

Tipping the Scales in 2009: Journalism and the Judiciary

As a cyber sceptic, the idea that media can generate and even influence powerful outcomes for the greater good is not a concept that is easy to buy into but there is no denying that the press and online pressure groups have singlehandedly forced the judiciary to re-evaluate the way they operate within the family courts.

The culmination of that pressure led the Ministry of Justice to conduct research on the problems blighting the system and led to the publication of several consultation papers, the first of which was published in July 2006, entitled “[Confidence and confidentiality: Improving transparency and privacy in family courts](#)”. From this research, another [consultation paper](#) and further responses appeared, the last of which was published in [December 2008](#) and effectively sets out proposals for further scrutiny of the system via media access to courts which were previously excluded.

The concept of media reporting in court is not an original one and reporters have been allowed into several of our courts for some time such as the Magistrates Courts and the Appeal Court, but by opening up the possibility of more rounded reporting in all family courts, the judiciary now face scrutiny at all levels and in all sectors of the system.

At present, there are at least ten current statutes that set out media reporting restrictions and so the law will need to be amended to make way for the new reporting protocols to take effect. In a recent debate in the House of Commons, The Secretary of State for Justice, Jack Straw suggested that any legislative changes were not likely to take place before April 2009, but in the meantime, politicians, pressure groups and policy makers alike will have the chance to debate the scope and extent of media presence in the previously ‘closed’ courts.

So, what can we expect once those changes take place and the media are given access to these courts? Sir Mark Potter conceded that this was the era that would usher in “an age of transparency....amidst largely misplaced criticisms of secret justice”, a defensive sentiment that unwittingly conveys the nervousness of the judiciary in allowing the press further access into its daily routine. This nervousness is translating itself into an overly pessimistic view that various organisations like the Family Justice Council, set up by Sir Potter to help improve the family justice system, express in their own [responses](#) to the new reporting proposals.

Properly regulated transparency has been working well in countries such as New Zealand and closer to home in Scotland and the reporting proposals for the family courts here in England will cover the family County Courts, the High Court and the Principal Registry of the Family Division. The types of cases that will be open for reporting are still undecided with the most concern over adoption proceedings but in general, cases that involve children as well as those that do not (such as private family law cases involving divorcing couples) will be subject to media attendance.

Although it is unlikely that the general public will be allowed in to these courts once the new regulations are passed, journalists may soon have the ability to not only report the salient facts of significant and complex cases but may also be able to report the names of professionals and expert witnesses who contribute their findings to a case. A crucial aspect of

the reporting ambit, it effectively removes the quiet complacency of a professional demographic, who for too long have been allowed to seek refuge under the judge's gown and the anonymity it affords them.

For those expert witnesses who practice ethically and within the established boundaries of their respective professions, there will be nothing to fear. For those who have forgotten their pledge to prioritise the welfare of those who come before them, the media will now be able to detect and place under scrutiny any perceived malpractice. After all, when a doctor or a lawyer out of court makes a mistake, they are expected to redress the imbalance; why not then, the expert witness in court whose mistake can also make the difference between at best, unnecessary family heartache and at worst, life and death?

The new proposals should also remove the power of judges to prevent parents and other family members from discussing their cases with MP's but the identities of witnesses, children and adults within the case will remain anonymous in the first instance, to prevent undue stress and bias on the parties and most importantly on the children in question. The palpable anxiety of the judiciary has left its mark on these proposals and there is one great big 'but' which overshadows the entire spirit of the reporting ethos: the discretion to exclude the press. The end result is clear; anything the judiciary don't want publicised (which will be defended through confidentiality and welfare principles) just won't see the light of day. To a certain extent there is a viable argument that goes with giving the judges the power to restrict press access in certain sensitive cases but the judiciary's already depleted popularity and the public's waning confidence in the justice system means that the judges will have to take care if they do not wish to be accused of case-cossetting.

As the pervading pessimism sets in, there are already a host of snags being highlighted by jittery judges, enquiring politicians and ardent activists, many of which can be ironed out and will be removed once the press establishes itself in the court room. There is the fear that journalists will be unethical in their reporting, that they will seek to sensationalise a story with a view to selling papers but their track record in case reporting has been excellent and the media have been seen to be compliant.

The cost of these reforms is also a source of concern although Jack Straw, in December 2008, anticipated them to be minimal perhaps because the Ministry of Justice has already forwarded £40 million to the Local Authorities, which should more than adequately fund this most troublesome branch of the family justice system. Nevertheless, question marks over the spending of that budget remain, not least of all because the Local Authorities refused to ring fence the finance, so no one is really sure where the money is going. Once again lack of accountability and transparency have created undue uncertainty.

It was this kind of uncertainty that dogged the courts persistently in 2008 and the main gripe with media reporting and how it is going to work in 2009 relates to the assumption that media presence will inevitably make witnesses and parties to proceedings self serving, seeing an opportunity to sway the case in their favour by wooing the media. Other than the fact that the media are notoriously unwoo-able (I should know, I write to journalists all the time asking for their input on certain issues and I always enclose some kind of chocolate bar as a 'sweetener', but oddly enough I never have any luck, although I am sure they eat the chocolate bar) there is also the reverse argument, namely that secret justice encourages parties to be even more self-serving, able to hide under the exposing radar so that they can say and do as they please with little or no consequence. With the media as a subliminal pressure on the system, parties

to proceedings are less likely to try to outsmart the system, judges are less likely to follow experts in their cosy consensus and public authorities are less likely to act on insufficient evidence (and if I see any of those journalists in court, I will ask them, very politely, for my chocolate bars back).

It may be however, that no one will get to see these journalists as the Family Justice Council has expressed concern over the lack of space in some court rooms, thereby suggesting that as a result the media may be restricted on a technicality. At first glance this sentiment has something of the absurd about it, as most courts can accommodate reporters and the more complex cases tend to be placed in the larger courts in any event, but upon reflection it is just another melancholy reminder that the judiciary are truly worried about the impact the press will have on their image and ultimately their sustainability.

The parting argument the Council gives in its attempt at bursting this ever growing bubble is that a cost benefit analysis needs to be done in order to identify the advantages of greater transparency over financial and time resources, the implication being that they are superbly sceptical of the overall positive impact more transparency would create. To anyone who has been through the system, worked in the system or just reads the news, the arguments for transparency are there for all to see and in a democratic society justice can never be done behind closed doors. The increased exposure of the family courts through diligent reporting is just the tip of the iceberg: the courts need audio and video recordings of all the hearings that take place (thereby giving a complete record of events); full transcripts made available to the parties and online (which has been proposed and when uploaded onto the internet will be done so with names of parties removed to preserve anonymity); working family court forums where professionals and families in the system can rate the service and give critical feedback and the presence of researchers and academics at hearings so that they can note how the courts work in practice (another proposal which may come to fruition in 2009).

All of these differing forms of media can and will pave the way for change and allow politicians and legal drafters the chance to respond faster than ever before to their evolving communities and their needs. Furthermore, online groups on sites like Facebook have made a genuine impact on raising awareness of the difficulties in the family justice system like the recent case of Baby P (which in one group alone on [Facebook](#) has over 370,000 supporters) and getting journalists interested and involved who in turn told these tragic stories to the nation and who put the government in a position where they had to respond in real time and on the public's terms.

There is no going back: the media has opened up Pandora's Box and the family justice system will be exposed in all its gruesome glory, but it will be up to the organisations and individuals within the system to carry that mantle on and make this exposure count. Journalism and online debate can only take us so far; once the doors of the Star Chamber are open, the renovation must begin. 2009 is set to be one of the most exciting years in British legal history and media, in its diverse and inimitable way, has created the perfect platform for a revolution.