HOUSE OF COMMONS

Justice Committee

Oral evidence: Open justice: court reporting in the digital age, HC 596

Tuesday 11 January 2022

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Watch the meeting

Members present: Sir Robert Neill (Chair); Ms Diane Abbott; Rob Butler; James Daly; Maria Eagle; Paul Maynard; Dr Kieran Mullan.

Questions 75 - 155

Witnesses

I: Sir Andrew McFarlane, President of the Family Division.

II: John Battle, Head of Legal and Compliance, ITN, and Chair of the Media Lawyers Association; and Dr Natalie Byrom, Director of Research at The Legal Education Foundation.

Examination of witness

Witness: Sir Andrew McFarlane.

Chair: Good afternoon, and welcome to this session of the Justice Committee. I particularly welcome our first witness, Sir Andrew McFarlane, President of the Family Division. Thank you very much, Sir Andrew, for coming to join us. We have to go through formal declarations of interest, with apologies for starting a little late. I am a non-practising barrister and a former consultant to a law firm.

Maria Eagle: I am a non-practising solicitor.

Ms Abbott: I am the only non-lawyer on this Committee.

Chair: There are others. Ms Abbott, welcome to your first meeting of the Justice Committee.

Paul Maynard: Diane, you are not unique; I am not a lawyer either.

James Daly: I am a practising solicitor and a partner in a firm of solicitors.

Rob Butler: I am not a lawyer, but prior to my election I was a non-executive director of Her Majesty's Prison and Probation Service and a magistrate.

Q75 **Chair:** Sir Andrew, we are particularly interested in open justice and your expertise as far as that relates to the Family Court. It might be helpful if you gave us a sense of the way the Family Court under its modern arrangements operates. Some of us go back to the old Family Division and a separate court, but obviously that has now changed. Perhaps we will then go on to how some of the broader principles apply.

Sir Andrew McFarlane: If that is helpful, I think it would be useful because I anticipate that the understanding the public at large have of the Family Court is limited, partly because we do not publicise much of what we do.

It is a big operation. The number of days on which judges sit on family cases is measured in round figures at about 110,000 per year, and the number of judges who are able to sit in family is well over 1,000. A lot of those will be part-time judges who sit for only six or eight weeks a year, but others do it full time. It is a big number, but they are not all doing it the whole time. A substantial body of magistrates, probably about a third, sits in the Family Court.

The Family Court sits at all levels of judiciary: lay magistrates; full-time district judge magistrates; district judges; circuit judges; and High Court judges. It sits more frequently unfortunately—more than crime and more than civil—because the Family Court is dealing with unhappiness of some sort or another in people's lives, and there is a feeling that family might

be the Cinderella of the justice system. I think there is a real public interest in this, and I am very pleased and grateful that this Committee is now taking an interest in family law, because a lot of justice that is delivered in this country is experienced by individual parents and children coming before the Family Court. They may not go before any other court for any other aspect of their lives.

As you know, we deal with disputes about children between parents when parents have separated and cannot agree. That is a major part of our work—probably 60,000 to 70,000 cases a year. We deal with domestic abuse. Many of the cases I mentioned in that figure will, unfortunately, have a domestic abuse element in them. Separately, people who want protection with injunctions for domestic abuse come to the Family Court. Separately, we deal with care proceedings when social services take proceedings to bring children into care. Again in round figures, there are about 45,000 cases a year, and some of those go on to adoption. There are international cases, with people going abroad. There is international child abduction and surrogacy, and separately there is a very big amount of work involved in sorting out finances after divorce and separation and split-ups of civil partnerships, and there is divorce itself.

Having listed that, you as Members of Parliament will all have had your ears bent, maybe in every single surgery, by people with issues about the Family Court. I see it—of course I am wholly biased—as a major part of the justice system, and there is a legitimate interest, therefore, in the public having a much better and more accurate understanding of what we do.

Q76 **Chair:** Both you and your predecessor, Sir James Munby, have argued very strongly and publicly for greater transparency in the family jurisdiction. You yourself have published your report "Confidence and Confidentiality", for which we are very grateful. Given that background, the fact it has been an area of concern for some time and your own expertise as someone who has specialised in family law pretty much throughout the whole of your career, we have the classic Scott *v* Scott common law-type definition of open justice, but from the perspective of the family jurisdiction how would you see open justice? What does it mean in practice, and what should it do if it is not doing so already?

Sir Andrew McFarlane: All other aspects of the justice system, apart from highly sensitive security matters, are open to a very large extent, and it is an exception to the open justice principle that family cases are dealt with separately. That is because structurally, in terms of the Administration of Justice Act 1960, when a court sits in private dealing with matters to do with children, it is a contempt of court to publish any information about those proceedings. That is the kernel of the structure, as it were.

Now, 60 years later, we are still bound by that, and it has very severely limited the ability of the press to come in—that has been part of the system for 10 or 12 years—and certainly to report anything that goes on

in the Family Court. It is not open; it is a private hearing about which there is to be no public reporting. My concern was to look at that. There has been concern. This has been rumbling along for 20 or more years as a topic that needs to be looked at. My concern was to look at it properly.

My view is that when you look at it with modern eyes, as I hope we have done, it is not tenable to say that solely to protect the identity of the individuals everything has to be kept out of the public gaze and cannot be reported. There must be a way of allowing openness so that people can see what we do, understand what we do, how we do it and why we make the decisions, and yet maintain the anonymity of the individuals involved. Obviously, the tricky bit is to achieve that confidentiality while being open.

Q77 **Chair:** I understand that. Your report posits a way forward, and I think you have set up a transparency and implementation group to look at that.

Sir Andrew McFarlane: Yes.

Q78 **Chair:** Is that way forward likely to involve some amendment by Parliament of the 1960 legislation?

Sir Andrew McFarlane: I am a judge and I have been very careful not to say anything that trespasses on the role of Parliament.

Q79 **Chair:** I understand, but I am asking about it from the practical working of the court position.

Sir Andrew McFarlane: We have to work through the detail of this, but it seems to me possible that under the Act of Parliament, which expressly says that rules can be made to adapt the impact of section 12, we can do that through the Rules Committee. What I am saying in the document is that it may well be that anyway Members of Parliament think all of this needs to be looked at again more roundly, not just family, and at whether section 12 needs to be considered, but clearly that is a matter for you and not for me. To give a straight answer to your question, we can do an awful lot of what I have in mind without Parliament having to look at the Act.

Q80 **Chair:** Can we tempt you at all to advise us as to those areas, other than family, to which section 12 might apply?

Sir Andrew McFarlane: Rather selfishly, I have not looked at other areas, so I would not want to be drawn on that.

Chair: You are confining yourself to family and you will start from within the rules. That is fair enough.

Q81 **Maria Eagle:** Sir Andrew, you said in paragraph 22 of your report that, "The level of legitimate media and public concern about the workings of the Family Court is now such that it is necessary for the court to regard openness as the new norm," which clearly it has not been in the past.

That is quite a difficult change in culture and mindset, isn't it? What was it that led you to conclude that there needs to be that major shift in order to increase the transparency of the Family Court?

Sir Andrew McFarlane: It is no one thing, and certainly all members of the Committee will know from reading the paper and following the news over the years that stories appear about what the Family Court has or has not done. They are quite often limited in the sense that the source of information is one party or another and there is no ordinary reporting of the cases. That has led drip by drip to the feeling that in some way the label "secret family justice system" is used and the feeling that in some way a secret court is conducting its business by removing children permanently from families and moving them towards adoption in an unsatisfactory way without proper process, simply endorsing what social workers say, using experts who are unfit and so on. It seems to me that it is highly unhealthy for society to understand that the extent of intrusion into family life that we undertake is done without knowing in a factually sound way what we are doing. That was what led me to it. There was no one case or incident that tipped it.

Q82 **Maria Eagle:** Is there something about the changing nature of the work of the Family Court that has led you to believe there is more of a case now for greater transparency, or is it just modernity and time marching on?

Sir Andrew McFarlane: If I may say so, that is very astute. The Family Court did not exist at all when the 1960 Act came in. The sorts of cases that came before a court in 1960 would have been custody disputes, as they were then called. Childcare and child protection was not at all at the level it is now. It was undertaken in front of the magistrates court; it went to the criminal part and the youth court. There wasn't a family court. The county court and the High Court dealt with private disputes between parents, so it is now wholly different in terms of both the subject matter, care proceedings, and the scale of it.

Q83 **Maria Eagle:** A major theme of your transparency report is the need to ensure that the greater openness, which you recommend and say should be the new norm, does not come at the expense of the interests of children. Of course, the secrecy in the Family Court is there to protect the interests of children. That is why it is there in the first place. How do you do that? What evidence did you receive on how important confidentiality is?

Children need to be protected from their affairs being spread all over the media, and that is much harder these days with social media than it used to be even with the ordinary mainstream media, if you like. What evidence did you receive on how important confidentiality still is? Is it as important as it used to be for children?

Sir Andrew McFarlane: Yes. Because of social media and the ability for stories to be picked up and suddenly go viral, if I was a young person I would have thought it would be even more important, or even more

scary, than it would have been in years gone by. In particular, we received evidence from work done by researchers who had got together a group of young people and let them loose on court reports, on judgments, to see whether they could identify information in judgments that would lead to identifying the children. That was a real eye-opener. It showed that it is one thing not to put the name in, but you could leave lots of little tell-tale tags in the story of the evidence that would allow jigsaw identification to take place. The fact that those young people had done that, and given that what they were saying as individuals and what the Children and Young People's Board run by CAFCASS for youngsters who had been through the family justice system were saying loud and clear was, "Do not allow our information to go out there so we can be identified," makes this decision really difficult. The things I was saying earlier all go one way. If that was all we had to think of, it would not be tricky, but the hard bit is that.

The second important priority to achieve in favour of confidentiality is that, as well as simply keeping it confidential in the Family Court when something awful has happened and the parents come to give evidence, you want them to feel as comfortable as they can be in a very uncomfortable situation so that they can be honest. If they have done something, the impetus is for them to say that they have, so that we can understand what has gone on and maybe work with them so that the children can return to them in a safer arrangement. There is a real premium on getting them to confess, to put it in a word. If they feel that what they say will be reported and directly identified to them, they will be less likely to do that, so on the other side of the balance there are really strong factors.

Q84 **Dr Mullan:** Can I pick up the point you raised about jigsaw identification? You may well be able to maintain anonymity at national level, so that the ordinary person reading a newspaper report would have no chance of pulling together who the person might be, but at local level, in a community, where there is the date of a hearing, how many people are involved and a sense that a family is going through a procedure, how do you maintain anonymity when some people already have a sense of the circumstances and are matching them up, as opposed to somebody who comes to it blind?

Sir Andrew McFarlane: I think that is the harder level. I live in a fairly rural area. When the local paper in our area reports something, it is because it has happened to a local person. Where I live they would not report something that had gone on in Bournemouth Family Court; they report it because it is local and people in the locality will know. That is part of the reasoning that led me to say that we want to have discussions with editors nationally, but particularly locally, as to how the problem should be addressed and why we want to pilot it in two or three areas. That is the tricky bit. It is easier for a national paper to carry a story that, even if it identifies the court as being Bournemouth, Scarborough or

wherever it might be, will not register with most readers; it is the local side that will.

Q85 **Dr Mullan:** What are the other ways in which you think you can have transparency without jeopardising confidentiality? You referred to talking to editors, but in a practical sense what are your initial thoughts on how you can achieve it?

Sir Andrew McFarlane: I think the way to do it is to make sure that no identifying information goes out and for the judgments that the court gives to be limited just to the information that is needed, not sensationalising matters. The reporting will be concerned with the process and the reasoning for the decision rather than the nitty-gritty details that may catch the eye of journalists more readily.

Sitting here at the moment, I do not know how that can be achieved, and we have to work with journalists to understand how best to do it. My experience and that of most family judges sitting in cases that have then been reported, both in the family jurisdiction and in the Court of Protection, which sits in public, is that journalists are very responsible and understand the issues. If you give them access to the correct detail, that is what they report, so I have some confidence that it will be responsibly and professionally undertaken by journalists.

Q86 **Dr Mullan:** You do not envision judgments being printed with things blacked out; you think it is something more sophisticated than that where particular elements might be repackaged in a form that could be shared.

Sir Andrew McFarlane: Yes. Separately, I have come to understand that when a judgment contains a significant amount of detail, perhaps of sexual matters, that, awfully, has a currency of its own. I do not see that judgments should be published at all that feed into that. There is no need for it.

The judgment is given for a number of readerships. The principal one is the parties in the case, for them to know what the judge did and why he or she did it in their case. Another readership is the Court of Appeal so that they can understand it. Another potential reader is the child in years to come, if they have access to their files. Another potential readership is social workers or other judges who may pick up the case five years later. Some element of detail has to be in the court process for that purpose, but the actual judgment might be an altogether shorter document with the other elements as an annexe.

I am in the easy seat at the moment of having got to the big ideas. How we do it is really tricky. That is why I have the transparency and implementation group up and running, and we are going to work through it, but I do not pretend that it is at all easy. Your questions are well placed.

Q87 **Dr Mullan:** We have touched on this already, and you have already hinted at reasons why you think it might be sensible. You are talking

more about accredited media than public consumption. You think that is perhaps done in a more controlled manner than in the general public.

Sir Andrew McFarlane: I think that is right. The main driver towards making this change is to do with public confidence in the system, and that is delivered largely by the public having access through the media to what goes on, rather than individual members of the public.

As part of what was the family justice review under Sir David Norgrove 10 or more years ago, I was struck by my experience in Australia. There the family court that deals just with private disputes sits in public. I sat with the judge on the bench in Dandenong, which is a suburb of Melbourne. There was a knock on the door, the court rose and there were 40 people in the room. They were largely parties in cases that were later in the list, or parties in a case coming up. There was no problem in Australia. The judges were surprised that I thought there might be a problem. It is just what they do. We heard evidence, as part of our review, from Australian judges.

Q88 **Dr Mullan:** Were the people in the court then allowed to share further what they heard, or was it limited?

Sir Andrew McFarlane: I think they are allowed to share what they hear. It is not newsworthy in the general sense, and they do not report any difficulties.

Q89 **Dr Mullan:** You mentioned that you thought that creating transparency could be achieved through changes to the rules rather than new legislation. Would that still allow you to pursue action against people who were not following those new rules?

Sir Andrew McFarlane: Yes.

Q90 **Dr Mullan:** Would the original legislation allow you to do that, taking into account modifications?

Sir Andrew McFarlane: Obviously, it is for the Rules Committee. Any changes to the rules have to go to Ministers, so it is not just me. What I have in mind is that this will be an exception to section 12. If there was anything that went beyond that exception, or if a judge in an individual case said that the exception would not apply, it would be caught by section 12.

Q91 **Chair:** On the Australian experience, did you raise any concern about the potential risk of social media with those sitting in court? It could be somebody they knew from their neighbourhood. It might be something that sounded rather prurient or that for some reason they would like to put out on social media. Was that something you taxed them about?

Sir Andrew McFarlane: I do not recall that we did; we may have done. Dandenong is like a sunny version of West Bromwich; it is not a big area, so for the people in the court day to day it was not a problem. That day the judge was dealing with about 10 or 12 cases that were coming up for

first hearing before the court. He would say, "Mr and Mrs Smith, you're representing yourselves. I am putting this off for a fact-finding hearing in three weeks' time. I have another fact-finding hearing next week in another case. Why don't you come along and watch and see how it goes?"

Chair: It is hugely different here.

Q92 **Dr Mullan:** Did that apply also to cases involving children?

Sir Andrew McFarlane: Those were children's cases. They were not social work cases; that is a different system. They were disputes between parents.

Q93 **Chair:** I get the sense that you are not looking to go as far as they do in Australia.

Sir Andrew McFarlane: No.

Q94 **Ms Abbott:** I want to ask about the report's recommendation for "urgent consideration to be given by government and Parliament to a review" of the provision that prevents publication of information relating to proceedings concerning children. Can you explain why?

Sir Andrew McFarlane: To review section 12?

Ms Abbott: Yes.

Sir Andrew McFarlane: I am conscious that it is an Act of Parliament and what I am indicating is that there now needs to be a change in the way we approached these matters over the succeeding 60 years. I am acutely aware of the fact that it is for Parliament to look at these matters, so I am flagging up the need for it to be on the radar. That is why I am particularly grateful to this Committee for picking it up so swiftly and looking at it now. Apart from indicating strongly that I think there is a need for a real change of direction, having flagged it up it is for Parliament to consider what, if anything, needs to be done, not because I think something urgently needs to be done to the Act.

Q95 **Ms Abbott:** It is good that you have so much respect for Parliament. That is less and less common now.

The report recommends that all family judges publish anonymised versions of at least 10% of their judgments each year. How did you arrive at the figure of 10%?

Sir Andrew McFarlane: It is not a big figure at all. At the moment, that is the ambition of the guidance issued some years ago by my predecessor, Sir James Munby, but it is not being achieved to any degree. I think the number of judgments published is about 200 a year, and I have given you the figures for the amount of work that is done. Judges simply are not doing it because we are overburdened by the volume of work in the system. To go through a judgment carefully

anonymising it probably takes two or three hours in a typical case, and that is time that judges simply do not have, so it does not get done.

Pitching the target low, at 10%, was I think being realistic. If we can get to 10%, it would be a major change and achievement, but it can be achieved only if we can find some way of supporting the judges so that they do not do the anonymisation and either a computer system is brought in or the Courts Service may have additional staff. It would be a resource to do it. In Australia, they publish all of their judgments; they are all anonymised, but judges do not have any role in it at all. I am sure that every judge who heard me say that would think, "How can we possibly do even 10% at the moment without support, because we are concentrating on doing the next case rather than going the extra mile and publishing the judgment in the previous case?"

Q96 **Ms Abbott:** You have just said that family courts are overwhelmed with the amount of work. When you say overwhelmed, are there twice as many cases as 10 years ago? What is the cause for the rising number of cases?

Sir Andrew McFarlane: That is a big topic.

Q97 **Ms Abbott:** That is why I asked.

Sir Andrew McFarlane: I will limit my answer. I am very happy to come back on another occasion because this is very important.

The volume of work is high partly because five or six years ago, before the pandemic, the volume of social work cases—care cases—rose by about 25% and we were engaged in working out why that was and what we should do about it. I have had discussions with more than one of your Members about this. We have an understanding about that, but those figures are there. They are now coming down a bit.

The pandemic struck. Although the Family Court kept going heroically from day one, working remotely with equipment we were not expecting to use for that, we had to adjourn a lot of cases, so we have a backlog that has grown from the pandemic. Separately, the cases where parents have separated and are in dispute about their children have grown pretty well year on year. A lot of those people represent themselves. Legal aid is not normally available. There is now a substantial volume of those cases in the system, and again the pandemic has caused us not to be able to address them even as promptly as we were before, so we have to work through a substantial backlog in the system.

Q98 **Ms Abbott:** Do you think you have enough judges?

Sir Andrew McFarlane: We could always do with more. I am on record saying that I consider some of the parents who separate and are arguing about their children absolutely need to come to the court because they need protection. There has been domestic abuse and it is entirely right that we are involved in those cases and the children are safeguarded, but

a fair number of the cases are simply relationships that have gone wrong between the parents and they cannot sort it out. Where do they go? They go to court. For them, going to court is not necessarily the right thing. It may make things worse. We need a change of culture in society so that when people separate they understand that there are softer ways of sorting out their problems, with court being the last resort rather than the first port of call.

I would rather not think of more judges. Looking at the number of days the Family Court sits, it is not a very good thing for a society to have so many cases before the Family Court. Some of them need to be sorted out by disputes being resolved in a different way.

Ms Abbott: Thank you very much.

Q99 **Chair:** Sir Andrew, you and many of your colleagues have made the point that mediation should be the first port of call in family matters.

Sir Andrew McFarlane: If I may say so, that was a spot-on question. I would be very happy to take it up.

Q100 **James Daly:** Much as I am tempted to follow Ms Abbott down that path, I think we will get back to open justice if that is okay, Sir Andrew.

I am going to play devil's advocate. You will forgive me in that respect. Following the questions put by my colleague Ms Eagle, is this really that important? I appreciate that you have produced a report and we are talking about it here, but in a second I am going to ask some questions about how the Family Court would deal with misreporting or issues such as that. Are we creating a problem that we do not even need to concern ourselves with?

Sir Andrew McFarlane: With respect, I think we do. For the public to receive negative report after negative report about what the judiciary, the Family Court and social workers are doing on behalf of society is a highly unsatisfactory state of affairs. It means that individuals generally may not have confidence in what happens and that, if you are yourself drawn into proceedings before the Family Court, you start off with the mindset that it is not a good place and that it is a place that does not conduct itself properly.

I would say this, but it is my genuine view that we conduct ourselves professionally and properly. We have an extremely thorough and fair process, but that is not the perception that the public have. I feel the time has come for a change in that and that the way forward is to be open.

Q101 **James Daly:** The practical consequence of what you have just said, especially in proceedings involving children, is an increase in bureaucracy. You will have to have an army of people crossing out any reference to various different things in these proceedings. To say that the reporting of them will be anodyne is probably an accurate reflection.

On occasion, I have the very unfortunate habit of watching very ghoulish American TV legal proceedings. You have been talking about the hope that reporters will take this or that view and that this person will do this or that. If transparency is the issue, let us be fully transparent; let people see everything that is going on, because effectively you are saying, "We'll have transparency but only on the court's terms; it will only be what we want you to know about it." Am I being unfair in suggesting that this is the first step towards televised court hearings and all sorts of other things?

Sir Andrew McFarlane: It is not a first step towards televised court hearings. As I have made plain, I am not recommending that the public generally should come in, and televising them would obviously be a technical version of that. It is reporting by professional accredited journalists, or lawyers who report through legal blogs, who come in and observe and then give an account of what they have observed, so it is very different from fly on the wall.

Q102 **James Daly:** I understand that. It is just that, when we talk about open justice, for people listening to this it is partially open justice; it is not complete open justice. If whoever is reporting it misrepresented the work of the Family Court, what action would the court itself be able to take against that organisation or individual?

Sir Andrew McFarlane: It depends on the misrepresentation. Obviously, it is for the journalist to decide whether they report anything or, if they report something, which bits of what they have seen they report. If it is untruthful or inaccurate, I hope to establish mechanisms, certainly lines of communication, with national and local editors that would be able to address that and correct it.

Q103 **James Daly:** For example, you do not want them to be giving opinions on the evidence they have heard; you simply want them to repeat the facts, essentially verbatim, that they have heard in court and not take any other viewpoint on what they have heard.

Sir Andrew McFarlane: I have not said anything about opinions. Part of reporting the facts, should they justify an opinion, would inevitably generate opinions. At the moment, there are lots of opinions in the media about the toppling of the statue in Bristol. I think it is inevitable that, if there is reporting of a case, people will form opinions and journalists will write opinion pieces about some of those cases.

Q104 **James Daly:** If reporting that may well be completely innocent or accidental in terms of some of the information being put out leads to the identification of a child, what can be done to stop that? What can be done to get back that information or take action against the organisation? Once it is out there it is out there, isn't it?

Sir Andrew McFarlane: Once it is out there, it is out there. If it was deliberate identification, it would still be in breach of section 12 and you would be able to take action, but you are right that once it is out there it

is out there, so the approach must be as careful as one can be not to put it out there.

I do not disagree that anonymisation of the judgments involves some additional, maybe substantial, element of bureaucracy, but one way forward is to encourage judges not to put identifying information into the judgment in the first place. If you get into the mindset of thinking, "In my judgment I will not be mentioning the school, which hospital it was and this, that and the other," that makes the task of anonymisation much easier because it has not been mentioned in the first place.

Q105 **James Daly:** The report recommends that all family judges publish anonymised versions of at least 10% of their judgments each year. First, why is it not 15% or 20%, or whatever the figure may be? Secondly, when you say, "publish their judgments," is that just as a matter of course? This is a genuine question. Would it just be 10% of the total number of their judgments that they published if they thought it was in the public interest?

Sir Andrew McFarlane: I have to drill down to the detail. As I said a short time ago, it is 10% because 10% is very significantly more than we are doing at the moment, and we are not doing anything like that because it is simply too much for the system. I think 10% is the proportionate place to start. If I said 100% or 50%, it would be so beyond the capacity of the system to contemplate doing it that it would never happen. Choosing what is published would be partly up to the judge, but I would be keen for it to be fairly random. I think there is an interest in the public being able to see not only the highly sensational cases, or cases that might be unusual, but the ordinary business of the court.

Q106 **James Daly:** It would have to be the judge who made that decision. Having met a lot of judges in my life, I do not think they would take kindly to other people telling them what to do.

Sir Andrew McFarlane: It would have to be the judge. Only the judge would be well placed to understand whether it was right and safe to publish.

Q107 **James Daly:** What are the biggest practical barriers to implementing the changes? Are judges one of those things?

Sir Andrew McFarlane: There is a range of practical barriers. What I am recommending is new stuff, so there is a need to talk it through with journalists, judges, court staff, court users and young people to understand what is involved. We have to think it through and how we are going to do it and, hopefully, all walk together along the route I have charted. I do not see any particular practical reason that is either insuperable or will be a major problem. It is a culture change, so it is more a matter of trying to draw everyone together and indicate, as I am doing, the direction that I as president wish to follow and—

Q108 **James Daly:** Are you the regulator? If a judge does not do 10% but 8%, are you the person who checks on that?

Sir Andrew McFarlane: No. It is encouragement. Judges are independent. There is no direct line management.

James Daly: Thank you very much.

Q109 **Dr Mullan:** Sir Andrew, I want to pick up your remarks about the negative reporting that takes place at the moment and your expectation that transparency might balance that. The only challenge that occurs to me is that in my experience the media are not particularly interested in reporting the ordinary, well-run uncontroversial hearing, so potentially could you end up in a situation of much wider reporting of the most controversial and difficult cases and a lower level of public confidence in the system?

Sir Andrew McFarlane: I don't know. I am sure you are right that there is no news value in "Family Court works well shock." This is what goes on.

If a case was particularly difficult, unusual or sensational, I would hope the reporting of it would nevertheless show that the Family Court dealt with it professionally, properly and proportionately, so the fact that it was an awful case would not mean that the view people had of the way the court dealt with it was itself negative. That is what I would hope.

Q110 **Paul Maynard:** I have sat very quietly listening. Just taking a step back, listening to your ideas and arguments, do you think that what you propose is more about defending the integrity of the court, the reputation of the Family Court and the quality of service it provides, rather than enhancing the quality of justice and the experience of those utilising the court to resolve their disputes? How do you balance the two? There seems to be quite a defensive mechanism: "We are misunderstood. We need more transparency to be better understood and protect our reputation."

Sir Andrew McFarlane: Obviously, part of what I have said is that, but the reason for saying it is not about judges or the court wanting to have its reputation protected; it is that, as I have said a number of times, I think the public have a legitimate interest in understanding what we do because we are doing it on behalf of society.

If we decide in a case that someone should or should not see their children, or whatever it might be, we are drawing a line. I think society has a legitimate interest in understanding much more about that because we do it on behalf of society. I also think it would feed into what I said earlier about the need to educate the public generally about what to do if you end up separating from your partner and there is a row about your children. I think there is a real public benefit in doing this. It is not about the court being defensive. The worry—the other side of the balance—is that there will be an impact on the ability of the court to administer

justice, partly in the sense I referred to earlier, in that if there is a risk of publicity it may inhibit witnesses from being as frank as they ought to be for the benefit of themselves and their children.

If society has a negative view about part of the justice system, that itself is not good for justice, and open justice is a sound constitutional principle because it enhances justice. I do not think it happens, or if it does it happens rarely, that where judges are used to sitting in private it might encourage less good practice. That is not good for justice. Sitting in a system that is more open is a healthy thing for justice in my view.

Q111 **Paul Maynard:** Without leading the witness to say what I want him to say, after a period of operation of your revised approach to transparency, would you expect the quality of the justice delivered to be better than what had gone before? Is sunlight the best disinfectant?

Sir Andrew McFarlane: Yes. In the round, clearly that is what I would hope.

Q112 **Paul Maynard:** That is what I wanted you to say.

Sir Andrew McFarlane: I got there in the end.

Q113 **Chair:** Understood. The next steps for implementation would be what?

Sir Andrew McFarlane: We have got on with it. The report was published in October. We have set up the TIG—everything has an acronym—the transparency implementation group, which is about 30 people from different agencies split into four groups. One is looking at how we pilot it; one is looking at relationships with the media; one is looking at the anonymisation of judgments; and another is dealing with data collection. They will now start in earnest. They are all on slightly different timescales. It will be quicker to set up communication with the media, but I am keen to get on with it.

Q114 **Chair:** I note, too, that you say it will be a positive move for the designated family judge to invite local Members of Parliament to the family courts. Certain Members would be very happy to do that. Perhaps that deserves a bit of publicity too.

Sir Andrew McFarlane: I think we just need to be more open more generally.

Q115 **Chair:** Will that be rolled out? You will encourage them to take the initiative and contact their Member of Parliament.

Sir Andrew McFarlane: Yes.

Q116 **Chair:** We look forward to that.

Sir Andrew McFarlane: I suspect every Member of Parliament knows about the Family Court. I am keen for Members of Parliament to understand what we do more thoroughly than they have been able to thus far.

Q117 **Chair:** It is a long time since I did undefended divorces. That's for sure.

Sir Andrew McFarlane: It is never too late to come back.

Chair: Indeed. Sir Andrew, thank you very much for your time and evidence. It is very much appreciated. We are very grateful to you.

Examination of witnesses

Witnesses: John Battle and Dr Byrom.

Q118 **Chair:** Welcome to our second panel. You were very patient. Thank you very much, Mr Battle and Dr Byrom. It is good to see you, Mr Battle, and it is good to see you again, Dr Byrom. You have helped us in the past. Are there any particular declarations that anybody wants to make?

Rob Butler: Yes. Mr Battle may remember that many years ago I was a newscaster at ITN and John was the lawyer who often stood over my shoulder to make sure I was not libelling anyone before I read it out loud.

Chair: I will not ask how busy you were kept.

John Battle: You were a very good reporter, Rob. That's for sure.

Rob Butler: Thank you very much.

Q119 **Chair:** Thank you very much, both of you, for coming. Can you introduce yourselves for the record, please?

Dr Byrom: I am Dr Natalie Byrom. I am director of research at the Legal Education Foundation, which is an independent grant-making trust. Between 2018 and 2020, I was expert adviser to the Courts Service on open data. For full disclosure, I was also recently appointed as data expert to the President of the Family Division's transparency implementation group.

John Battle: My name is John Battle. I have been an employed barrister for nearly 30 years in newspapers and 20 years at ITN, where I am the head of legal and compliance. I am also the chair of the Media Lawyers Association, and I have been involved in the project for broadcasting the courts.

Q120 **Chair:** Thank you all very much. In broad terms, as far as you are concerned, what is this principle of open justice that we talk about? It sounds like a very grand thing: open justice. What, in practical terms, does it mean to you, and why is it important? You heard Mr Daly's question earlier.

Dr Byrom: At its most basic level, it refers to the transparency of the legal process, and it encapsulates the idea that the hearing, the evidence, the reasoning and the decisions made in court should be both accessible and intelligible to the public.

The principle of open justice is so important because it is not an end in itself, but a means to an end, and the ends that it serves are public legal education, judicial accountability, democratic accountability, and promoting trust and confidence in the justice system. It is essential for good policy making; if you do not understand how the law is being applied in our courts, you cannot understand whether it needs to be improved. It is important on a personal level because today, every day, up and down the country in your constituencies, courts make life-changing decisions on behalf of individuals, whether that is about deciding where a child is going to live, removing someone from their home or protecting communities from crime.

I thank the Committee for holding this inquiry because I have to say that at the moment I am deeply concerned that open justice is under threat. I also think there is a real opportunity for this Committee, and you individually as parliamentarians, to address that threat, first, by encouraging the Courts Service to deliver on the commitments it has made to improve the information that we have about what happens in the justice system, and, secondly, through making sure that a portion of the settlement that the MOJ receives through the spending review is dedicated to putting in place the systems that will be needed to promote open justice in the future.

Q121 **Chair:** What is the nature of the threat, if I can press you?

Dr Byrom: The nature of the threat is the fact that we have so little information about what happens to people within our justice system. In 2020, nearly a third of questions that were asked in Parliament of the MOJ could not be answered because they did not hold basic information about the system. That is a state of affairs that cannot be allowed to continue.

Q122 **Chair:** It is a lack of data, which you have mentioned to us before. Thanks.

Dr Byrom: Essentially, yes. Thank you.

Q123 **Chair:** Mr Battle?

John Battle: For me, open justice is about information, about ensuring that the public are informed about what is going on in the court. The main way that happens is information through reporting in the media. It is important on many levels: first, for justice, to ensure that justice is seen to be done and that people have faith and trust in the system, and secondly, on a more micro level, recognising the facts and issues going on in a case and seeing whether a fair outcome was achieved. From a big-picture level, it is important for trust in the system and the rule of law that people know what is going on.

The other part of this equation is, essentially, the role of the reporter and the media to check the process, to make sure that there is some audit of what is happening. You referred to the famous Scott *v.* Scott case. The

purpose is a trial within a trial to ensure that the case itself is on trial so that there is fairness and justice is achieved. That is really what openness is about: to ensure that justice is achieved and to ensure that the process itself is fair. The means to do that are to inform the public through reporting. That is really important. Justice is the most important principle, but seeing justice done, I would say, is the second most important principle.

Chair: That is very helpful.

Q124 **Rob Butler:** Broadly, how do you think open justice and court reporting have been affected by the changing nature of the media and the increasing reliance on digital technology? Dr Byrom, can I start with you, please?

Dr Byrom: Absolutely. If we are talking about the digital technology that is being adopted by the Courts Service, we are seeing the creation of new end-to-end processes that fundamentally test the way in which open justice has traditionally been delivered through reporters sitting in physical courtrooms and writing down and publishing what happens. There is a risk that, in the absence of new strategies such as collecting and publishing more detailed information about those processes and the outcomes that are secured, the justice system may become less transparent over time.

In tandem, we are also seeing, as in much of society, increased demand for producing more data, and we have seen that in the justice scorecards that the Lord Chancellor has just published and the HMCTS's own data strategy, which leans heavily on "We're going to publish more of our data." That sounds like a good thing, but I am worried that there is insufficient emphasis being placed on improving the quality, accuracy and completeness of the data and information that is collected at present. That is a real risk, because inadequate information and poorly codified processes for releasing it pose a critical threat to the goals of open justice, such as informed public policy making.

One of the issues is that social media magnify the potential for misinformation to be spread more widely. A high-profile example we saw over the summer was a documentary produced by Channel 4 "Dispatches" that looked at the Family Court and the way it was approaching cases of domestic abuse and the way it was using the concept called "parental alienation". After the documentary was aired, there was a huge storm on Twitter, with two sides of an argument going at each other. The journalist who produced the documentary received huge amounts of abuse from people saying that they had made it seem like all men were abusers. The problem is that, when you do not have the data to contextualise the cases that were used in the documentary, it makes it impossible to have an accurate and informed debate about whether or not the Family Court is approaching the issues in that way, and that is why it matters so much.

Q125 **Rob Butler:** Mr Battle, how do you think open justice has been impacted by the changing nature of the media, and it has changed a huge amount, as you and I both know from our own experiences, and indeed by the increased reliance on digital technology, whether that is digital technology in the courts or digital technology in the media?

John Battle: One of the main points I want to make is that it is not all doom and gloom. Some really good initiatives have taken place in the last 10 years to use digital technology. For example, reporters can tweet from court now. They can bring laptops into court. There has been some filming in the courts, in the Supreme Court and the Court of Appeal. There is filming in many public inquests. We also receive court injunctions electronically. The stakeholders, whether in the Ministry of Justice, the judiciary, police or CPS, recognise that openness is important.

In more recent times, in terms of digitalisation and issues on the ground, there has been wide use of the court video platform during the pandemic. It has worked pretty well. It has sometimes been hit and miss as to whether it has been completely effective. The areas where it has not worked are, for example, where the link did not work, the court sat at a slightly different time from what was appointed or the camera was not pointed in the right direction, but it has been a step forward. It is important to recognise that there have been some real changes in reporting, and the days of reporters standing outside the court and saying, "It all happened inside there," and a van going past with the prisoner inside and then the scales of justice, are gone.

One of the other areas where it has made a change was something called the CPS media protocol. I think Lord Macdonald brought it forward in 2005 when he was the DPP. It meant that material shown in the court before the jury is now given to the media to show. There have been some changes, but there certainly could be improvements. I am more than happy to speak about them now or at a later point.

Q126 **Rob Butler:** I will come on to some of those, if I may. I am glad that you have brought out the balance on both sides. How do you think open justice has been affected by changes in the ways that news is gathered more widely? You will be vividly aware that there are far fewer journalists in pretty much any newsroom, whether it is print, local or national, or broadcast, than there were 10 or 20 years ago. There are fewer people having to generate the same amount, if not a greater amount, of content. There are definitely far fewer specialist legal or court journalists. What impact has all of that had on open justice?

John Battle: You are right; overall, there is less reporting of the courts than there was. We have to grapple with that fact. It is not the same as it was 20 years ago when there was less information on social media and online that people were competing with. Why has that happened? Partly because the media are looking at other areas. As you say, there is a decline in the number of court reporters. Having said that, there is still intense interest in court reporting. One of our bulletins usually covers a

court case within it. The real difference, I think, was the CPS media protocol that then allowed footage to be shown.

If you are given information, images or material from the courts, it is much more likely that you are going to report on it. If you are locked out at the door or you are not given information about what is happening inside, there will be a chilling effect. The more information we have, the more we are going to report. I can attest that there have been cases when we have had images and information from the courts showing what happened there where if we had not had that—for example, a CCTV image—we would not have reported it. If you get more information, you report more.

Q127 **Rob Butler:** But isn't there an inherent challenge in what you have just described? Correct me if I am misinterpreting this, but what you are almost saying is, if the Old Bailey is able to present you with some great video evidence that has been used in a trial and would make a brilliant story for ITN, which is a national television news outlet, that is all well and good, but local newspapers such as *The Bucks Herald* in my constituency of Aylesbury will no longer have a reporter sitting in the local magistrates court covering the panoply of all the local cases—let's remember that 95%, if not more, of criminal cases are decided in the magistrates court—that used to give people a very good flavour of what was going on in terms of justice more widely. If we are talking about open justice at its broadest, where are we as a result of those changes?

John Battle: I think you make a fair point. The changes benefit the national media, and local reporting has reduced. The openness, generally, in information like documentation or video can be used. I know, for example, that in ITV news, we have a big regional set-up. I am involved in the attempts to film sentencing in the Crown court, and there has been a real interest from regional news in that. If you have courts in Manchester, Bristol or Norwich where a sentencing will be filmed, that will provide information for the local reporters. The PA plays a big role in ensuring that local newspapers are properly given information as to what is happening in the courts. You are right; it is not perfect, and we have to be realistic.

Q128 **Rob Butler:** The PA is the Press Association. Interestingly, we had one of their reporters giving evidence to us earlier on. Even they have shrunk their coverage. It is useful to have that context.

Dr Byrom, what do you think about the idea of the balance between local reporting and the number of journalists that are available in terms of getting access to justice, albeit it is not, in such a nuanced way, the data you specialise in, but for people having a general understanding of what is going on?

Dr Byrom: At the foundation, we have been really interested in how we might encourage more because we see the media as playing such a critical role in public legal education about justice system processes.

Although we had no editorial control over the output, we funded the Bureau of Investigative Journalism, which did a fantastic piece of work looking at what the impact of the pandemic had been on arrangements in the housing court and what happened to people who had been subject to that. It required additional funding to resource those local reporters.

As John mentioned, it is not all doom and gloom. Often, you get the idea that the media are only interested in reporting cases where there is a sensational aspect, but where we were able to fund the kind of investigative journalism that looked at what was happening to people on the ground, it made coverage on the BBC across lunchtime and the evening news. There is a danger that the media in general underestimate public interest in what happens in our courts. It is really important.

Q129 **Rob Butler:** Picking you up on one of your earlier points about digital technology in the courts—the courts provision and the idea that people would log on to see what is going on in a court—is there not an argument that that could increase open justice, to the extent that you could have a reporter who cannot be in five or six different courts physically on the same day, but could log into different digital cases and, therefore, potentially report more broadly than would have been possible otherwise?

Dr Byrom: Certainly, in the study I conducted for the Civil Justice Council in 2020, one of the things that we were told by journalists was that remote hearings had made it possible for them to cover far more hearings than would otherwise have been available to them. That is really important. Access to hearings is one part of open justice, but it is just one part. There are a whole range of other issues—access to documents and decisions—and it is important that we look at the picture in the round because one of the big barriers to reporting on cases in courts is the extremely high cost of transcripts. For a trial, it can cost up to £20,000. When you are trying to report in a way that is responsible and abides by all the relevant law around reporting restrictions, having access to accurate information is really important. I cannot understand why, in the context of a billion-pound reform programme, we have seen such lack of focus on how we invest in the kind of infrastructure that is needed to support all those aspects of open justice.

Q130 **Rob Butler:** I want to pick up on the point you just made about what people can and cannot report on. There have been a lot of calls for the public to be able to blog about proceedings where, until now, only journalists have been allowed. Youth cases are a good and simple example. Do you both welcome that, or do you share what, I admit, is my concern—it would be because I was a journalist—that such bloggers will not have had the training in journalistic law that reporters have that tells them what they can and cannot report? That "can and cannot report" is not to try to hide anything from the public; it is to avoid prejudicing proceedings or avoid identifying people who should not be identified because they are entitled to anonymity. On what side of the line do you fall, Mr Battle?

John Battle: It is a good distinction to say that the press should be allowed to tweet and put online and on social media what is in the court. The balance at the moment is correct. In order for the public to do it, you need to get special permission from the judge.

Contempt of court in court reporting is a very technical area of the law. I teach at ITN, and always have, an ongoing session through the National Council for the Training of Journalists, and I do not think you can just go along to court and start reporting. There are dangers of prejudicing the case, dangers of identifying victims and dangers of running ahead of yourself as to what is going to happen in the trial. The distinction at the moment is a good one, and I do not think it should change.

Q131 **Rob Butler:** Dr Byrom?

Dr Byrom: I tend to agree. It is important that we remember that open justice is not just about journalists. In theory, the doctrine of open justice means that you, I or anyone can walk into a court and observe what happens there, and that is important. When it comes to reporting, it seems sensible that there is proper training in place.

One of the things that is lacking in all these debates is that we do not know enough about what the public think about greater openness, and that is something that the President of the Family Division is very alive to. We need more transparent and effective mechanisms for consulting the public in helping us to understand what they consider acceptable and what the likely impact of increasing the openness of particular parts of the justice system might have on their trust in the justice system. We need similar approaches to those that have been developed in the context of making more health data available, for example, and more public consultation.

Q132 **Rob Butler:** I want to finish my section with a question about the broadcasting of proceedings themselves. Mr Battle, you touched on that. We know that we are going to have the broadcasting of some sentencing remarks in the Crown court. What contribution do you think that will make to open justice, notwithstanding the limitation that Dr Byrom has been highlighting? How far, if any further, would you want to see court proceedings being televised beyond sentencing remarks?

John Battle: I have been involved in the filming the courts project for many years. We started off in the Court of Appeal and did a pilot project there. Then the Supreme Court started. When it was first filmed, it moved from here over to Parliament Square. Public inquiries are now filmed regularly as well.

We are hoping to start filming in the Crown court soon. As broadcasters, we can say we are ready to go. We can film in the Crown court; not filming defendants, not filming witnesses, not filming victims or families, but filming the sentencing. I think that will be a good thing for justice. It will be the first time that the public will be able to see in the media the

trial court—the main criminal court, the Crown court itself. That is a step in the right direction. There is a good balance. We are not filming everything. We are not filming all the witnesses and so on. It is a good starting point.

There is no reason why many other areas could not be filmed, whether it be the High Court or even the outcome of coroner's inquests. If a coroner was giving a judgment as to the outcome of a particular case that had a matter of public importance attached to it, why should that not be filmed? Clearly, you would take into account the sensitivities involved in the case. If there is a matter of public importance, the starting point, I say, would be that it should be filmed.

I have a couple of quick points about cameras in court and how that has worked. First, it is generally down to the judge whether they film or not. The judge has the right to say no, which is totally understandable. Secondly, there have not been problems, and that is important to recognise. As a lawyer, I always look to the evidence. What is the evidence here? The evidence is that it has worked, trials have not collapsed, there have not been problems in the court, and that is a good thing. Let's build on the evidence and move forward for filming in more courts.

Q133 **Rob Butler:** So that we are absolutely clear, would you want, in the Crown court, to go further than sentencing remarks? At a later stage, would you want to be able to broadcast an entire trial with all the witnesses and so on?

John Battle: I think that is some way down the line. As Mr Daly said earlier, there is a difference between partial open justice and absolute open justice. For the time being, I do not think it is likely that it will be a full trial. Let's see where this next step takes us. I envisage that at some point there will be a case where you will be able to see, for example, the opening of the case by prosecution or an image of the defendant in the court. That is perhaps the next step after the filming of sentencing, but it is very much a step at a time.

Rob Butler: Thank you very much.

Q134 **Maria Eagle:** I have heard what both of you have said. You have both given examples of some improvements that you noted that have enhanced openness. I have heard from Dr Byrom that there are threats.

I do not really get a sense of what your views are about the current trend. It is all very well having a snapshot and saying, "This is improving and that is getting worse," but what is the trend? Are we moving towards more open justice at a canter? Are things getting worse, and is openness becoming more difficult overall? What is the trend over the last few years and where are we going? Are there particular threats to that?

For example, going online can provide chances to access hearings. If you can set up Zoom for a hearing, perhaps it is easier to get into the hearing

if you are a journalist wanting to report it. Perhaps it is not easier; perhaps it is harder. Can you give me a sense of whether things are improving, what the trend is like, and what the biggest threats are to increasing openness in the future, if that is what you would like to see?

Dr Byrom: It is great that we are having this discussion. That is hugely positive. One of the first inquiries that this Committee undertook in 2010 was looking at transparency in the family justice setting. One of the real positives is that we are seeing a lot more attention paid to the fact that we have so little data about our justice system. I did some research before coming to speak to you today. Over the past 17 months, over a fifth of your own reports have drawn attention to the fact that you are unable to effectively scrutinise what happens in the justice system because you do not have information about what is happening to people within it.

You must be tired of me saying this to you by now—as tired as I am of saying it—but if you look at the history of it, we have successive National Audit Office reports, we have the Lammy review, we have the CJC review, we have the Domestic Abuse Commissioner's report, we have the Victims' Commissioner's report, and we even have the independent review of criminal legal aid. In all of those reports, the central message running through them is that we do not understand and we do not have enough basic information about what happens in the system to keep it under review and ensure that it provides the protection to people that is needed.

If you do not mind me saying, Ms Eagle, you were very impressive in front of the Public Accounts Committee. It was great to hear warm words from the permanent secretary about how important data was, but we need to see that backed up now with consistent, credible action. We have the funding. We have the opportunity through the digital reform programme. Frankly, to allow this to slip away without more concrete action would be an act of extreme negligence because we are talking about the steps that need to be taken to preserve open justice not just now but in the future. Once the digital systems are stood up as part of the reform programme, it becomes too expensive and too difficult to retrofit the data collection that is needed. We are seeing good trends in terms of rhetoric, but now is the time for consistent, credible action.

Q135 **Maria Eagle:** Thank you. Mr Battle?

John Battle: I think the trend is towards more openness, but it is going at too slow a pace. We need a significant commitment to open justice. I do not fear that there will be significant problems. The open justice initiatives that we have had have been successful. We are not always going to get it right as the media, but we try hard to get it right. Also, we are regulated by the Contempt of Court Act and statutory provisions and so on. There is a framework in which we operate.

What needs to be done is, essentially, to have more joined-up thinking between the different stakeholders in the system to ensure greater openness. They are all working in the right direction, but it lacks force and a gatekeeper—someone who is moving the openness forward—and that should happen on a number of issues. For example, it does not seem to me right that in 2022 it is very difficult for a reporter to find out what reporting restrictions they are supposed to be following. It is a law that has been made by the judge restricting the case, but it is very difficult to find what the restriction is. That does not help reporting. Similarly, there are changes to the Criminal and Civil Procedure Rules that have allowed disclosure of documents, but there is not a mechanism in place that allows that to happen, so you have a principle without a practice.

It is moving in the right direction, but it is going too slowly, and there is a danger that court reporting will be painted into a corner and the issue of openness, transparency and trust in the courts gets relegated in the news without the support and commitment of all the agencies that are involved in the Courts Service.

Maria Eagle: Thank you.

Q136 **Paul Maynard:** Dr Byrom, you just mentioned that there is a broad trend towards open justice, no one disagrees with it, it is a universal love-in, and we all want to see it. You also mentioned that the rhetoric is great but the reality may be less great.

In your evidence, you cite a lot of the quantitative data that is absent—how many judges and how many sittings—all of which allow us to answer all those wonderful PQs that people put down, at £148 per question for the taxpayer to fund, of course. How do you view the access to more qualitative data, though? The Government are trying to create a central free database hosted by the National Archives. What are your views on that? Will it require a step change in our HMCTS approach to transcription? Does it need more disruption like machine learning and speech-to-text transcription? Are the practicalities at great variance with the rhetoric that says, "Yes, open justice, love it"?

Dr Byrom: Absolutely. First—I have been on record on this—the decision to move responsibility for the retention of publication of judgments to the National Archives is a hugely positive step, but more action is needed, and it is vitally important that that move results in more case law and more judgments being available in the public domain. There are two arguments for this. If I may, I would like to make the business case and the personal case for why it matters. As you all know—many of you are lawyers—court judgments occupy a centrally important place in our law; they are as legally binding as legislation. To put it plainly, if you want to know what the law is and how it affects you, you need access to the judgments and decisions from courts.

It strikes me as fairly terrifying that, in spite of their central importance, until this announcement, the state has failed to invest in work to

systematically collect, preserve and publish those records. There is no public, centralised system at present for collecting judgments at the point they are made, storing them and making them available for publication. That means that things like publishing a sample of 10% is really difficult. There is no central complete record of the decisions that are made in our courts, and there are no publicly agreed criteria for which judgments should be published. Instead, we have allowed the task of preserving these judgments, which are part of our law, to be delegated to private actors and restricted-access publishers who charge large fees for access to their content.

What does that mean? It has a number of important consequences. It exacerbates inequalities of arms because if you are in a law centre or a not-for-profit advice agency you cannot gain access to the case law that you need to prepare your cases. It undermines the ability to innovate. Applying machine learning to a partial set of documents would result in inaccurate and skewed results, and that is a problem when we are thinking about the growth of AI. Most importantly, it means that the state does not hold and is not able to access the records of its third branch of government, which is the courts. This has financial implications for the taxpayer because it means that, effectively, we are paying twice: once for the judges to issue the pronouncements and then a second time for the state to buy back access from the publishers. It is deeply concerning.

To talk about the personal case—why it matters that we have access to qualitative information—I want to talk to you about Alex Kelly. Alex Kelly was 15 years old when he was found hanging in his cell at Cookham Wood young offenders institution. The fact is that Alex should not have been there in the first place. In his short childhood, he had experienced serious sexual abuse and he had a number of mental health vulnerabilities. A campaign that was launched as a result of his case led to changes in sentencing guidelines, but because decisions in the youth court are not what is termed legally significant and are not often reported, it is impossible to tell whether those new guidelines have resulted in children in our country being treated better in our courts.

There is also the case of MF. I can only refer to her as MF because that is how she is reported. MF was a woman and a mother who had been subject to a campaign of serious physical, emotional and sexual abuse by her husband. When she went to court unrepresented to try to gain custody of her children, she was told by the judge in that case that, in fact, she had not been raped because she had not resisted physically enough. The only reason that that case came to light and was picked up, and that family judges are now working on improving the training that is given to family judges, is that the judgment was recorded. If we are not recording comprehensively the judgments that happen, it is not just that we cannot assess the quantity of justice but we cannot assess the quality of justice, and that is something that should concern all of us.

Q137 **Paul Maynard:** Thank you for connecting what can often be a very dry

debate to some very real-life examples. Is HMCTS engaged in this debate at all? Do they regard it as the unsexy end of what they regard as a totally whiz-bang technological revolution? They get excited about TV screens but not about the stuff you cannot really see or might not notice. How on board is HMCTS with your arguments?

Dr Byrom: One of the things with judgments, and which illustrates a broader issue when it comes to open justice, is that delivering open justice requires working in partnership between the judiciary, HMCTS and the MOJ. Until 2020, when the shadow senior data governance panel was set up, there was no forum for bringing together the senior judiciary and senior MOJ officials to speak to HMCTS and say, "This is what we want from our information-sharing practices." John is exactly right on this. What you need is more investment in a single point of contact where these issues can be raised by stakeholders and then dealt with. It needs endorsement at the highest level. We were lucky previously. The decision to transfer publication to the National Archives was backed by the then Lord Chancellor. We need to see similar commitment from both the LCJ and the Lord Chancellor to driving these initiatives through, otherwise they are destined to wither away. Thank you very much for the question.

Q138 **Paul Maynard:** Mr Battle, I have heard a lot of real evidence so far. I know that you are in favour of a reporters charter. The tenor of what you are saying to me sounds a bit like there was a golden age of court reporting and we would love to go back to it, yet it does not seem to be that modern technology will take you back to when Rob was standing outside a blustery courthouse talking fast into a microphone. Is that an unfair characterisation?

John Battle: No, I do not think so. I do not think there was a golden age of court reporting. It is the future that really matters it, isn't it? We have to embrace digital technology and be realistic to the challenges that court reporting faces, and see what we can do to encourage and promote court reporting. My suggestion is that we should have a reporters charter, essentially, to help reporters because the reporters are an important part of the system. There are many rules, regulations and protocols that apply and help them, but there is no one place where all the threads are drawn together.

I am proposing essentially, through the Media Lawyers Association, of which I am the chair, to have a system wherein there is a template of basic rights that reporters can ask for in the courts and can have the commitment of the Courts Service itself; the right to be in court, the right to take notes, the right to have a specific place in the court, the right to wi-fi, the right to be told what the court reporting restrictions are, the right to stand up and make representations, and so on and so forth.

Those basic rights need to be drawn into one place so that commitment and help is given to the reporter, because it is not easy. If you are going along every day to the courts and you are finding it difficult to find what reporting restriction you are supposed to be applying, or you are not

given access to documents that you are entitled to, it will not encourage reporting. There will be a golden age to come. I do not think it is in the past. If we get the momentum going, the golden age is ahead of us.

Q139 **Paul Maynard:** Increasing coverage will require investment somewhere. There are suggestions about a public model and about a private model. The BBC subsidises the Local Democracy Reporting Service, for example. You have a similar initiative for the courts, yet I rarely see Blackpool Council on "North West Tonight". Could I see Blackpool magistrates court? I suspect not. There are commercial alternatives. You might be familiar with Courtsdesk, which was funded by Reach plc. It generated hundreds of extra news stories that were focused on a very local area. Do you believe that there is any role at all for public investment to reinflate court coverage, or is it down to news organisations like the one you work for to put their money where their mouth is—or their microphone?

John Battle: The starting point would be public funding. If you are a reporter who is expected to comply with a particular law, it is not unreasonable that you are informed of that, and the database is there, put up by the courts system—HMCTS—so that you can access it to look at that. I do not think you should have to pay to find out what law you are supposed to be applying. In other areas, clearly, that can be looked at on a case-by-case basis. There are lots of systems already through which information is provided from the judge to the lawyers and others in the courts. There should be more thought as to what of that material could be disclosed to the journalist.

Journalists regularly go to a barrister and say, "Can you give us your opening skeleton?" They say, "I'd like to, but I don't have the means to do it. You'll have to get it yourself in one way or other." Making it easier for reporters would be a good thing. I anticipate that certainly a database for court orders should be publicly funded. It would be password protected so it would not be open to the public. Members of the public could not find what is not supposed to be heard, but a reporter would be able to access it with a password. We have the UK Press Card Authority, the press card system, so there is a system to work out who is a recognised reporter. I hope that answers your question. The starting point would be public funding.

Q140 **Paul Maynard:** That is interesting. It is always public funding. As seed-corn money, I don't disagree. Were you going to come in, Dr Byrom?

Dr Byrom: One of the challenges here is, unlike under charity law, journalism is not a charitable activity. In the US it is, which means that you see lots of charitable funding going into public interest reporting, which also helps to shape the agenda that is going forward, whereas here because of charity law it makes it difficult for organisations like the Bureau of Investigative Journalism, which does high-quality public interest journalism, to secure the funding that it needs.

Q141 **Paul Maynard:** Can I come back on one point you made earlier that

gave me a slight heart attack? You mentioned expanding the remit of potential broadcasting to other areas of the court, and you mentioned coroners' courts. I realised as a Minister that there was no area of justice more poorly understood than what occurs in our coroners' courts. You mentioned using public importance as a criterion for more broadcasting. Out of interest, would you regard a celebrity inquest as a matter of public importance?

John Battle: There is an interest in freedom of expression itself, isn't there? The more information that comes out, the better. Obviously, the media would look at someone who is famous and that would be of interest to the public.

Q142 **Paul Maynard:** Prurience is no obstacle then.

John Battle: It is not prurience. We do our job in a responsible and fair way. We are regulated by a number of different pieces of legislation. If you look at the history of broadcasting in this country reporting courts and public inquiries, it is good. At the moment, the Grenfell inquiry is being televised a lot on ITV News London regions, not every day but almost every week when it has been sitting, and the public have been able to see what is going on there, hear the evidence given by witnesses, the points being put forward by counsel and what is being said by the panel. It is a force for good. I do not think it is a negative thing. Going back to a simple point, it is down to the judge whether they allow filming in the first place. The media do not have the absolute right to film; it would be down to the judge, as is everything else in the court.

Paul Maynard: That is interesting.

Q143 **Chair:** There is one issue that strikes me in terms of public interest and the risk of sensationalism. It does not apply, I accept, to your own sphere with filmed reporting and so on. There is always the risk that you will remember as a journalist the headline bearing precious little relation to the text of the actual article thereafter. I have been a victim of some of that in my opening speeches in the past when I was a barrister. Is there some particular additional responsibility, as perhaps we encourage more reporting of judgments, particularly in more sensitive areas, and that there has to be something that the profession needs to do to make sure that the eyecatcher that might be good for selling the paper—a declining bit of the market—should not give a misleading impression about cases that might be potentially quite sensitive?

John Battle: There is always a danger, isn't there? That cannot be disputed. There are means to resolve that. You can complain to the editor. You can complain through the statutory regulator, Ofcom, or other regulators. There are provisions in the Contempt of Court Act as well. If the matter is not fairly and accurately reported, there is a potential claim for defamation. The remedies are there. In my experience, having been in the media for 13 years, both in newspapers and in television, we try hard. We do not always get it right. We try hard to get it right. We try

hard fairly and accurately to report what is in the courts. That is my point.

Q144 **Chair:** Okay. In fairness, it was not meant tongue in cheek, but there was a blackmail case in which the victim had competed once or twice in some carriage driving championships with the late Duke of Edinburgh, and for some reason my opening speech was headlined "Sexy romps of Philip's pal", which did not bear much relation to the evidence, if I can put it that way. I understand.

I make the light-hearted point to draw out a serious point; there will be some circumstances where it cannot be so readily laughed off. To what extent, therefore, is there an obligation for a little bit of self-denying ordinance to some degree around how the media deals with these things, if for good public policy reasons we increase the opportunities for reporting? Do you have any thoughts on that?

John Battle: It is part of media training and recognising that journalists do a professional job. There are bodies out there to provide the training, and, internally, it is important to have standards. At ITN, we have standards for accuracy, fairness and so on. We have to be professional. When people act incorrectly, they need to be called out.

Chair: Fair enough.

Q145 **Dr Mullan:** I can tell you that in the last few weeks alone I have seen two examples of mainstream media reporting of people receiving a life sentence on a minimum tariff as being "jailed for life". That is an absolutely concrete, simple element of our judicial system that just in the last few weeks alone has been incorrectly reported in the mainstream. It is perhaps a bit more of an issue than your response might indicate. Would you agree?

Chair: That is a factual inaccuracy rather than a screaming headline, isn't it?

Dr Mullan: Yes.

John Battle: Over time, if that is called out and complaints are made about it, whether to the individual house or to the regulator, reporting will improve, but I take your point.

Dr Mullan: Okay.

Chair: Dr Mullan, do you want to carry on because you had another question? I will wrap up at the end.

Q146 **Dr Mullan:** I want to talk about the institutional organisation of it all because we are dealing with the Ministry of Justice, the independent judiciary, and HMCTS. Do you feel that there is clear leadership, and, if so, who is leading on the issue of transparency among the three? Dr Byrom, do you want to start?

Dr Byrom: You are entirely right to say that delivering this in a systematic way requires thinking about changing the way different sections of different departments operate. One of the challenges, certainly when I was on secondment in HMCTS, was that inconsistent decisions were being made by different parts of the organisation around releasing information. There were 11 different routes, none of which were codified by which information was leaving the organisation. Some of the decisions that have a direct bearing on transparency and open justice like the high cost of transcripts, for example, are delegated to the commercial function of the MOJ, which is very difficult for policy to get a grip of.

There is also the issue, which you will have noted in the MOJ's own evidence, that there is a proliferation of stakeholder groups, and it is not really clear which stakeholder group takes precedence. What you need is to build on the existing infrastructure, such as the shadow senior data governance panel I mentioned, as part of a coherent public-facing strategy so that everyone can see what is happening, funded and backed at the most senior level, by which I mean the LCJ and the Lord Chancellor, and jointly owned by the MOJ and the judiciary.

Importantly, within that, any strategy around preserving and promoting open justice needs to be tied to a concrete timetable, which means that you, as parliamentarians, are able to hold the Ministry to account. We need to ensure that the public consultation and the stakeholder consultation that is so important is baked in and tied to that strategy, because there is a real issue of stakeholder fatigue with people being brought to different groups and giving of their time to talk about what the issues are but then nothing happens. It is really important.

Q147 **Dr Mullan:** Who does the shadow senior data governance panel sit with at the moment, and who is responsible for that?

Dr Byrom: It is funded currently by HMCTS, but the idea is that it should report to and advise directly the Lord Chancellor and the Lord Chief Justice. We have been waiting to see the HMCTS proposals to bring it out of shadow mode. What we really need to see in the next phase is formalisation, independent appointment and external recognition that it reports to and advises the Lord Chancellor and the Lord Chief Justice.

Q148 **Dr Mullan:** Do you want to add anything, Mr Battle?

John Battle: I do not disagree with the general points made there. Within the system, you have lots of stakeholders moving in the right direction, whether it be the judiciary, the Crown Prosecution Service, the police, HMCTS, the MOJ and so on. At heart, they want more openness, and it is clear that they have moved forward, certainly in the last 10 or 15 years, to embrace more openness. Sir Andrew McFarlane's report is a very good example of that. You need leadership. You need people who will say, "Let's do this." Part of it is a leap of faith. Sometimes we just have to give it a try. Most of the time, when you give it a try, it works.

What is lacking is some central point, a central person, overseeing it and auditing it or reviewing it and saying, "What is happening on that?", or, "Why did that never take place?" You have these sophisticated Criminal and Civil Procedure Rules that give reporters quite a lot of rights, but actually there is nothing in place of real note that makes that happen. You need someone to look underneath the bonnet and say, "This is what needs to happen. That is not working with that," something like a commissioner or a reviewer, an audit every year to see how open justice issues have been moved along. That would be very helpful. It would be helpful for those who want open justice to happen within the system, including all the stakeholders that I just talked about. That would be a really good thing.

Q149 **Dr Mullan:** You will be aware of the Government's desire to go even further with allowing people to start afresh after a sentence and reduce the time in which they are forced to disclose things to employers, for example. Of course, for someone at a public hearing, it is a matter of public record what they were convicted for. To some extent, an inability to go and search various people's names, convictions and court hearings makes it quite difficult to track someone over time, although it does happen. There are online groups that, quite within the law, track people convicted of certain offences and see where they moved to and disclose to local press that they are there. Do you have any concerns from that point of view that an all-singing, all-dancing platform that allowed us to understand everything our courts do would potentially make it very easy for people to track someone's criminal history in a way that they really cannot now?

Dr Byrom: That is covered by various different laws, and you are right to raise it as an issue. It is an example of why open justice policy needs to be joined up. At some point, unilaterally, a decision was taken to make the decisions of the employment tribunal available online. Company names are generic in a way that individual names are not. If you go into Google at the moment and search the name of an individual, the first thing that comes up is that they have brought a case before the employment tribunal. A really good paper by academics at Oxford highlighted the dangers of that for doxing, blacklisting, and preventing people from seeking further employment. We need to ask ourselves whether the way to approach this is to denude open justice or whether it is about putting sanctions in place to prevent the blacklisting. There is a danger, if you look at the history, in restricting access to information.

In France, for example, they had that issue when they had a huge swing to openness, making more data and information about court cases available online. It led to a rapid expansion in the use of AI to predict outcomes in cases and then all of that activity. The way they approached addressing that was, rather than restricting access to the decisions that played an important part in delivering open justice, to put in place criminal sanctions for predicting the outcomes of cases, resulting in a prison sentence and fines for that. We need to think about whether the

way to tackle the harms that are potentially created by transparency is about restricting access to information, which also leads to a whole range of other negative, unintended consequences, or whether we think through how we punish bad users of information rather than restricting access to information in the first place.

John Battle: The Rehabilitation of Offenders Act gets it right on that. There is a period of time after which you would not report a person's individual conviction.

Q150 **Dr Mullan:** I accept that, but it is not illegal to track someone online who has been convicted of a sex offence and let people in their area know that they have moved there. The fact that there are people doing things that are completely within the law is the challenge.

John Battle: That is the challenge, but that is the nature of information; people may act on it. What is more important than that is the truth. This has happened. This is the truth. This is what happened in the court. This was the outcome of the case. This is how our system worked. As someone from the media, I think we have to remain focused on that. The truth has to be protected. If there are too many restrictions or you are not helping or facilitating the reporting, the truth will go into the shadows, and that is not a good thing for anyone.

Q151 **Dr Mullan:** I wonder whether you could add something to say that after 10 years an event might not be as readily accessible. I am not giving a view either way.

John Battle: We would ordinarily look at the Rehabilitation of Offenders Act. If it is still active with the Rehabilitation of Offenders Act, it seems reasonable to report it. After that time, you would have to look at the facts and say, "It is probably appropriate not to have it up there." It depends on each case. You have to look at the individual facts, and the Rehabilitation of Offenders Act provides quite a good guide.

Dr Mullan: Thank you.

Q152 **Chair:** Thanks very much. You were both very helpful. You have given the view that you are favourable to the report from the President of the Family Division, Sir Andrew. I know Dr Byrom is involved with it. Would you like similar approaches to be taken in other jurisdictions, or do the existing arrangements work well enough elsewhere? There is the data point, I know, Dr Byrom, but is there anything else?

John Battle: If I had a wish list of things that should be done, it would be quite clear. First, there needs to be a database of reporting restrictions. Secondly, there needs to be a focus on providing documents to journalists, whether it be criminal proceedings or civil proceedings, giving effect to their rights already in place. A reporters charter would be really good so that you could turn up at the court and say, "I'm allowed to come in here." Fourth would be someone who is reviewing and auditing it. I do not think that is too much to ask. All you are doing is

putting into place what is already there. These are not radical ideas. It is entrenching what people are entitled to already, but the mechanism does not allow it.

Q153 **Chair:** Dr Byrom saw the lack of data as the greatest threat to open justice. What would you say is the greatest threat or challenge from your perspective? Is it the same thing or something else?

John Battle: Sleepiness. Just allowing it to go on slowly and not embracing open justice principles and open justice is a really important point in our system. The pace of change in the media is so fast that by the time we, within the courts system, embrace a certain type of technology or allow reporters to report in a certain way, the media, in terms of the technology, has moved on. We should not be playing catch-up the whole time. We have to move with the times and say, "We put openness at the heart of our system," and, "What can we do to help reporters do their job?" It is quite a simple point, but that is what I would ask for.

Q154 **Chair:** Dr Byrom, you have very powerfully put the case on data and a number of other issues. Is there anything else?

Dr Byrom: The data issue is endemic across all areas of the justice system. If we are talking about openness, the magistrates court is an area of great concern, particularly as more offences are being shunted down there. There needs to be action to address the publication of sentencing remarks. It was something that was recommended in the Lammy review and it was broadly endorsed, yet we have seen no action on it. That is fundamental to ensuring that trust is maintained in our criminal justice system, so that is what I would like to see.

Chair: Thank you very much.

Q155 **Ms Abbott:** I want to ask Dr Byrom a question. The Family Court, with all due respect to Sir Andrew, does not have a great reputation, and the reason for that, I think, is twofold. One is the secrecy. Nothing excites the suspicions of the public more than secrecy. Also, you only ever hear about the Family Court when something bad has happened. No one ever goes to the media to say, "I had a really great experience at the Family Court." I noticed earlier that you said that there have been all the reports and statements but there has not been as much progress as you would have liked to see. Why do you think that is?

Dr Byrom: I think it is some of the issues that we have alluded to previously. This issue needs to be owned from the top. It needs to be resourced. Some people have described the MOJ settlement through the spending review as a windfall settlement. If that is the case, we need to think about investing a portion of it in making sure that this happens. Some of it comes down to governance and the fact that the issue of open justice falls awkwardly between the judiciary and the MOJ, so we need joint working and resourcing to deliver that.

On the Family Court and the work that Sir Andrew has done, which I think is excellent, one of the questions that you rightly asked was about the 10% of judgments and whether or not that was sufficient. One of the things that is badly needed, and is alluded to in the report, is the matching of that 10% publication of judgments with the collection of better data, which enables you to contextualise those judgments, because if you do not have it you are not able to tell whether it could lead to more misinformation. The question that I have is that the mechanism arrived at in the President of the Family Division's report was the idea of a stand-alone web tool to collect that data.

We are moving into the final year of a billion-pound programme of court reform, and it rather perplexes me that the data requirements that would be needed to fulfil open justice, such as having authoritative data on domestic abuse or on parental alienation, were not built into the design of that system. I would be really interested to ask HMCTS why that is the case, because relying on manual tools places an additional burden on judges, as the President of the Family Division alluded to, and it could also lead to less accurate information. It is important that that is addressed.

Ms Abbott: Thank you very much.

Chair: Thank you. That is very helpful. Unless there are any other questions from any of my colleagues, I thank both of our witnesses, Mr Battle and Dr Byrom, for your time and for giving evidence to us this afternoon. It is very much appreciated.

John Battle: Thank you for inviting us.

Dr Byrom: Thank you.

Chair: The session is concluded.