routinely made already) should automatically be made available to participants after each hearing for a nominal copying fee.
- These proposals should also apply to anyone asked by the court to interview participants and/or produce a report for the court (e.g. social workers, psychologists etc).

These reports and evidence are essentially a part of the court hearing (as, for example, it is

usually contempt of court to reveal their contents), and they should be regarded as such. A CAF/CASS interview or report is effectively a *court hearing by proxy*.

As the DCA propose that journalists should be able to attend court hearings – where in theory *any* of the evidence or report contents could be discussed – it is a logical extension that this right to attend hearings should also accrue a right to view and discuss these reports with participants.

Clearly, this right would hardly impose a greater risk to privacy or confidentiality than the right to attend court itself (as any of the evidence could potentially be discussed in court). In any case, the proposed reporting restrictions (which we support) would prevent publication of material identifying either child or participants.

The difference though, is that our proposals would give the press (and hence the *public by proxy*) the right to ensure that the family court process is properly accountable; and a greatly improved ability to assess if the court process is fair *and* operating in the child's best interest.

The DCA proposals on their own would not be able to achieve this.

Despite providing *apparent* openness (while no doubt being politically acceptable in itself), these proposals would do very little to provide *real* accountability, and hence nothing to improve the family court process and outcomes for the children concerned.

¹ See our web site for more details of our proposals.

² In some circumstances it may be necessary to remove certain confidential information from a recording.

The Equal Parenting Alliance

The Equal Parenting Alliance Party is a new UK political party, formed in 2006. We believe our family law system is failing children, failing families and failing parents. We believe that no child should lose a parent, when parents separate, without *very good* reason. Everyone agrees that

children of separating parents should maintain normal, frequent and continuing contact with both their parents. However, the current Family Justice system is simply *unable* to deliver even this most fundamental of requirements for children.