

Written evidence from His Honour Clifford Bellamy

NOVEMBER 2021

I am a retired Circuit Judge. My experience as a Circuit Judge was almost exclusively in the Family Court. I was the Designated Family Judge [DFJ] for Warwickshire and Coventry (2006-2012), DFJ for Leicester (2012-2016) and DFJ for Derby (2016-2019). My response to the call for evidence is limited to the work of the Family Court.

I have been Patron of The Transparency Project since 2019. On behalf of The Transparency Project, Lucy Reed has responded to the Justice Committee Inquiry. I have read that submission. It is detailed and thorough. I agree with it. I do not want to cover again issues addressed in that submission.

The brief submission I am now making is not being made in my capacity as Patron of the Transparency Project but in my personal capacity.

Writing in The Times on 2nd November 2021, John Battle, head of legal compliance at ITN and chairman of the Media Lawyers Association. makes the point that:

“The reporting of what goes on in our courts is vital to democracy. But the legal system needs to embrace modern communication methods so that the work of the courts does not become marginalised in the news....The pace of change is not keeping up with the digital age. It is in the interest of the courts, the legal system and the media to make this happen.”

I agree with him to a point. However, whereas the need for open justice is taken for granted in the work of the criminal and civil courts, that has not been the case in the Family Court. The Family Court has sought to balance the acknowledged importance of open justice with the need – some may say the imperative – to maintain confidentiality for the children and families whose cases are dealt with by the Family Court. The attempt to balance those two objectives has led to criticism – most notably media criticism – that the Family Court is a secret court. Some fear that court reporting in the digital age makes it more difficult to maintain confidentiality and risks the identification of children and families, for example, by means of jigsaw identification.

Striking the right balance between confidentiality and transparency/open justice has proved challenging. During the last 20 years a great deal of time and effort has been expended in

trying to open up the Family Court but the seeming imperative to maintain confidentiality at all costs has acted as a drag on progress. As the President of the Family Division, Sir Andrew McFarlane, notes in his recently published report ‘Confidence and Confidentiality: Transparency in the Family Courts’ (published 28 October 2021) “the pace of change has been glacial”. He goes on to acknowledge that

“...there is a significant and important public interest in our society having and maintaining confidence in the work of the family court.”

In consequence, he says that he has reached the clear view that,

“there needs to be a major shift in culture and process to increase the transparency of the system in a number of respects.”

If implemented – and there is no reason to believe that they will not be implemented – the proposals set out in the President’s report represent a seismic shift in the balance between confidentiality and transparency in the work of the Family Court.

In March 2020 my book, *The ‘Secret Family Court – Fact or Fiction?’*¹ was published. The motivation for writing this book was my concern about the widespread view held by some – particularly by journalists – that the Family Court is a ‘Secret Court’.

In this submission I don’t intend to deal separately with each of the five bullet points set out in the Justice Commission Inquiry’s call for evidence. In my view, so far as concerns the work of the Family Court, my book provides relevant material relating to each of the five bullet points. The book contains two chapters dealing specifically with issues relating to the media including a section relating to the role and impact of social media.

The purpose of my brief submission is to draw the attention of the Justice Committee to the existence and relevance of my book. The members of the committee may find the book useful in its deliberations so far as the work of the Family Court is concerned. They may also find of some interest the evidence I gave to the President’s Transparency Review which I have appended to this short paper.²

Some of the recommendations set out in the final chapter of my book have been adopted by Sir Andrew in his report including, importantly so far as this inquiry is concerned, my ~~recommendation that there should be a Media Liaison Committee such as that which has~~

¹ Published by Bath Publishing.

² <https://www.judiciary.uk/wp-content/uploads/2021/02/Transparency-Review.pdf>

existed for some years in Nova Scotia. The Media Liaison Committee will comprise journalists, media lawyers and judiciary. This clearly has some positive implications for Family Court reporting in the digital age. This is a very significant development.