

PRIVACY AND SAFEGUARDING
EVALUATION OF PRACTICE GUIDANCE
(2018)

CHILDREN JUDGMENTS

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PRIVACY AND SAFEGUARDING

AN EVALUATION OF PRACTICE GUIDANCE (2018): ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

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MAY 2021

Acknowledgements

First and foremost, thanks go to the young people who participated in this evaluation - at a time of unprecedented pressure in their lives resulting from the pandemic and following a long delay in starting the project. Their commitment, and then patience while we developed a new methodology, was astonishing; their hard work, well-informed, reflective thinking in the evaluation exercise was outstanding. Without their continued commitment to this field on behalf of children – and over several years, this work would not have been possible.

The Advisory Group and the Nuffield Foundation also extend thanks to young people for their work.

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Thanks are also due to our academic peer reviewers, and to:

CoramBAAF, and especially to Dr John Simmonds OBE, Director of Policy, Research and Development, Dr Judith Trowell, Chair - Ethics Committee, and Danielle Sawyer.

National Youth Advocacy Service - in the early period of the work, Eleanor Harrison and Mary Mullin; over the latter period, Ben Twomey and Bethany Wright.

The Nuffield Foundation, and to Ash Patel, Programme Head – Justice, for support during the early part of the pandemic and changes to the methodology, and for helpful feedback.

The authors also extend thanks to Jay Jhutti-Johal for her work on the project from February 2020 to August 2020. Thanks are also due to Julia Higgins for tireless endeavours with young people throughout fieldwork, and for administrative support on the project.

The project was hosted by CoramBAAF



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The project was funded by the Nuffield Foundation



The Nuffield Foundation is an endowed charitable trust that aims to improve social well-being in the widest sense. It funds research and innovation in education and social policy, and also works to build capacity in education, science and social science research. The Nuffield Foundation has funded this project, but the views expressed are those of the authors and not necessarily those of the Foundation.

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Publication date: May 2021

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EXECUTIVE SUMMARY

Recommendations

This report is an evaluation of the implementation of Practice Guidance (2018) on anonymisation practices and changes to the treatment of graphic descriptions of the sexual abuse of children in children judgments posted on the British and Irish Legal Information Institute (BAILII) – a public website. The report makes the following recommendations based on summary of the evidence below.

1. Posting judgments on BAILII with unabridged graphic descriptions of sexual abuse/rape of minors should be halted: those already posted should be removed.
2. In a digital world with a perpetual footprint, an inter-department review of the crime-family interface is necessary to achieve an updated practice protocol with regard to the treatment of images (photographs), videos, and narrative of child sexual abuse in documents exchanged, and a judgment intended for the public arena. Use of a schedule of abuse (as used in images in criminal proceedings) should be explored regarding sexually explicit narrative.
3. Family justice policy has to catch up - and quickly, with the digital world and its footprint: this is the landscape within which the contemporary privacy, safeguarding and welfare needs of vulnerable children should be placed. Policy must be forwarding looking: the digital world is evolving at an unprecedented rate. Current safeguards are ineffective, and out of date. Family justice needs a vision to address the current dynamic landscape: Checklist 1 and 2 provide the policy framework. This needs to be delivered through training which should be fully ticketed. The public and young people need to know that judges are fully trained and responsive to this challenge and will exercise their discretion to protect the privacy and safeguarding needs of vulnerable children.
4. In order to facilitate future monitoring of Practice Directions, judgments should reference Guidance within a sub-heading titled 'Law and Guidance'. Monitoring would be further aided if judicial citations were made more uniform, using a standardised system for all children judgments posted on BAILII. This should be a precursor to any resumption of posting judgments on BAILII concerning child sexual abuse as it would assist monitoring CL2, by making judgments concerning allegations of sexual abuse readily identifiable.

5. There should be no automatic presumption of 'publication' of children judgments. Following a review and a decision on operational changes (accompanied by a Children's Rights Impact Assessment) there should be a further limited evaluation to assess progress in judicial practices.

Introduction: the evaluation

- The evaluation explores implementation of Checklist 1 (CL1) of Guidance aimed to assist judges to reduce or eliminate risks to children of jigsaw identification. Checklist 2 (CL2) aims to better safeguard children/young people subject to sexual abuse by the use of a summary/abridgment of graphic descriptions of sexual abuse in a public document.
- It follows research undertaken in 2010, 2014 and 2015 with young people and takes as a starting point their views and experiences - as subjects and stakeholders in the family justice system, as audiences of the media, and as users of the internet and social media platforms.

The sample and review exercise

- It examines 30 judgments posted on BAILII between 2017 and 2020 concerning 80 children; judgments were drawn from all tiers of the family justice system.
- All judgments were read and analysed by the research team, 12 were evaluated by young people; all findings by researchers were cross checked with those of young people, results demonstrating a high degree of concurrence.
- The evaluation included an internet search for coverage of judgments – and the children and families therein on media and social media sites.

Geographical indicators, jigsaw identification (JI) and Checklist 1

- Overall, 6/30 judgments contained four or more 'within county' markers indicating the geographical location of children; 18/30 contained three or more indicators.
- There was notable success in the use of CL1 with regard to the exclusion of dates of birth, names of schools attended, anonymising children and parents by use of initials, and avoidance of naming towns where families reside/had lived.

- Some progress was noted regarding detailed accounts of children’s problems at school, and regarding detailed cultural/religious backgrounds of families. However, care is necessary in the inclusion of ‘cultural markers’: if these are considered essential, such judgments may not be appropriate for posting.
- Limited progress has been made with regard to reducing the detail of information about extended family members, a majority of judgments (25/30) containing extensive details. Young people argued judges should reflect on the necessity for this detail - and the implications of its inclusion for jigsaw identification.
- Progress towards eliminating the risk of jigsaw identification has been undermined by continued naming of certain local authorities and some trial courts. Naming certain local professionals can further confirm geographical boundaries to the location of children and families.
- Young people identified that all communities have ‘known families’, with features that make them recognisable. Particular household profiles (e.g. with several adults and children, other young adults staying), poor home conditions, and professional visits make families locally visible: anonymising judgments for these families was a litmus test for CL1.
- The inclusion in children judgments of extensive and specific details about criminal proceedings concerning parents/others in a household (e.g. dates of police visits, arrests, offences, trials, convictions and sentencing) undermine efforts to improve anonymisation because these details provide significant avenues through which to identify a parent(s) and thus children.
- Young people argued that while no single indicator would lead to the identification of children in judgments, it was the cumulative impact of a number of potentially ‘disclosive’ details that raised the risk of exposure. They argued judges need to pause and reflect on the combined potential for identification of children from details – across the JI indicators – which they include.

Allegations/concerns regarding failures of parenting

- Young people were surprised at the level of detail – and history of parental problems and failures in a public document. While acknowledging the need for the judge to have a comprehensive assessment of parenting, they identified an urgent need to reconsider what was *necessary* in a public facing document and how this detail might be better drafted to protect the privacy and emotional wellbeing of vulnerable children.
- They argued detailed information about parenting problems is not simply ‘embarrassing’, it is deeply shaming, facilitates bullying and intimidation, causing psychological distress to children already emotionally damaged by ill-treatment.
- They also reminded judges that many children removed under care orders may eventually return to/be in contact with parents and siblings/stepsiblings.

The treatment of descriptions of sexual abuse of children

- Major criticisms were levelled at judgments concerned with the sexual abuse of children; young people questioned the inclusion of graphic, salacious and multiple descriptions of sexual abuse of a child in a public document. They pointed to summaries/abridgment of those details in judgments, demonstrating that a different treatment was possible.
- The concern and anger at the inclusion of graphic descriptions of CSA was independent of concerns about jigsaw identification. Nevertheless, the safeguarding risks posed are not reported in a vacuum: two-thirds of CSA judgments contained three or more ‘within county’ indicators.
- Young people argued that in an incontrovertibly media and social media age, the risks to sexually abused children in terms of future safety, and mental health and wellbeing, requires greater attention to a summary/abridgment of graphic descriptions by judges before placing a judgment on BAILII.
- A detailed analysis of CSA judgments by researchers showed limited progress in the use of CL2; a small minority of judgments restricted graphic descriptions of sexual abuse/rape to a summary (e.g. summarising descriptions in ABE transcripts/judgment from criminal proceedings).

- Most however continue to contain graphic descriptions of a child's sexual abuse - frequently imported, verbatim and at length, from other proceedings/documents - primarily criminal proceedings and ABE transcriptions, or reproduced by the High Court/Court of Appeal from the content of first instance judgments.
- While most judgments *also* contained a summary at some point, most - by error or design - contain graphic, salacious descriptions of sexual abuse/rape of a child in a document intended for the internet.
- A substantial minority of judgments (9/21 – 40%) concerning sexual abuse of a child/young person also contained evidence of grooming/trafficking of children. In a significant minority (8/21 – 38%) the perpetrator(s) took images during sexual abuse; these were frequently shared, uploaded and traded on the internet.

Professionals and accountability

- Young people recognise the principles underscoring the naming of courts and local authorities as public bodies but argued the decision to name one or both needs to be taken within a review of the risks a judgment poses to children.
- Where professionals were named in judgments, young people expressed concerns that this could contribute to jigsaw identification if these individuals were known to work in particular neighbourhood teams/centres/health services.
- Many judges appraised the work of professionals (40% praised, 67% were critical). Young people welcomed criticism of professional practice where this failed to safeguard children but argued that 'naming and shaming' individuals was not in the interests of children, coming too late to benefit the subject children but with a potential to compromise their privacy, and safeguarding needs.

What young people liked about judgments and what should be posted

- Young people liked clear explanations of the tasks and duties of judges, and in language accessible to a lay audience. They liked judgments which stressed the importance of fairness and due process for parents, and which recognised that despite problems, a parent(s) may wish to care for their child(n).

- They also liked judgments which stated that children were in no way to blame for court decisions to remove them from birth parents along with explanations as to why children could not be placed with family members. They liked a clear focus on the importance of sibling relationships and that these should be supported in placement plans.
- They welcomed statements about the importance of anonymisation for children.
- They liked judgments which provided a 'route map' by way of an introduction and paragraph headings; they were critical of those which they felt lacked a clear structure and headings - these presented a challenge for a lay reader. They identified judgments in highly complex cases that remained 'accessible' - indicating that it could be done.

Media access and reporting of children cases

- Like previous cohorts of young people, a major concern was that judgments which contain graphic descriptions of the sexual abuse of children are placed in the public arena, material becoming available to anyone, for downloading and uploading – worldwide, and for the lifetime(s) of the child(n) concerned. Once posted on BAILII, all control over this material is ceded; all digital data can be used and abused.
- Half the sample judgments and families were covered in national media and local press and news outlets; this included 11 judgments concerning the sexual abuse of a child/young person.
- The internet search demonstrates the ongoing, material risk of jigsaw identification of children. A sample of judgment case studies demonstrates the ease with which disclosive information can be accessed, the level of disclosure relating to children, and links to wider family/others, it facilitates.
- Press coverage in local outlets confirmed the geographical boundaries for child(n), many of whom will have within county placements for schooling, and also family connections. BAILII is providing a pathway to revealing the identity and locational factors, putting vulnerable children at risk of being traced.

- The search also identified the presence of ‘web communities’ who expose adults who have been accused/convicted of sexual offences against children. Their practice of naming convicted individuals contributes to the risks of jigsaw identification of children.
- A major finding is a symmetry in the searchability of press/media and other coverage of judgments. Key words used by media/press/other social media platforms in relation to judgments can be used to search BAILII, taking a reader directly to the judgment - with full graphic, salacious descriptions of the sexual abuse/rape of a child/young person that it may contain.
- It facilitates access to descriptions of the sexual abuse of a child/young person – described in graphic detail by children themselves; such material could not be purchased ‘over the counter’ as it would arguably risk breaching the Obscene Publications Act 1959.

Conclusions

Practice Guidance (2018) – CL1

- Checklist 1 is having an impact on anonymisation practices; factors incorporated into CL1 appear to be about right. There are however two caveats and some ‘bedding in’ problems.
- Key in these is a need to undertake an *overall* check of potential locational indicators in judgments across all headings/sections and potential for jigsaw identification. A final search would identify terms/details/areas/dates previously anonymised but later inadvertently included.
- Careful attention as to the inclusion of characteristics of ‘known families’ is necessary: detailed family histories/backgrounds (for the ‘sake of completeness’ and to demonstrate to parents that the court has an understanding of their lives) can be highly problematic in meeting the objectives of CL1. Successful anonymisation of such judgments is a litmus test for the success of Guidance.

- In the contemporary, digital climate where the potential risks to children are high (in cases concerning sexual abuse/where households have a particular profile) a change of practice to a more narrowly focused judgment is likely to be necessary to address the changed digital landscape.
- Extensive details from criminal proceedings imported into children judgments undermines much of what might otherwise be achieved by family court judges under CL1 of Guidance.

Practice Guidance (2018) – CL2

- Progress on the implementation of CL2 across all court tiers - with notable exceptions, has been slow.
- A key issue for CL2 is the importation into judgments of large sections of an ABE transcript/other police documents in which children describe sexual abuse in graphic detail. The reasons for that approach by judges may be personal style/principle or tradition – or simply pressure of time (it may be quicker to cut and paste sections from evidence into judgments). Young people suggested how judges might summarise descriptions for judgments.
- As indicated above, a consequence of the decision to simply post children judgments online ‘as is’, and a failure to understand/recognise the digital world and the lack of control over the use of judgments once posted, is that graphic, salacious descriptions of the sexual abuse/rape of children are freely available in digital format, permitting downloading/uploading and trading.
- Young people noted that the risks posed by posting graphic descriptions of sexual abuse are not reported in a vacuum; they also carried risks of jigsaw identification of already vulnerable children/young people.
- In an undeniably media and social media driven world, findings indicate that a statement on the cover page of judgments (the ‘standard preamble’) regarding the need to preserve the anonymity of children does not and cannot protect them. It has not been written with knowledge of the digital world.

Primary and secondary purpose of judgments

- There is no indication that judgments applying CL1 to the anonymisation of details in judgments failed to meet the primary purpose of judgments. Almost all judgments also met the needs of lay readers to understand reasons for applications and orders made, although some barriers for lay readers were identified, for example, lack of headings in judgments.
- Given the limited progress in implementation of Checklist 2, it was not possible to assess the impact of Guidance on the primary and secondary purposes of judgments involving child sexual abuse.

Policy Implications

- Improvement to implementation of CL1 requires judges to reflect on what information *should* be included in judgments in the digital era and how details pertaining to children and families should be presented to avoid putting children inadvertently at risk. This has implications for the time judges require to do this task properly and to a high standard.
- Findings indicate greater consideration should be given to the privacy needs of children in decisions to post judgments on BAILII. A more consistent application of CL1 could better address the principle of proportionality between perceived public interest and privacy needs.
- Checklist 2 may need more time to bed-in, and in response to these findings and recent developments by the Court of Appeal, which arguably indicate approaches to sharing and posting graphic accounts of child sexual abuse may be changing.
- Where risks of identification of children are high, there is a need for more narrowly focused judgments. Where detailed family histories are considered essential to fact-finding and orders, this background should be summarised. Judges can acknowledge awareness of the difficulties parents have faced, and any changes they have attempted to make, either verbally at court, or in the judgment.
- A similar approach can be adopted with regard to the evidence of children. It is important for children to know whether they were believed: a summary of their evidence in the judgment can be followed with a statement assuring the child/readers

the judge has read the full transcript of the child's evidence, and whether and why they were believed. The cost of that assurance should not have to come at the loss of privacy, dignity, and potential future risk for children by posting unedited evidence.

- Taken together practices at the crime-family interface for CL2 and CL1 issues, considered alongside findings from the internet search, indicate this interface requires urgent review, with a specific focus on how inter jurisdictional and inter agency practices can better protect the privacy and safeguarding needs of children. One option is to update and strengthen the Protocol and Good Practice Model (2013) to include best practice in the redaction of disclosive details and control of graphic images and narrative of the sexual abuse/rape of children in a digital age.
- Judges must understand that the rapid growth in platforms and connectivity means that risks to the privacy and safeguarding of vulnerable children are constantly evolving. Therefore, judicial practices in anonymisation and use of summaries/abridgment needs to be forward-looking, and digitally aware.
- The rapid growth and evolution of the digital world requires judicial training to support judges and to build an understanding/acknowledgment of (a) how information moves across the digital world at speed (b) how search engines operate, and the use/misuse of key words (c) how children and families can be tracked and traced (d) how mainstream platforms such as Facebook can be used for the trading/exchange of obscene materials regarding the sexual abuse of children and (e) the permanence of the digital footprint.
- The responsibility for judgments posted on BAILII rests with the judge: where a decision is made to post a judgment, a judge has a responsibility to ensure the judgment does no further harm to children. Some operational changes however could assist judges in realising the aims of CL1 and CL2.
- A key issue is more judicial time for this work – to permit reflective practice and to undertake summaries/abridgment of children's evidence. Two supporting options are (a) front loading the preparation of documents at the start of proceedings in a way that is non-disclosive, and (b) assistance by advocates in anonymisation of documents *during* proceedings and at key stages utilising CL1 and CL2 Guidance

and addressing both agreed and disputed issues. Any operational changes will have to be adequately resourced.

- Given the aim of public law proceedings is to make arrangements to protect children from significant harm/future risk of such harm, it is essential to appreciate that a potential for harm in the digital realm continues beyond the closure of proceedings. There are two facets to this issue:

(a) any digital record of proceedings is itself a potential hazard to the subject children; where a decision is made to post judgments online for public consumption, the risks to the child(n) can be greatly reduced with careful application of Guidance - CL1 and CL2.

(b) the 'inability/unwillingness' of parents to protect children (frequently part of the allegations) may extend beyond proceedings to their engagement in the digital world. This is a complex issue for courts and local authorities - but not an argument for ignoring the reality of those risks.

- Young people expressed anger at an apparent lack of consultation or information sharing with them regarding placing graphic descriptions of their sexual abuse/rape on a public website. Legal and welfare agencies need to reassess codes of ethics/conduct regarding young clients; this to cover not simply responsibility and timing for telling young people that the media may be in court, but also that a judgment may be posted on a public website, and what it is likely to contain.
- It should be mandatory – and a point of ethical practice and respect for young people - to explain how their rights under Article 12 (with Articles 13, 16, and 17) of the UNCRC will be implemented so that they understand the terms under which they express a view and give evidence. This is an early case management responsibility. Decisions not to tell young people about these issues may meet the needs/fears of professionals but it is at a cost to children and young people in terms of their future privacy rights and safeguarding needs.

SECTION ONE

INTRODUCTION: EVALUATION OF PRACTICE GUIDANCE (2018)

Background

- 1.1 This 'fast track' qualitative study builds on research regarding the views and experiences of children and young people¹ regarding the privacy and safeguarding of children subject to proceedings in the context of information contained in judgments placed in the public arena (e.g. Brophy 2014a, b;² 2015;³ 2016a, b, c, d). It evaluates the Practice Guidance (2018) issued by the President of the Family Division (see Appendix I)⁴ which aims to assist judges to improve the anonymisation of children judgments placed on BAILII (British and Irish Legal Information Institute) - a public website on which judgments are posted, not published. BAILII does not have an editorial role, nor responsibility for the content of materials made available on the site; that remains the responsibility of the author of the judgments.
- 1.2 Practice Guidance issued by the PFD endorses the 2016 Guidance - Checklists 1 and 2 (Brophy 2016).⁵ Amongst other things, Guidance deals with two aspects of judgments placed in the public arena: (a) personal and geographical indicators in judgments and issues of jigsaw identification of children and (b) the treatment of sexually explicit descriptions of the sexual abuse of children. The President annexed both checklists to his Guidance, encouraging all judges to refer to these checklists when 'publishing' any judgment in a family case relating to children: 'I believe that judges will find the checklists to be of real help in writing anonymised judgments'.

¹ In this report 'children and/or young people' are used interchangeably; for ease of reading one term is generally used and, unless otherwise stated, this should be taken to imply all minors.

² Brophy J, with Perry K, Prescott A and Renouf C (2014) Safeguarding, Privacy and Respect for Children and Young People: Next Steps in Media Access to Family Courts. Research Report. NYAS and ALC. http://www.alc.org.uk/publications/publications/nyas_alc_report_media_access_to_family_courts_next_steps_views_of_children

³ See Appendix II: Executive Summary 2015; for full report, see: [http://alc.org.uk/uploads/Brophy_-_Judgments_on_Bailii_and_Childrens_privacy_and_safety_-_FINAL_REPORT_\(Oct_15\).pdf](http://alc.org.uk/uploads/Brophy_-_Judgments_on_Bailii_and_Childrens_privacy_and_safety_-_FINAL_REPORT_(Oct_15).pdf)

⁴ Practice Guidance: Family Court – Anonymisation guidance (December 2018) - <https://www.judiciary.uk/publications/practice-guidance-family-court-anonymisation-guidance/>

⁵ Project ref: Law 24719 Nuffield Foundation; work funded at the request of the previous President <https://www.nuffieldfoundation.org/news/anonymisation-of-children-judgments-new-draft-guidance-published>

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

- Checklist 1 (CL1) addresses personal and geographical indicators in judgments. It was developed on the basis of the 2015 evaluation of children judgments on BAILII in which a group of young people expressed concern about the level of personal and geographical information routinely included in judgments; they demonstrated how these details permit jigsaw identification of children/families (see Appendix II – Executive Summary). As outlined by the President, anonymisation is not confined to concealing names but extends to the avoidance of any materials liable to lead to the identification of the child. Guidance thus aims to help judges strike a balance between the policy that more judgments should be published, and the concerns expressed by and on behalf of young people about the implications for them of placing personal details and information in the public domain.
 - Checklist 2 (CL2) was developed to address what can only be described as shock and outrage by young people at the degree of graphic, intimate and often multiple descriptions of the sexual abuse/rape of children in a document on a public website - and the fact that, once published, detail remains in the public arena for the remainder of a young person's life – to be shared and uploaded indiscriminately and for purposes unrelated to public education including paedophile networks/purposes.
 - Guidance thus asks judges to consider what level of detail it is necessary to include in documents placed in the public arena. It gives examples of alternative drafting (see Appendix I – annex 2) and asks judges to consider the use of a summary in any public facing document, reserving graphic, intimate descriptions to an annex which would not be published but made available to any appellate court.
- 1.3 This evaluation explores whether, when adopted, Guidance reduces/eliminates risks to children of jigsaw identification from judgments, and secondly, better safeguards those who may be vulnerable as a consequence of public disclosure of graphic descriptions of sexual abuse/rape, by the use of a summarising/abridged version of abuse, and whether use is made of an annex document.
- 1.4 It also explores whether such judgments meet the primary and secondary purposes of judgments as set out in judicial training and repeated in the draft Guidance of 2016

(see Appendix III: para 2). The primary objective is to ensure that a judgment meets the needs of 'law' (applying the relevant legislation, rules and case law to the application and evidence, demonstrating due process in the treatment of evidence (written and oral), and to parties to the proceedings so that they understand the outcome (and bearing in mind potential for appeal). The secondary aim is to provide sufficient information to enable a lay reader to understand the case, the reasons for the application, and the orders made.

- 1.5 A key concern is whether Practice Guidance to judges (and others⁶) to improve anonymisation practices meets the needs and concerns of young people in the contemporary internet/media driven culture, where information can be downloaded and shared by the media and social media platforms – by anyone, and where such information remains publicly available throughout a child/young person's life. The research with young people (in 2010 and 2014⁷, and 2015⁸) was innovative in design; it took as a starting point their views and experiences as both consumers of the internet and media driven age, and as stakeholders in the family justice system. As the previous President of the Family Division commented in meeting this cohort of young people: "you are the experts in this field" - both in terms of social media expertise and usage, and regarding potential risks and challenges which face sexually abused children in the care system and beyond.
- 1.6 Some urgency was attached to this evaluation. First, because following the 2016 draft Guidance the previous President had undertaken to get his Practice Guidance issued as soon as possible, aiming at that point for January 2017. He had also requested, when ready, his Guidance be evaluated using the same 2015 methodology and cohort of young people; at that point they were very willing to repeat the 2015 evaluation exercise. They have been on standby for many months.

⁶ Advocates can provide invaluable assistance to judges as to initial issues which may give rise to concerns about privacy/safeguarding and with regard to checking a judgment prior to publication.

⁷ Brophy (2010) The views of children and young people regarding press access to family courts. Research Report. London: Office of the Children's Commissioner – England.
<https://www.childrenscommissioner.gov.uk/report/report-on-the-views-of-children-and-young-people-regarding-media-access-to-family-courts>; and note 2 above.

⁸ See note 3 above.

- 1.7 Second, as above, the current President issued his Guidance almost two years later, in December 2018, also with a request that we evaluate it in the same manner. Timing was crucial: the lives of young people inevitably move on and given earlier delays it was important to retain at least some of those who undertook the 2015 evaluation. Further developments were announced by the President in May 2019⁹ including a review of the overall field described as ‘transparency’ in family courts, adding further urgency to the project.¹⁰

Aims and Objectives

- 1.8 The aim was thus to evaluate a sample of children judgments on BAILII during the years 2017 to 2020, to determine first, from the perspective of young people, whether Guidance in the form of Checklist 1 (CL1), when applied, meets concerns by reducing/eliminating the potential for jigsaw identification of children. Second, it aims to explore whether Guidance in the form of Checklist 2 (CL2) on the treatment of graphic descriptions of sexual abuse/rape of children, where applied, better meets the privacy and safeguarding concerns of young people.¹¹
- 1.9 Third, the evaluation explores whether such judgments meet the primary and secondary purposes of judgments.

Methods and Sample

- 1.10 The methodology is set out in detail in Appendix IV. Briefly, it repeats that utilised in the 2015 evaluation of study judgments (i.e. prior to any Guidance). It thus involves a group of young people in the exercise - some of whom were involved in the 2015 evaluation from which Guidance was developed.

⁹ <https://www.judiciary.uk/wp-content/uploads/2019/01/View-from-the-Presidents-Chambers-May-2019-1.pdf>

¹⁰ It should be noted we are restricted in time and funding to an evaluation of Guidance; this report does not undertake a review of the broader field of media/other access and reporting of children cases. Much of that has been done elsewhere. We are aware of previous work on media access and reporting in family cases (e.g. Doughty 2016) also the pilot on Legal Bloggers (FPR 2010, PD36J); neither project however involves direct engagement with young people as stakeholders, not least in the context of the content of published judgments and subsequent Guidance on anonymisation.

¹¹ This is not to say that others, for example, experienced journalists/others – who might be termed the ‘motivated intruder’ (<https://ico.org.uk/media/1061/anonymisation-code.pdf>) with time, internet skills and ability to acquire local knowledge ‘feeds’ could not eventually track down children/families.

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- 1.11 All judgments were also independently evaluated against Guidance by the research team; findings of young people were further compared with those of researchers.
- 1.12 Questions as set out in the data collection schedule (Appendix VI) applied (pre-tested) questions (Brophy 2015, Appendix III) to a new sample of judgments exploring application of Checklist 1 of Guidance (information pertaining to geographical location of children and families, school and school issues, age of children, religion/cultural issues, extended family details etc) within judgments and potential for jigsaw identification of subject children.
- 1.13 Questions also explored descriptions of the sexual abuse/rape of children in judgments and application of Checklist 2 of Guidance - and if/how descriptions are summarised/abridged - and whether young people thought post Guidance judgments offered better protection for such children.
- 1.14 The exercise also explored what young people liked about judgments, the information therein which they thought should be published - and why, and whether they thought judgments contained sufficient information to enable a (lay) reader to understand the reasons for the application, and the decisions the judge made.
- 1.15 As per the 2015 exercise, young people were then asked to select information from judgments to be used as internet search terms for an exploration of whether information from judgments/cases appear in the media (local and national on-line newspapers, and other media sites accessed via the internet), and social networking services such as Facebook.
- 1.16 Both exercises aimed to repeat the 2015 exercise to enable a pre- and post-Guidance evaluation in a 'compare and contrast' model.
- 1.17 Appendix IV – Methodology herein, sets out in detail the procedure for selecting judgments; broadly, we aimed to mirror the procedure outlined in the (2015) pre-Guidance evaluation. Within the time frame identified above, and the criteria outlined in Appendix IV, we sought two tranches of judgments, seeking first to 'match' judgments with the geographical location of young people.

- 1.18 From a list of all public law children judgments on the BAILII website between 2017 and 2020, a search was undertaken to identify local authority applicants matched to the geographical location of the young participants. The aim was to allocate a maximum of three judgments to each young person and within a workshop environment with a support person, each young person would read, discuss and mark up the judgment and complete a semi-structured schedule (Appendix VI – Schedule 1). This method was subsequently amended to a 1-2-1 video link with a researcher, following impact of the Covid19 pandemic as detailed in Appendix IV.
- 1.19 Judgments concerned the care and future placement of some 80 children and young people aged from under 12 months to 17 years; approximately 44 were aged between eight and 17 years.
- 1.20 In terms of young people participating in the evaluation, we aimed for 7-8 (maximum of ten), evenly spread between those with experience of evaluating judgments and those new to the project. We aimed for about 21 judgments.
- 1.21 In practice, for reasons outlined in Appendix IV – Methodology reflecting the impact of the Covid-19 pandemic on young people/their households, young participants were reduced to six¹² while our total sample of judgments was increased to 30.
- 1.22 Judgments were evaluated using semi-structured schedules; all judgments evaluated by young people were also evaluated by a researcher (see Appendix VI Schedule I - Young people, Appendix VII Schedule 2 - Researchers). This permitted a comparison between the findings of researchers, and those subsequently provided by young people. Analysis of the 12 judgments evaluated in this way showed a high degree of concurrence between young people and researchers regarding information selected from judgments to answer the questions and on which to provide further comment.
- 1.23 This was a key result because it provided confidence that researchers identified information in judgments using the same ‘lens’, both with regard to identifying factual issues in judgments and those pertaining to privacy and safeguarding of subject children - identified as of concern by young people, and which Practice Guidance

¹² With a further reduction during fieldwork (see Appendix IV – Methods).

sought to address. This allowed for an aggregation of data from the 12 judgments evaluated by young people with the data from the 18 judgments evaluated exclusively by researchers. Analysis and findings for most of the key sections of the report are presented as follows: first, findings from the 2015 evaluation are summarised, followed by findings for 2020 - disaggregated (by young people and researcher sample judgments), then aggregated as a single sample to evaluate the overall impact of Checklists 1 and 2 - Annex, Practice Guidance (2018).

Format of report

1.24 In reporting findings this report broadly follows the format of the 2015 report:

- **Section 2** examines 'geographical indicators' in post-Guidance judgments exploring information which indicates the location of a child/family, and tiers of information which facilitate jigsaw identification (Appendix II, page iii, '3-D' pyramid). Findings from 2015 are compared with those of 2020 exploring the impact of Checklist 1 of Guidance (jigsaw identification) on information about where a child(n)/family live/resided, schools, nurseries, and colleges attended, age of children, extended families and religious/cultural contexts.
- **Section 3** explores allegations of failures of parenting and child ill-treatment in judgments. It compares 2015 and 2020 findings exploring the views of young people as to the details provided and issues of jigsaw identification and safeguarding. It presents a further in-depth analysis of the treatment of descriptions of sexual abuse in judgments, exploring the sources and frequency of descriptions, use of summaries/abridgment, and/or an annex.
- **Section 4** explores information about the local authority applicant, courts and the professionals (e.g. social workers, doctors and others) and potential for jigsaw identification of children/families. It also explores (a) whether judgments contain additional, potentially disclosive information, and (b) whether overall, young people thought friends, peers/others at school/college and people in communities could identify the children/families in judgments.
- **Section 5** explores information which young people liked in judgments, what they thought should/should not be published and whether judgments were likely to meet the needs of a lay readership.

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- **Section 6** explores views about media access and reporting and examines coverage of judgments in media and on social media networking sites.
- **Section 7** draws together key findings and conclusions about the impact of Practice Guidance (2018) on the anonymisation of children judgments and the treatment of descriptions of the sexual abuse of children, and addresses issues of amendments to Guidance and future challenges suggested by data.

SECTION TWO

GEOGRAPHICAL INDICATORS AND JIGSAW IDENTIFICATION

Introduction

- 2.1 As indicated in the introduction, this evaluation takes as its starting point the views of young people set out in a 2015 evaluation of children judgments and their concerns about jigsaw identification of children, and safeguarding issues in the face of media and social media - and the potential for sharing information nationally and internationally facilitated by the internet.
- 2.2 In 2015, young people identified how discrete categories of information could facilitate jigsaw identification of children (Appendix II – Executive Summary). These are the features of judgments which Practice Guidance (2018) on anonymisation practices sought to eliminate as far as possible – in Checklist one (CL1) of the Guidance. As outlined in Appendix IV – Methodology, with regard to the exercise undertaken by young people, all the judgments which they evaluated were also separately evaluated by researchers (Appendices VI and VII – Schedules 1 and 2). Results from the two data sets demonstrate that young people and researchers identified the same information in judgments in response to the questions posed, and potential risk factors pertaining to jigsaw identification: findings indicate nearly 100% concurrence across questions (Appendix IV, para A.27).
- 2.3 In presenting findings therefore, firstly we present a summary of those resulting from the 2015 (pre-Guidance) evaluation of judgments on each of the key categories of information with potential geographical indicators, such as areas in which children lived, information about school and issues at school, information about extended family members, and religious and cultural contexts.
- 2.4 Secondly, we present findings from this (post Guidance) evaluation in two cohorts: those for young people (cohort I, 12 judgments), and those from the researchers' evaluation (a further 18 judgments). Finally, in assessing the impact of the Guidance we present findings as a whole (i.e. 30 judgments, Appendix IV, para A.22)

Location – the home of children and families

- 2.5 In 2015, most judgments (17/21) contained information about where a child had lived, including some references to specific towns. In 2020, 10/12 judgments evaluated by

young people, and 16/18 of those evaluated by the researchers had some information about the *area* in which child(n) lived. Most of these judgments identified the local authority applicant (thus identifying geographical boundaries) but:

- 4/12 judgments evaluated by young people also named towns
- 10/18 judgments evaluated by researchers identified a town(s)

2.6 Young people were concerned that details about where child(n) lived would make them identifiable, with one stating:

'This shouldn't be included because it is disclosive and narrows down where the family live, especially as two local authorities [are] named'. (male)

2.7 Young people also expressed particular concern about detail which referenced a move from one area to another; they queried why details of moves between named locations were necessary to understand the proceedings and decision making. Young people argued that if this level of detail was judged as necessary for the judgment, it should be described only in respect of regions, for example, this family 'moved within the South East' or 'moved from abroad' or moved from another 'local authority in the North West'.

2.8 Information sometimes specified multiple local authorities where there had been a history of care proceedings, names of towns in which families did shopping, towns where grandparents resided, and residential histories when families had been placed in a series of temporary accommodation.

Schools and leisure activities

2.9 In 2015, one judgment published the name of a school attended, although others identified specific features of schools, such as religious denomination, which young people argued made them recognisable - given the likelihood that there would only be one school of that type in an area.

2.10 In the 2020 evaluation by young people which involved school aged children it was a similar picture; no school was explicitly named in judgments, although one judgment named the educational setting attended by a parent. Young people were unanimous

in their view that information about schools attended should not be published in judgments on a public website because of the risk of jigsaw identification.

- 2.11 While the cohort of further judgments assessed by researchers did not name a single school, some judgments did contain some identifying features of the schools children attended. This was more common where educational settings were not mainstream, for example, residential settings, pupil referral units, special schools for learning difficulties, or specialist behavioural units. Sometimes judges would include detail such as which part of a city a school was in or name a London Borough (possibly to demonstrate the distance a child had to travel from their home). In one judgment there was information which revealed the proximity of the school to the homes of both a parent and a foster carer.
- 2.12 With regard to out of school activities, none of the judgments evaluated by young people contained any information about these. Such activities appeared in just 2/18 judgments assessed by researchers. However, some judgments included information about the leisure activities of parents; researchers identified this as information that could facilitate the identification of children, particularly where an activity was 'unusual'.

School incidents/problems

- 2.13 The 2015 evaluation identified 9/21 judgments detailed problems children experienced at school. Young people argued details as described should not be posted: it made children recognisable to peers and potentially, adults in communities.
- 2.14 Similar results arose in the 2020 evaluation by young people with 7/12 judgments containing information about experiences of children/parents at school. Judgments¹³ included details such as altercations on school premises involving parents and other family members, children disclosing abuse to friends and teaching staff, and attendance and behavioural problems of children.

¹³ Two judgments concerned a child(n) who were not of school age.

- 2.15 Young people also stated that visits to schools by professionals such as social workers, police officers and counsellors would signal to their peers and others that children were troubled, or at risk, as would moves to foster carers.
- 2.16 The inclusion of this information in judgments contributed to young people's concerns about jigsaw identification; peers and others reading a judgment or a report of it were likely to recognise the event and thus the child. Where an incident at school might be relevant to the proceedings, providing evidence of a child's exposure to events at home for example or the behaviour of adults, young people argued that judges should reflect on the detail when drafting and ensure the information could not contribute to the identification of children. As one young person stated:

'Problems at school could have significant bearings on a case and may need to be included with a certain sensitivity and appropriate anonymisation.' (male)

- 2.17 Details about problems at school were published in 6/18 judgments assessed by researchers. This information was similar to that identified as problematic by young people and included accounts of challenging behaviour and incidents at school, fixed period exclusions, attendance problems and interviews with police officers or other professionals. All these details made children identifiable to their peers and the wider community.

Age of child(n)/young people

- 2.18 In 2015, all judgments provided the ages of children but there was variation in the descriptions and the details published. In 2015 young people were opposed to the publication of full dates of birth, especially when judgments contained other identifying features of children and families.
- 2.19 In 2020, there was significant variation in how ages of children were described in the judgments assessed by young people. Some judgments were limited to stating the year of birth, others month/year of birth, and others, the age of children in years or years and months.¹⁴

¹⁴ Bearing in mind the capacity of a date of birth, and a geographical location to facilitate the school attended – and indeed the year group of a young person.

- 2.20 For those (18) judgments evaluated by researchers there was similar variation, ranging from a judgment that provided the full dates of birth of the children subject to proceedings, to a judgment where the child's age was referenced as being below a threshold number.
- 2.21 There were identifiable efforts by judges, post Guidance, to avoid specific details, for example, describing a child's date of birth as 'a date in 2012', or 'early in [year]'. While most judgments suggested efforts are being made to avoid specific dates of birth, there were nevertheless lapses in descriptions of events which permitted the information to be inferred, for example, references to an event having occurred on a child's birthday, with the date of the event provided in the judgment.

Information about extended family members

- 2.22 In 2015 most judgments (17/21) included substantial details about other family members, and young people stated that this information contributed to the jigsaw identification of children.
- 2.23 In 2020, a majority of judgments (11/12) evaluated by young people contained details of extended family. These encompassed information about siblings, step-parents, aunts, uncles, grandparents and parents' old and new partners, but also comprised details about places of residence, occupations, and ethnicity.
- 2.24 While young people accepted that some details could be relevant to proceedings, for example, contributing to an understanding of the context of current parenting, they questioned whether inclusion of extensive detail was always appropriate. They argued the test was whether the detail was essential and added something to an understanding of the proceedings (e.g., the position or perspective of a parent(s), or evidence filed by another party - and thus necessary to the work of the court) otherwise, this information "*brings in other parties that other people could recognise*", and therefore assists in jigsaw identification of children.
- 2.25 Young people also raised concerns about extensive biographical and other details which made some families very recognisable, for example, where such families were multi-national, multilingual, lived in multi-ethnic or multi-generational households or if complex immigration and/or asylum details were published. Young people also

argued such features that made for an “uncommon/less common family setup,” made families identifiable locally, or as ‘known families’.

- 2.26 Aspects of families and households also picked out by young people as being ‘unusual’ included frequent changes of partners, large numbers of children, families where the children had different fathers, or a history of children being removed, and homes and gardens which were apparent to the community as in a poor state of repair/upkeep, and/or unhygienic. All of these had the capacity to assist jigsaw identification. As one young person added in identifying several features of a home including visible neglect and disrepair:

‘...it’s [also] a large extended family household – with lots of dogs. The dogs had puppies. This is likely to be a known family locally – everyone knows the families with dogs... in my road we know who has dogs...’ (female)

- 2.27 Most judgments (14/18) assessed by researchers in 2020 contained detail about family structure and extended family members. This ranged from the very specific, such as information about how and where parents met, their birth dates and dates of marriage, to the more generic, such as number of siblings or paternal/maternal uncles and aunts. There were some efforts to anonymise this detail, such as denoting a paternal uncle as ‘PU’ but attempts to hide identifying features was not always successful: some first and family names were sometimes revealed. Judgments contained other details about countries of origin and dates of entry for relatives who had travelled from abroad, along with some cognitive difficulties and health details of family members, adding ‘clues’ to the identity of a child and family.

Information about religion/cultural contexts

- 2.28 In 2015, only 5/21 judgments contained information about religious or cultural contexts. In that evaluation young people argued this information should only be in judgments if it was deemed essential to issues of risk and placement: the risks of making child(n) identifiable to their peers and minority communities were too high.
- 2.29 In 2020 young people identified similar results: 3/12 judgments identified the religious/cultural background of children/families. They argued this information should not be published, especially “*where the religion is unusual*” or where “*smaller minority communities could be identifiable.*” They queried whether ethnic/religious

affiliation had any significance to proceedings and were concerned that details increased the risk of identification of families. Certain information could also increase risks to children - either locally because of prejudice against minority ethnic/religious communities, or from within a child's community because of the shame which a child may well be perceived as bringing on the community through involvement with courts/state agencies, but specifically regarding issues of child sexual abuse and the gendered implications for other females in extended families. They suggested that in the case of religion, for example, that judges should reflect carefully on essential detail and terminology; where necessary they recommended alternative forms of words, replacing 'mosque' or 'church' with 'a place of worship'.

- 2.30 In 2020 information about the religious affiliation of the families involved in proceedings was identified in 6/18 further judgments evaluated by researchers. Details included names of places of worship such as mosque, church or synagogue, as well as references to positions of authority such as Priest, Imam or (sometimes named) Pastor. Other indications of affiliation were identified in judgments because of references to dietary restrictions, religious garments and dress, or cultural traditions.

Key findings: Geographical indicators and jigsaw identification

2.31 Overall geographical markers

- 6/30 judgments (20%) had four or more 'within county' markers
- 18/30 judgments (60%) had three markers
 - 14/30 (47%) named towns in which children/family lived, visited, or accessed services. Young people were adamant that these details should not be included; they contributed to jigsaw identification.
- In 2015, 6/21 (29%) contained at least 4 of 5 markers.

Dates of Birth

- Almost all judgments 27/30 (90%) had removed the date of birth of children.
- In 3/30 judgments where exact dates of birth were revealed, in two instances details were 'inadvertently' disclosed detailing other events.
- In 2015 all judgments stated the age of children but varied regarding the detail provided; young people were strongly opposed to dates of birth being included, with other details, it identifies the precise school year.

School incidents/problems

- Some 12/30 judgments (40%) contained information about incidents and problems at schools. Young people argued these details can make children easily identifiable, especially where they were associated with visits by professionals such as social workers and police.
- In 2015, 9/21 judgments (43%) contained what young people considered to be disclosive information about incidents/problems at school.

Naming schools

- While no judgment explicitly named a school, references to a type of school or unit could enable the setting to be recognised.
- In 2015, one judgment named the school but young people also identified specific information (e.g. a faith school) facilitated identification of the school.

Extended family members

- A majority of judgments (25/30 - 83%) detailed information about family members. This covered household structure and composition, asylum and immigration issues, occupations, countries of origin and languages spoken. Young people said these features made children and households identifiable.
- In 2015, 17/21 - 81% of judgments contained such details.

Cultural/religious contexts

- 9/30 judgments (30%) contained information about the cultural/religious backgrounds. Young people argued judges should reflect on the necessity for this detail - and the implications for jigsaw identification of children/families.
- In 2015, the proportion was 24% (5/21 judgments).

'Known families'

- Young people identified that all communities have 'known families', whose features make them readily locally recognisable. These include dimensions of household composition, incidents/problems at school, visits to school by social workers and police, and problems in housing and home conditions. Anonymising judgments for these families was a litmus test for CL1.
- Overall, judgments demonstrate some attention to anonymisation practices covered in CL1 of the Guidance, some features (e.g. date of birth) showing substantial change. Others indicated some effort, for example, with regard to reducing 'four or more within county indicators' but attention to the combined potential for disclosure indicates room for improvement.
- Young people argued that while no single indicator would lead to the identification of children and families in this sample of judgments, the cumulative impact of a number of 'disclosures' raised the risk that they would be recognised. Young people argued that these key personal details, if essential, should be deemed 'amber' warnings.

SECTION THREE

FAILURES OF PARENTING, CHILD ILL-TREATMENT AND THE TREATMENT OF DESCRIPTIONS OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

Introduction

- 3.1 As outlined in Appendix IV, the approach to addressing concerns/allegations of failures of parenting and ill-treatment of children mirrored the exercise undertaken in 2015. Taking their allocated sample judgments, each young person was asked to identify allegations of failures of parenting¹⁵ and ill-treatment/risks to children,¹⁶ and to indicate whether they thought the information, as drafted, should be included in judgments intended for BAILII, and their reasons (see Appendix VI – Schedule 1). Below we set out the results of that exercise for the profiles of children and parents in sample judgments, alongside those for 2015.
- 3.2 We then report the views of young people as to the details of failures of parenting and child ill-treatments.
- 3.3 This is followed by a further in-depth examination of the treatment of descriptions of the sexual abuse/rape of children and young people in judgments in the context of CL2 of Practice Guidance.

Concerns/allegations contributing to failures of parenting

- 3.4 As with other research on the profile of parents subject to s.31 applications, the profile of parenting factors identified in judgments demonstrate that cases are complex with multiple issues and concerns. Parents have multiple socio-economic, psychosocial and mental health problems. The relative distribution of factors in this sample however may differ from a random sample of applications because of the (purposive) sampling criteria.¹⁷

¹⁵ These reflecting categories of concerns and allegations of failures of parenting documented over several decades of research based on court files and local authority applications.

¹⁶ That is, the child is suffering ill-treatment by way of (a) neglect (b) emotional abuse (c) physical abuse/injury (d) sexual abuse (e) other ill treatment, this resulting in the child suffering/likely to suffer impairment of (a) physical health (b) mental health (c) development (see Appendix VI - Schedule 1).

¹⁷ See Appendix IV – sampling procedure. The incidence of crime (at 40%), inability/unwillingness to protect a child (80%), and domestic violence (67%) may be a particular feature of cases concerning child sexual abuse and requires further research.

3.5 The categories for 2020 were:

- **Mental/psychological health problems**¹⁸ - 13/30 (33%) of judgments¹⁹
(In 2015, these allegations featured in 7/21 (33%) judgments)
- **Drug and alcohol issues** - 8/30 (27%) of judgments²⁰
(in 2015, these allegations featured in 5/21 (24%) of judgments)
- **Involvement in crime** - 12/30 (40%) of judgments²¹
(in 2015, this allegation featured in 7/21 (33%) of judgments)
- **Inability/unwillingness to protect a child** - 23/30 (80%) of judgments²²
(in 2015, this allegation featured in 10/21 (48%) of judgments)
- **Domestic abuse** - 20/30 (67%) of judgments²³
(in 2015, this featured in 6/21 (29%) judgments)
- **Housing problems** – 8/30 (27%) of judgments²⁴
(in 2015, these allegations featured in 5/21 (24%) judgments)
- **Chaotic home conditions** – 8/30 (27%) of judgments²⁵
(in 2015, this allegation featured in 3/21 judgments)
- **Frequent changes of parenting** – 4/30 (13%)²⁶
(in 2015, this allegation featured in 2/21 judgments)

Allegations of parenting failures: the views of young people

3.6 In identifying allegations of parental failures, young people recognised that these aspects of a parent's life were important in understanding why parents may be

¹⁸ In general, by the time of legal proceedings where mental/psychological issues feature in an applicant's allegations of failures of parenting, it features as an allegation (i.e. parenting was impeded/failing in the context of a recognised mental health condition). However, in a small number of cases, there are concerns about the mental/psychological health of a parent but which the local authority has been unable/unwilling to pursue in the form of a clinical assessment. For the purposes of brevity – and because a specific concern/allegation is one of several in applications, we use both terms, but then use 'allegations' – this incorporating any cases where applications state 'concerns' which, during proceedings, resulted in a clinical assessment – whether or not these result in a confirming diagnosis.

¹⁹ Disaggregating the 2020 sample, this featured in 5/12 judgments evaluated by young people, 8/18 judgments evaluated by researchers.

²⁰ 2/12 judgments evaluated by young people; 6/18 judgments evaluated by researchers.

²¹ 7/12 judgments evaluated by young people; 5/18 judgments evaluated by researchers.

²² 10/12 judgments evaluated by young people; 13/18 judgments evaluated by researchers.

²³ 10/12 judgments evaluated by young people; 10/18 judgments evaluated by researchers.

²⁴ 5/12 judgments evaluated by young people; 3/18 judgments evaluated by researchers.

²⁵ 3/12 judgments evaluated by young people; 5/18 judgments evaluated by researchers.

²⁶ 2/12 judgments evaluated by young people; 2/18 judgments evaluated by researchers.

unsafe/unable to care for children. However, they had strong views and concerns about the impact on children of placing some specific details in the public domain.

3.7 *Parents' mental health issues, backgrounds/histories*

Young people also raised concerns about extensive details about a parent's mental health issues and background in publicly available judgments. These included details about drug and alcohol addiction. They were cognisant of the fact that these aspects of a parent's life can be key in assessing a parental ability/capacity to care for and prioritise a child's needs. Equally, such issues could impact on a parent's ability to recognise risks to children. However, they argued that in drafting judgments for the public arena, details and histories should be considered more carefully and included only when directly implicated in findings of fact and welfare decisions.

3.8 Detailed histories for the sake of 'completeness' were often unnecessary. Where such detail also concerned adults no longer in children's lives, young people argued it was especially important that judges reflect on why it was included. For example, reflecting on this detail in a judgment one young person argued:

'... this information should not be in the judgment. It is unnecessary detail and not relevant to the case. The father is not party to the proceedings, having previously 'abandoned the family'. The children do not need this information about their birth father in a public judgment. How would this make them feel if they read it when they are older?' (male)

3.9 *Criminal justice proceedings concerning parents*

Young people were particularly critical of judgments that contained extensive details of a parent's involvement with the criminal justice system. Many judgments included details of historic offences, but a number referred to current/recent proceedings and were linked to care proceedings concerning the ill-treatment of a child(n).

3.10 They were well aware of some tensions between family and crime, and that the outcome of criminal proceedings *could* be pivotal to decision making in care

proceedings.²⁷ They noted instances where it was appropriate to provide *some* detail (e.g. where parents posed an ongoing risk/threat) but as one young person argued:

'... [the information] should only be included in outline form... [a reader] needs to know the information to show the father is a risk - but without the details because they could be used to identify the family.' (female)

- 3.11 Young people were however alarmed about extensive details of dates of arrest, police interviews, visits by police to children's homes, dates of trials and sentencing outcomes included in children judgments. Such detailed information facilitated the identification of a parent(s) and by implication, children. It marked a severe breach of the child(n)'s rights to privacy and infringed their right to confidentiality. For example:

'Dates of arrests, police... are all unnecessary. [I] understand that a timeline may be needed, but this should be worded to conceal exact dates, [for example], using month/year - or early/mid/late in [year]'. (male)

- 3.12 Young people were emphatic that family court judges needed to reconsider the detail about criminal offences that it is necessary to include in family court judgments and show greater awareness of both the privacy and welfare implications for children of placing these details in the public domain. For example, young people argued:

'These details should not be published on BAILII. They are too disclosive and allow the identification of the family and therefore the children. ...In addition, if the children read the judgment in the future it will be detrimental to their mental health and wellbeing that this information about their parents is in the public domain.' (male)

'No way you would not know these children if you lived locally' (male)

'Details about convictions, sentencing... All references to criminal activity make this family identifiable locally and possible nationally given the gravity of the offence.' (male)

²⁷ Especially where prison release dates were central to understanding aspects of a judge's decision.

Young people were conscious of the prominence of reporting of criminal offences especially in local press/media and the sharing of reports in the digital age. They argued strongly that anonymisation guidance must cover criminal matters.

3.13 *Unable/unwilling to protect a child/young person*

There was strong support for the inclusion of information about the inability or unwillingness of parents to protect children. This was regarded as key to understanding child protection measures by both a local authority and the family court, and especially so for children subject to sexual abuse (see below). Where parents, usually mothers, failed to recognise the risk of grooming or exposure to adults with predatory behaviour, or failed to believe children's disclosures of sexual abuse, young people said this information was appropriate to include in judgments as evidence of a failure to prioritise the safety and wellbeing of children.

3.14 However, young people expressed concerns about some of the language used to describe these behaviours. Being the child of a 'failed parent' carried a particular shame for children; using this label in public judgments was detrimental to the future wellbeing of a child. They argued that it was important for judges to emphasise that it was the behaviours of parents which were problematic; the term 'failed parent' should not appear.

3.15 *Chaotic living conditions*

Young people had similar concerns about some explicit descriptions of children's home environments. The chaotic lifestyles of parents and appalling living conditions were relevant to findings of failures in parenting but young people argued that in a public judgment details be restricted to an overview, suggesting vocabulary for descriptions of home environments such as 'chaotic', 'unkempt' and 'unhygienic'. Judges should exert more care when drafting details because of the deep shame and humiliation felt by children living in such households. Where appalling living conditions need to be addressed, they argued this could be done by way of careful language, and cross-referenced to photographic/written evidence in the court bundle obviating the need for descriptions of the state of children's living conditions in a document on a public website.

3.16 In addition to the impact on children's mental health and wellbeing, and fears of public shaming and bullying, young people were concerned about easy identification

of families from such homes. Chaotic homes are known to most local communities - in part because the chaotic conditions inside the house often continue to publicly visible spaces (e.g. yards, gardens, corridors, stairwells etc.). Moreover, children from such homes were identifiable at school – they were smelly, dirty, with stained clothes, no underwear; younger children often attended nursery with dirty nappies. Frequent changes of carers or adults moving in and out of homes also contributed to recognition of ‘known families’.

3.17 Other issues such as substance abuse, police attendance at homes for drug and/or violence and domestic abuse made some families recognisable in local communities. This increased the capacity of public judgments – in describing in detail, allegations of failures of parenting and family backgrounds, to facilitate jigsaw identification of children – but also made public their specific form of parental ill-treatment in every detail.

3.18 *Domestic abuse*

Young people were also concerned about the detail of domestic violence in judgments. They identified both privacy and safeguarding concerns of placing detailed episodes in judgments available on a public website. While recognising that a pattern of violence was important in considering the risks to children, they argued that it would be more appropriate to summarise/abbreviate the evidence in a public document. Throughout, their concerns were for the impact on the welfare of children. As one young person observed:

‘...there should be less detail. People don’t need to know this detail, there should be a summary... Children are ashamed of this information [about their parents] it makes them feel less of a person...’ (female)

3.19 Young people also argued that the fact of domestic violence indicated extra risks to children and families and by implication, amplified the need for stricter anonymisation:

‘Yes, this [issue] should be [included] - as it is why children are not safe but it needs to be carefully worded – you don’t want the mother put at greater risk from the father because she has revealed these details.’ (female)

Key findings: Parental problems and failures of parenting

3.20 Balance between *necessary* information and privacy needs of children

- Young people were surprised at the level of detail about parental problems and failures in a public document. They acknowledged the need for the judge to have a comprehensive assessment of parenting and capacities but argued there was insufficient regard to the impact on children of posting some of this detail.
- They argued detailed information about parenting problems is not simply 'embarrassing', it is deeply shaming, facilitates bullying and intimidation, causing psychological distress to children already emotionally damaged by ill-treatment.
- Young people argued that in judgments intended for the public arena there is an urgent need to consider the balance as to what is necessary regarding the detail of parenting behaviours and how to present this, in order to protect the privacy, mental health and welfare needs of vulnerable children.

Criminal justice and family court judgments

- There was particular concern about certain details pertaining to parents' involvement in criminal proceedings. Extensive details about offences, arrests and sentencing increased the chance of children and families being identified.

Health issues, backgrounds/histories

- Young people argued details about a parent's mental health (including substance abuse) should only be included where it had a direct relevance to current allegations and decisions. Otherwise, such information and detailed histories were considered unnecessary to an understanding of current proceedings.

Domestic violence

- Young people expressed concern about some details of domestic violence and ongoing risks to children/mothers; judges should reflect on those risks when drafting judgments.

'Known families'

- Posting extensive details about home conditions contributed to identification of a neighbourhood's known 'problem families'; young people were particularly concerned about the privacy rights and risks to the welfare of children.

Allegations of child ill-treatment

3.21 Below we set out the categories of alleged ill-treatments identified in judgments in 2020, alongside those for the 2015 sample. We then address the views of young people about posting details, as drafted, and their reasons. As with failures of parenting, the distribution of categories of alleged ill-treatments across judgments, in part, reflects the (purposive) sampling criteria aimed at achieving sufficient judgments to evaluate descriptions of the treatment of sexual abuse (Appendix IV, para A16).

3.22 The categories of alleged child ill treatment in this sample were:

- **Physical neglect** - 13/30 (43%) of judgments²⁸
(In 2015, neglect featured in 9/21 (43%) judgments)
- **Emotional abuse** - 19/30 (63%) of judgments²⁹
(In 2015, emotional abuse featured in 9/21 (43%) judgments)
- **Physical abuse/injury** - 22/30 (73%) of judgments³⁰
(In 2015, physical injury/abuse featured in 5/21 (24%) of judgments)
- **Sexual abuse** - 21/30 (70%) of judgments³¹
(In 2015, sexual abuse/risk featured in 7/21 (33%) of judgments)
- **Other harms/risks of harm**³² - 19/30 (63%) of judgments³³
(In 2015, other harms were cited in 6/21 (29%) judgments)

Descriptions of child ill-treatment: the views of young people

3.23 Young people discussed the importance of clarity regarding allegations of ill-treatment of children in judgments and the impact on a child's health and development. They recognised the centrality of this exercise for the work of family

²⁸ 7/12 judgments evaluated by young people; 6/18 evaluated by researchers.

²⁹ 11/12 judgments evaluated by young people; 8/18 evaluated by researchers.

³⁰ 9/12 judgments evaluated by young people; 13/18 evaluated by researchers.

³¹ 8/12 judgments evaluated by young people; 13/18 evaluated by researcher.

³² These were primarily those resulting/likely to result from an inability/unwillingness to protect a child.

³³ 7/12 judgments evaluated by young people; 12/18 evaluated by researchers.

courts, and for applicants, children and parents. Applicants had to be held to account and evidence tested. What they questioned was the level of detail of child abuse in a public document: this was especially so regarding descriptions of sexual abuse, but concerns were also raised about some details of other forms of ill-treatment.

3.24 Their primary concern was for the privacy and safeguarding needs of the subject children/young people. Thus, they argued strongly that graphic descriptions of sexual abuse were unnecessary in a public document – and could occasion further harm. Notwithstanding allegations were at the *'heart of the case'* and had to be properly addressed, young people raised major concerns about graphic descriptions of sexual abuse included in judgments.

3.25 *Neglect, emotional abuse and physical abuse/injury*

Young people argued allegations and findings should be evidence-based and judgments should address the immediate and long-term needs of children. For example, with regard to emotional abuse:

'Yes, [this detail] should be published as it is part of the case for proceedings, and emotional neglect or harm can contribute to long-term mental health damage of young people.' (male)

'This is ok to publish because the information is needed to understand the potential harm the children could experience' (female)

3.26 They were however alarmed about some details; the most alarming detail related to descriptions of child sexual abuse (see below) but there were concerns about other details of ill-treatment and repetition of details of physical neglect and emotional and physical abuse in judgments. For example, multiple descriptions of a neglected child were felt unnecessary:

'Repetition of accounts! [surely] – once is enough? otherwise [it is] detrimental to young people later if they read a judgment.' (male)

3.27 Efforts by judges to limit descriptions of ill-treatment of children were welcomed by young people: it suggested that judges had reflected on the impact on the child/young person of placing extensive details in the public arena. As one young person commented regarding a judgment addressing physical abuse:

'[this] judge is careful to say that [he] does not "set allegations out in any great detail" implicitly protecting the child.' (male)

3.28 Young people also highlighted judgments where reports from certain experts were summarised, for example, from a child psychiatrist's report where conclusions as to neglect and its impact on the child were set out in summary form by the judge. They argued that all judges should reflect on the implications of placing extensive details of ill-treatment in the public arena and where possible, present these in summary form.

3.29 Detailed incidents can make children locally identifiable, especially where medical facilities are named. Neighbours may also play a key role in reporting neglect, suspected bruising/injury to agencies; extensive details in public documents increase the risk of identification. A young person cautioned:

'This [allegation] is likely to be a key factor in a case [but] [the judge] should consider how much detail is necessary to paint a picture, how relevant [the detail] is to the overall matter, and how identifiable this makes someone in the local community.' (male)

3.30 *Child sexual abuse*

In the 2015 evaluation of judgments concerning the sexual abuse of a child, young people reported awareness of the duties of courts to clearly demonstrate why a child may be removed from a parent(s), to hold the local authority to account (for actions and services), to ensure parents were treated fairly, and to ensure all evidence was properly tested. What they questioned was the degree of graphic and multiple descriptions of the sexual abuse of a child/young person in a document intended for the public arena.

3.31 They questioned whether judges were aware of how graphic descriptions of sexual abuse of a child may be used, and the growth in targeting and grooming of children for sexual abuse. They referred to the magnitude of material on the internet depicting graphic sexual abuse and rape of children, how such material can go viral at the 'click of a button' – becoming available worldwide for sharing and downloading, indefinitely. This question was posed alongside but independent of concerns about the ease with which information facilitated jigsaw identification of children.

- 3.32 In 2020, young people again expressed shock and concern about graphic descriptions of multiple episodes of the sexual abuse of children in judgments. In all eight CSA judgments evaluated by young people, they highlighted passages of text containing sexually graphic, and - for a public arena, salacious material.³⁴ Excessive and repeated descriptions were variously described as *'inappropriate and disturbing'*, *'unnecessary'* or *'too specific'*.
- 3.33 Young people were particularly critical of the use of extensive verbatim descriptions of sexual abuse extracted from sources such as transcriptions of interviews with children/young people by police and others, also some material set out in expert reports, and judgments in related criminal proceedings.³⁵
- 3.34 Young people new to the research and those who participated in the evaluation of 2015 were utterly dismayed by the extent of graphic descriptions of the sexual abuse of children in judgments; they expressed shock and anger that this level of detail was available in a public document.
- 3.35 Their astonishment was compounded by anger on discovering that the young people concerned appear not to have been consulted or asked for permission for this information to be in the public arena; moreover, they may well be completely unaware that it is now freely available on the internet. One young person reflecting on how she would feel to discover this information about herself was in a public document, said she *'would pray that no one could identify'* her.
- 3.36 At the forefront of young people's evaluation highlighting explicit and multiple descriptions of sexual abuse/rape, were concerns about safeguarding and privacy, but also the emotional wellbeing of sexually abused children. Reading the detail,

³⁴ As outlined in Appendix IV, researchers' evaluation of the same judgments addressed the same questions as young people but included supplementary questions, one of which was to capture areas of agreement and divergence between the evaluation of researchers and those of young people. Comparing responses of young people and researchers regarding descriptions of sexual abuse in judgments, results show complete agreement.

³⁵ This finding was confirmed in the comparative evaluation of the same judgments undertaken by researchers; it was further confirmed by findings from the additional judgments evaluated only by researchers: 13/18 concerned the sexual abuse of children, key overall was the use, verbatim, of large sections of ABE transcription.

young people queried whether judges were aware of the impact on children of such information being publicly available. They argued that judges needed to be more mindful and informed of the reality that, once published on BAILII, graphic sexually explicit material remained available for anyone to read, share and upload – and in perpetuity. As one young person argued:

*‘...details of the [multiple] sexual assaults of a [age] year old will affect her, reading it she will feel awful... [She] needs to process the experiences and be allowed to “forget” this - but [placing it on the web] means she will **never** be able to – it’s there forever...’* (female)

- 3.37 Young people expressed concerns about the safety of children who had been sexually abused, once placed ‘in care’: such children and young people are potential targets of attention from sexually predatory adults and others in communities, and are vulnerable to “*grooming and exploitation.*”
- 3.38 Excessive detail and graphic descriptions of sexual abuse in judgments was also felt by young people to exacerbate the sense of shame and blame which attaches to children who have suffered sexual abuse at the hands of fathers/stepfathers or other household members. They argued that we still live in a ‘culture’ where some adults – and other children - hold children responsible for sexual abuse by adults; that increases children’s sense of shame and thus vulnerability.
- 3.39 They further argued that even where allegations of sexual abuse/rape had not been proved or concluded to criminal standards (in parallel criminal proceedings), graphic descriptions, once published in family judgments, increase the risks to children because they mark them as vulnerable.
- 3.40 Additionally, they argued that where children/young people witness the sexual abuse of a child, this experience was damaging: it contributed to long-term mental/emotional damage and vulnerability. For example, in a judgment concerning three children a respondent drew on the details and discussed potential ramifications for children forced to observe sexual abuse, one of which is to go on to exhibit inappropriate sexualised behaviour. This behaviour makes children vulnerable in communities:

'[this judgment] should be published as [allegations are] described in matter-of-fact terms and [are] not too descriptive...the children were witnesses and there is damage to [child x], and [child y] exhibits 'sexualised behaviour'.

(male)

3.41 Young people also raised concerns about the potential for prejudice within and against communities, where the religious/minority ethnic background of an alleged perpetrator is revealed in judgments. As indicated above, there may be additional risks for children associated with placing graphic descriptions of sexual abuse in the public domain: children being condemned for bringing shame on families and a minority community *per se*.

3.42 In their assessments of CSA judgments, young people highlighted efforts by judges to restrict the amount and graphic descriptions of sexual abuse by way of a summary/abridgment. For example, one young person commented:

'The level of detail contained in [this] judgment has been limited in comparison to the other judgments [he had read]. The judge specifically mentions that it is not necessary to set out the full details. (male)

3.43 However, they also highlighted where judges' efforts in summarising/abridging were not completely successful. In one such judgment, the judge stated that explicit descriptions of the sexual abuse of the child would not be provided, drafting instead a summary of the conclusions of experts. However, this later gave way in the judgment to reproducing expert evidence documenting graphic descriptions of sexual abuse.³⁶

3.44 Young people made a number of suggestions about ways to balance the need to provide information about allegations of sexual abuse and reasons for removing a child, while mitigating the impact on children's privacy and safety. They argued verbatim accounts should be "*pared back*" and replaced with a summary of

³⁶ Researchers' comparative evaluation of the same judgments also supported limited use of summaries – and 'slippage' to graphic details in later parts of the judgment. That pattern was also identified in the additional 13 CSA judgments evaluated by researchers only.

descriptions of sexual abuse/episodes of rape, and for the latter descriptions to be placed in an annex not publicly available. As one young person further argued:

'...[its] all ok for the court but not for a public document - to be placed on BAILII; for these purposes this information should be limited to a summary.'
(female)

- 3.45 Young people made detailed suggestions about how sexually graphic material could be reworded in public judgments. There was a preference for descriptions to be “generic” or to use “overarching terms”. For example, they suggested replacing multiple and detailed descriptions of sexual abuse with statements such as:

'[child x] had been [sexually] abused in a number of ways' (male)

'...[the young person] alleges [...] sexually assaulted her on multiple occasions in the same home location.' (female)

- 3.46 Such summaries would capture the gravity and the number of offences without providing information which had the capacity to compromise privacy and safety, and further damage the emotional wellbeing of the child.
- 3.47 Young people expressed substantial concerns about an apparent lack of understanding or vigilance by judges about the ‘door’ which BAILII throws opens in a 21st century digital age. They argued the content of CSA judgments must be considered in the context of modern media and social networking channels and increased knowledge of the extent of the sexual abuse of children in society.
- 3.48 Placing unedited, graphic descriptions of the sexual abuse/rape of children and young people in the public arena increases their vulnerability. Young people also felt that journalists and others would be on the lookout for salacious details. As one young person argued in evaluating such a judgment: *‘the media would pick up this type of detail.’* Judgments containing additional ‘unusual’ details (e.g. particular

household structure/ethnic group) heighten concerns; as one young person argued, these features serve as clickbait:³⁷ *“the media would have it everywhere”*.

- 3.49 The ability of social media to facilitate the spread of graphic details and other information from judgments was of enormous concern. Young people reiterated that the information would be available, for sharing and downloading, for the duration of children’s lives. Posting graphic descriptions of sexual abuse might occasion further damage to children by making them vulnerable in the public sphere, and also impacting on their mental health/emotional wellbeing because they have to live with the knowledge that details are publicly available. As one young person commented:

‘Learning to live with the experience is bad enough, knowing it is out there and can be cut and pasted on social media – anytime and forever, it’s the worst thing that has ever happened to her – and it is there, forever! And she has no choice’. (female)

- 3.50 The safeguarding risks posed by publication of graphic descriptions of sexual abuse are identified by young people as freestanding, but they point out these could be compounded by the threat of jigsaw identification. In the eight CSA judgments evaluated by young people, none were completely ‘risk free’ of jigsaw identification and half were arguably high risk:

- 8/8 contained at least one ‘within county’ geographical indicator
- 4/8 contained four or more indicators.³⁸

- 3.51 In particular, young people identified details in CSA judgments which signalled locally ‘known families’. Placing graphic descriptions of sexual abuse in the public arena not

³⁷ On the internet, sexually explicit salacious details whose main purpose is to attract attention and encourage visitors to click on a link to a particular web page. As argued by young people in 2015, it can also serve a similar purpose in newsprint/online headlines of local and national newspapers.

³⁸ And from the supplementary questions addressed by researchers for this cohort of judgments, they highlighted a further 3/8 which contained additional potential locational information from details surrounding descriptions of sexual abuse. In the additional sample of judgments assessed by researchers only, they identified 4/13 CSA judgments provided some locational information surrounding descriptions of sexual abuse. In addition, researchers identified a potential for jigsaw identification in almost all these latter judgments: 1/13 contained one ‘within’ county’ indicator, 3/13 had two indicators, 6/13 had three indicators, 2/13 had four or more indicators. One judgment was assessed as excluding all possible geographical indicators.

only confirmed the type of abuse, it facilitated identification of children with a *particular* vulnerability as potential targets for grooming and further sexual exploitation – in local communities, and further afield.

- 3.52 This risk was magnified in judgments with related criminal proceedings. As demonstrated above, not only was evidence filed in criminal proceedings a key source of graphic, unredacted descriptions of sexual abuse of children in family court judgments, extensive details of arrests, trials, convictions and sentencing were also imported. Young people said these details facilitate tracing children and families.
- 3.53 When asked to identify information in judgments which they liked, thought should, and should not, be posted on BAILII, young people again returned to descriptions of the sexual abuse of a child(n). In summary, they argued:
- Where judgments contained evidence of the association by a parent – usually a mother - with known sex offenders, or adults known to pose a sexual risk to children, that information *should* be included in a judgment.
 - Where an application to place a child(n) with extended family members was rejected by the court - because they were deemed unable to protect a child from further sexual abuse, this finding *should* also be published.
 - Where judges made efforts to summarise/limit graphic descriptions of sexual abuse, they reiterated they liked this practice.
 - Where judges included graphic descriptions of the sexual abuse/rape of a child/young person, they reiterated this detail *should not* be published.³⁹

³⁹ In the comparative evaluation of the same judgments by researchers, in 7/7 judgments where young people said graphic descriptions of the sexual abuse of children/young people should not be published, researchers concurred. Researchers also questioned the inclusion of details of the sexual abuse of a child(n) already removed from a parent and where the perpetrator had been placed on the Sexual Offences Register; that detail indicated the seriousness of the offence and a conviction arguably obviates the need to repeat details of the abuse in a judgment concerned with other children.

Key findings: Views of young people

3.54 Neglect, emotional abuse and physical abuse/injury

- Young people expressed concerns about *some* details of ill-treatment in judgments: these could occasion additional harms if placed in the public arena. While acknowledging the need for clarity in categories of ill-treatment and supporting evidence, young people said *certain* evidence should be summarised.
- Careful attention is required as to why it is necessary to detail the behaviour of adults and children no longer in the lives of families; where these are not relevant to the issues before the court, young people said this detail should be excluded.
- Information imported into judgments from criminal proceedings make children and families highly vulnerable to identification because they disclose too much information - about arrests, trials and sentencing.

Child sexual abuse

- Young people acknowledged that allegations of child sexual abuse/risk of sexual abuse were crucial elements in judgments, what they questioned was graphic and multiple descriptions in a public document. Most CSA judgments they evaluated contained multiple and graphic descriptions. Their findings were verified by independent evaluation of the same judgments, and a further sample of CSA judgments by researchers.
- Concern and anger at the inclusion of descriptions were 'freestanding' but exacerbated where there was a risk of jigsaw identification from other details in judgments; that was the case in half of the CSA judgments they evaluated.
- Young people argued that in an incontrovertibly digital age, the risks to sexually abused children in terms of future safety and mental/emotional wellbeing should not be ignored by judges and when these could so easily be reduced/eliminated.
- The changes young people proposed focused on the use of summaries and an annex for graphic descriptions of sexual abuse.

- They expressed anger at an apparent lack of consultation or information sharing with young people regarding placing graphic descriptions of sexual abuse on a public website.

Treatment of descriptions of the sexual abuse of children/young people: In-depth analysis

3.55 Below we begin with findings regarding any direct references to the Practice Guidance (2018) in judgments; we then present findings from a further, more detailed examination of all CSA judgments (i.e. 21/30).

3.56 As outlined in Appendix IV, all CSA judgments were re-read and further coded⁴⁰ according to whether they contained:

- explicit descriptions of sexual abuse/rape
- descriptions in multiple places in judgment
- descriptions imported, verbatim, from other proceedings/documents
- use of a summary/abridgment of graphic descriptions
- use of an annex for graphic descriptions of sexual abuse, this not intended for the public arena
- concerns/allegations about grooming and trafficking of children/young people, and modern-day slavery
- mothers with a history or currently associating with men known to be a sexual risk to children
- evidence that images of the sexual abuse/rape had been taken and whether images had been shared, uploading/downloading and traded and whether reference was made to what has/should happen to such images at the conclusion of family proceedings.

3.57 *Practice Guidance (2018)*

In providing a framework for this further, more detailed analysis by researchers, we first explored references to Practice Guidance (2018) and/or specific reference to

⁴⁰ See Appendix VIII – Schedule 3.

issues of anonymisation, and the privacy and safeguarding of children in the narrative of the judgment. Overall, some 12/30⁴¹ judgments contained at least one reference to the Guidance/specific attention to issues of anonymisation and the privacy and safeguarding of subject children/young people in the body of the judgment.

- 3.58 Reference appears at three main junctures: (a) the point at which the judge addresses evidence of sexual abuse (b) in an opening statement, or *aide-mémoire*, where the judge is reminded of the legal framework within which issues should be approached⁴² and (c) discussion of respective rights and freedoms of parties.
- 3.59 Most coverage occurred at the point at which judges considered evidence on the sexual abuse of children/young people (7/12 judgments). For example, with regard to the treatment of transcriptions obtained under Achieving Best Evidence procedure,⁴³ there were examples of alternative ways of reproducing that detail such as:
- Rather than reproducing, verbatim, whole sections of the ABE transcription which contain graphic detailed descriptions of sexual abuse, a judge may summarise, or refer to criminal proceedings, may note that transcripts were accepted by a jury, and stating that on that basis, it is not necessary to set out [in this judgment] graphic descriptions of sexual abuse suffered by a child.
 - Equally, a judge may refer to a child's ABE transcription, noting the seriousness but without reproducing verbatim, graphic descriptions of sexual abuse, stating it would serve no useful purpose and would result in a publicly available document which recorded ruthless, inhuman, degrading, sexual assaults on a child.

⁴¹ In disaggregated samples, in cohort I (assessed by young people) 7/12 judgments contained such references, in cohorts II and III (assessed by researchers) 5/18 judgments contained a reference. A small number of judgments contained information relevant to more than one category (a-c above), for example, referencing Guidance at the outset, and/ or during an *aide-mémoire* reflecting on the relevant legal framework, and at the point at which sexual abuse is addressed (applying CL2).

⁴² If the judgment contained paragraph headings (Section 5 below) under 'Law' or 'Legal framework'.

⁴³ Ministry of Justice (2011) Achieving Best Evidence in Criminal Proceedings: guidance on interviewing victims and witnesses, and guidance on using special measures – legal guidance sexual offences (2011). <https://www.cps.gov.uk/legal-guidance/achieving-best-evidence-criminal-proceedings-guidance-interviewing-victims-and>

- There is also evidence of efforts by advocates, for example, when constructing an agreed statement of facts by parties, the judge noting efforts made to reproduce these in anonymised form. In turn, the judge stating the court also does not propose to set out [the child's] allegations in detail in the judgment, it was unnecessary where a summary will suffice.
- A small number of judges opened with a statement about the need for anonymisation, citing Guidance, noting concerns about jigsaw identification. Some reiterated in the text that anonymity must be strictly preserved.

3.60 Thus, a number of judges are attempting to implement CL2 regarding the use of summaries/abridgment of graphic descriptions of the sexual abuse/rape of children. However, as indicated by young people, maintaining consistency was a challenge; graphic descriptions frequently crept in at later sections of the judgment.

3.61 *Explicit descriptions of sexual abuse of children/young people*

Most judgments concerning sexual abuse - 18/21 (85.7%) contained explicit, descriptions of sexual abuse of children/young people. Moreover:

- About a third - 7/21 (33.3%) contained graphic descriptions in multiple places
- In two-thirds – 14/21 (66.6%) graphic descriptions were imported, verbatim, from ABE transcripts/other police evidence in criminal proceedings
- In addition to graphic descriptions most judgments - 19/21 (90.4%) *also* contained a summary of sexual abuse allegations at some point
- None of the 21 judgments made use of an annex.

3.62 *Grooming/trafficking of children and modern-day slavery*

Over 40% of judgments – 9/21 (42.8%) contained evidence of grooming/trafficking of children; a small number also contained evidence of modern-day slavery.⁴⁴

⁴⁴ Modern Day Slavery Act 2015 <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

3.63 *Mother's association with men known to be a sexual risk to children*⁴⁵

Over 25% of judgments – 6/21 (27%), contained evidence that a mother is/has been associating with men known to be a sexual danger to children.

3.64 *Images taken during the sexual abuse of a child/young person*

Many judgments – 8/21 (38%) contained evidence that adults – almost always a male perpetrator, took pictures during his sexual abuse of a minor: images were frequently uploaded, shared and traded on the internet.

3.65 *CSA judgments by court tier and type of hearing*

Analysis of the (21) judgments regarding the treatment of descriptions of the sexual abuse of a child/young person indicates a lack of compliance with CL2 of the Guidance across all years of the evaluation, and all tiers of court:

3.65.1 *Court of Appeal (CA)*

As indicated above, 6/21 CSA judgments were posted by judges in the CA:

- All CA judgments contained graphic, salacious descriptions of the sexual abuse/rape of a child(n)/young person; half (3/6) described sexual abuse in multiple locations in the judgment
- Over half (4/6) imported verbatim, graphic descriptions of sexual abuse/rape from ABE/police interviews, and judgments from criminal/family courts
- Most (5/6) *also* used a summary/abridged description at some point(s)
- None made use of an annex
- The issues addressed by the CA were almost always appeals against findings of fact by a trial judge and challenges to the *process* that had been engaged.

3.65.2 *The Family Division of the High Court (HC)*

Nine judgments (9/21) were posted by judges in the High Court:

- Most (8/9) contained graphic, salacious descriptions of the sexual abuse/rape of a child/young person; half described sexual abuse in multiple places in the judgment – although one with some care

⁴⁵ Schedule 1 Offenders, and men not convicted but known to be a sexual risk to children, for example, those believed to have links with paedophile networks, dealing in/sharing pornography.

- Most (5/8) imported verbatim, graphic unedited descriptions of sexual abuse/rape from other proceedings/documents – usually ABE/police transcripts in criminal proceedings
- All HC judgments (9/9) *also* used a summary at some point(s) in the judgment
- None made use of an annex
- The issues addressed were mostly appeals against findings of fact by a trial court judge, challenging the fact-finding *process* engaged.⁴⁶

3.65.3 *The Family Court (FC)*

Six judgments (6/21) were posted by judges of the Family Court:

- Most (5/6) contained graphic, salacious descriptions of sexual abuse/rape of a child/young person
- 2/6 judgments contained descriptions in multiple places in the judgment
- 4/6 judgments imported verbatim, graphic unedited descriptions of sexual abuse/rape from other proceedings (mostly criminal proceedings)
- 4/6 *also* used a summary at some point(s) in the judgment
- None made use of an annex
- The issues addressed were, of course, different and more diverse than those of appellate courts, covering evidence, fact finding, welfare and placement decisions, contact issues, and applications by extended family members.

⁴⁶ Two judgments were concerned with technical issues (not related to procedure issues/fairness and due process surrounding fact-finding or welfare decision making).

Key findings: In-depth analysis – treatment of descriptions of sexual abuse and CL2 of Practice Guidance (2018)

3.66 Overall:

- 12/30 (40%) judgments contained at least one reference/evidence of attention to Practice Guidance (2018).
- Reference appears where the judge addresses evidence of sexual abuse, or in an opening statement or *aide-mémoire*, when the judge is reminded of the legal framework, and (to a lesser extent) in discussing rights and freedoms of parties.
- Five (5/21- 24%) CSA judgments indicated attention to CL2: graphic descriptions of sexual abuse/rape were kept to a minimum. Where use was made of descriptions in ABE transcripts/criminal proceedings, these were summarised.
- Even with the most diligent attention to CL2 however, ‘slippage’ occurred; graphic descriptions crept back into judgments at some point.
- The dominant pattern has thus yet to change. At some point most judgments - by error or design - contain graphic, salacious descriptions of sexual abuse/rape of a child in a document intended for the internet. Descriptions were frequently imported, verbatim and at length, from other proceedings/documents - primarily criminal proceedings and ABE transcriptions; in HC and CA judgments, descriptions were reproduced from first instance judgments.

Findings across courts

- Almost all CSA judgments contained graphic, descriptions of the sexual abuse of a child; all HC and half of CA judgments *a/so* included some abridgment/summary. Almost all Family Court judgments included graphic descriptions; most *a/so* contained a summary. No judge made use of an annex.

Risks to children: domestic and international

- Over 25% of judgments indicated a mother associated with men known to be a sexual risk/convicted of sexual assaults on children; over 40% contained evidence of grooming/trafficking of children; 38% indicated the perpetrator(s) took images during sexual abuse, frequently shared, uploaded and traded on the internet. A small number also contain evidence of modern-day slavery.

SECTION FOUR

NAMING AGENCIES AND PROFESSIONALS, ADDITIONAL POTENTIALLY DISCLOSIVE INFORMATION, RECOGNITION OF FAMILIES

Introduction

- 4.1 Reflecting the 2015 evaluation, young people were asked to explore whether judgments named key agencies (the local authority applicant, the court) and professionals (social workers, guardians, doctors, other professionals such as health visitors, teachers, nursery staff, police) and whether they thought that information should be posted and why. We present these findings first; we then explore whether they thought any additional information in judgments might contribute to the identification of child(n) and families. Finally, we explore whether, overall, young people felt that a child/young person could be identified by friends/peers at school/college, and others in communities.
- 4.2 We begin with findings from 2015 and the potential young people said naming agencies and professionals has for contributing to jigsaw identification of children/families.⁴⁷
- 4.3 We then set out findings for 2020 starting with evaluations by young people followed by those from researchers only, concluding with overall findings.

Naming agencies and professionals

4.4 *Naming the court*

In 2015, all judgments identified the name and address of the trial court; all appellate courts were identified and all appellate courts named the trial family court.

⁴⁷ As identified in 2015, Practice Guidance (2014) stated public authorities, professionals and expert witnesses should be named (*unless there are compelling reasons to the contrary* – emphasis added). While historically most professionals and experts were not routinely named, s12 of the Administration of Justice Act 1960 does not protect everyone in proceedings. Alongside attempts to change practices, in a brief resume of cases to 2010, Munby LJ (as was) indicated that public agencies, professionals and treating clinicians and expert witnesses cannot expect to obtain injunctions to protect their identities (ALC Hershman Levy Memorial Lecture; ‘Lost Opportunities: Law reform and transparency in the family courts’, Birmingham, 2010).

- 4.5 In 2020, young people identified:
- 9/12 judgments identified the court (either directly, or by naming the trial court in a judgment resulting from an appeal)
 - 3/12 did not name the court.
- 4.6 In those judgments evaluated by researchers:
- 12/18 judgments named the court
 - 6/18 did not name courts.
- 4.7 Young people acknowledged issues of ‘visibility’ of state agencies as important for family courts, but they also raised concerns about naming some courts. They were concerned that in certain circumstances, naming a family court could contribute to jigsaw identification of the location of children/young people and families.
- 4.8 While naming a court does not always imply distinct geographical boundaries, (e.g. where a court, such as the Central Family Court, serves as the designated Family Court for several local authorities)⁴⁸ for courts serving a single local authority it would identify the geographical boundaries to the location of children/families.
- 4.9 For 8/30 judgments where the court was not named, in one judgment it was indicated because the local authority was named - which was served by a single family court. In the remaining seven judgments, hearings took place in the Royal Courts of Justice (in the High Court or the Court of Appeal), thus there was no immediate risk of geographical identification, and none of the trial courts were named in the judgment.
- 4.10 *Naming the local authority applicant*
- In 2015 young people identified almost all judgments (18/21) named the local authority - directly, or by implication (e.g. in listing advocates for each party). A small

⁴⁸ Following changes to what was the Principal Registry of the Family Division (London) into three distinct London family courts (East, West London, and Central) with roughly equal shares of the public law applications for 32 London Boroughs’ work.

number of judgments (3/21) simply referred to the applicant as ‘the local authority’ on the cover page of the judgment.⁴⁹

4.11 In 2020, young people identified:

- 9/12 judgments identified the local authority applicant⁵⁰
- 3/12 judgments did not name the local authority; however, it was implied because the trial court was named.

4.12 In judgments evaluated by researchers:

- 14/18 identified the local authority
- 4/18 judgments did not name the local authority; however, it was implied in two judgments because the trial court was named.

4.13 All young people in 2020 expressed concerns about naming the local authority; in 8/12 judgments they argued strongly that the applicant’s name be redacted, because it identified geographical boundaries to the location of children subject to extensive abuse. In a further 4/12 judgments they were concerned that while naming the local authority was not in itself a risk for disclosure, it had to be assessed alongside other details in the judgment which indicated where a family lived.

4.14 Naming the local authority may not, of itself, represent a huge risk, but young people argued that deciding to do so should serve as an ‘amber’ warning to judges. It should therefore be considered alongside a review of other potentially disclosive details in a judgment to assess the overall risk of permitting the geographical location and identify of a subject child(n)/young person or family to be determined.

4.15 In each of the 3/12 judgments where young people said the local authority had not been named, they argued it was ‘implied’ – because the judgment named the family court. As indicated above, while naming a family court does not always imply geographical boundaries, in these three instances the named family court served a

⁴⁹ As with some judgments in 2020, the cover page noting ‘Between A Council – and – etc) and within the judgment referred to the views and evidence of the applicant as ‘the local authority’, or ‘the LA’.

⁵⁰ Directly or indirectly by listing certain advocates where these were local child care specialists.

single authority. Thus, whether or not the local authority is named, naming the family court indicates the geographical boundaries to the location of children and families.

4.16 In 4/18 judgments where researchers identified that the judge had anonymised the name of the local authority, the family court was named in two judgments. In both cases the named courts serve a number of local authorities, thereby limiting the disclosure of a family's location. Nevertheless, there was some geographical narrowing by the naming of the court, albeit to a metropolitan area.

4.17 Overall, 2/30 judgments avoided naming the local authority and the family court, thereby minimising identification of geographical boundaries to the location of children and families.

4.18 *Naming individual professionals*

In the 2015 evaluation, bearing in mind some judgments predated Practice Guidance on naming public bodies, professionals and experts in judgments,⁵¹ young people identified variations in practice in sample judgments:

- 8/21 judgments named one or more social workers – most did not
- 5/21 named the child's guardian – most did not
- 5/21 named a doctor(s)
- 8/21 named other professionals/agencies

4.19 In 2020, young people also identified a range of practices across the 12 judgments they evaluated:

- 2/12 judgments named one or more social workers
- 1/12 named the child's guardian
- 9/12 named doctor(s)⁵²
- 3/12 named other professionals/agencies⁵³

4.19 The respective figures for the 18 judgments evaluated by researchers were:

- 8/18 named social workers, 3/8 were independent social worker experts

⁵¹ See note 47 above.

⁵² In 3/12 judgments assessed by young people there was no clinical input.

⁵³ Such as teachers, police, nursery workers.

- 6/18 named the guardian
- 9/18 named one or more doctors⁵⁴
- 5/18 named other professionals.

4.21 Overall, as with 2015 findings, judicial practices to May 2020 varied as to who was named in judgments. For those key professionals appearing in all cases: social workers were named in 11/30 judgments, the Children’s Guardian in 7/30 judgments. Where doctors filed evidence, these were usually named in 18/30 judgments;⁵⁵ other professionals were named in 8/30 judgments.⁵⁶

4.22 As with findings in 2015, in 2020 young people had concerns about the implications of naming some professionals, especially social workers and guardians, whom they argued might be known to work in particular neighbourhoods or with particular families. Even in those instances where judges chose to anonymise professionals by initials, there was concern that this could be “*leaning towards potential identification*” because it appeared to some young people that judges were using actual initials.

4.23 With regard to doctors, young people drew a distinction between court appointed clinical experts and others. Where the latter might be treating physicians in local communities or hospitals, they argued the naming of these individuals could be disclosive – many families/children with health difficulties/needs or already known to be at risk, may well know the community paediatrician or their local CAMHS. Again, young people highlighted that the naming of these professionals were ‘amber’ warnings for jigsaw identification. Naming them should thus be considered in the context of a holistic evaluation of the risks the judgment may pose to the privacy and safeguarding needs of a child/young person.

4.24 *Judicial evaluation of the work of agencies and professionals*

In 2015, young people identified judicial criticism of the work of agencies and professionals in 7/21 judgments. It ranged across most professionals/key agencies

⁵⁴ In addition, in 3/18 judgments there was clinical input but doctors were referenced by initial only - such as Dr ‘T’. In 6/18 judgments there was no clinical input.

⁵⁵ In 18/30 judgments doctors were named, in 3/30 they were referenced by initials, and 9/30 judgments had no clinical input.

⁵⁶ See note 53 above.

(social workers, local authority management, another judge, magistrates, the manager of a family assessment centre, Children's Guardians, and expert witnesses). They also identified judicial praise for the work of professionals in a small number - 4/21 judgments (covering the work of a social worker, the manager of a family centre, a Children's Guardian and a probation officer).

- 4.25 In 2020 young people identified criticisms of the work of professionals and agencies in 7/12 judgments. Criticisms were levied at local authorities, a Children's Guardian, a social worker, the police, a school, and an expert witness. In 4/12 judgments, praise or appreciation for work covered was for social workers, an independent social work expert, a local authority and Children's Guardian.
- 4.26 In 13/18 judgments evaluated by researchers, criticism of the work of individuals and agencies was wide ranging and encompassed local authorities, the police, individual social workers, a youth worker, legal professionals, and judges in earlier hearings. In 8/18 judgments judges singled out agencies and professionals whose work was exceptional/had provided particular assistance to the court. These included a Children's Guardian, a social worker, a local authority, a police officer, an expert medical witness and child care lawyers. (4/18 judgments contained both criticism and praise for the work of professionals.)
- 4.27 Thus overall, in 2015 just over 38% of judges (8/21) took the opportunity to comment (positively or negatively) on the work of individuals/agencies. By 2020 the 'direction of travel' for judicial comment is stronger with 83% of judges (25/30) commenting.⁵⁷

Additional, potentially disclosive information

- 4.28 In the 2015 research, young people identified most judgments (13/21 – 62%) contained additional information which they argued could permit children to be identified. In 2020, young people highlighted additional information in 8/12 (66%) which they argued could contribute to the identification of children/families.

⁵⁷ In 2015, 2/21 judgments contained both criticism and praise; in 2020 the figure was 7/30.

- 4.29 Most additional information concerned a parent or extended family members which added to features of jigsaw identification outlined in Sections 2 and 3 above, increasing the likelihood of identification of 'locally known' families. For example:
- Description of a grandmother, including a date and her place of birth
 - Details of visits to relatives, or holiday, with approximate dates (month/year)
 - Specific incidents/accidents, especially those which were life changing
 - Information about work/business, regular leisure/sport activity of a parent
 - Immigration issues for a child/adult, countries of origin and those where families had stayed/passed through
 - Details of new arrivals in families (e.g. a child/young person) from abroad.
- 4.30 Young people also said detailed histories of parents - especially where previous children had been removed to foster care/adoption, meant parents were likely to be 'known locally'.
- 4.31 Young people reiterated that telling school friends about ill-treatment may in turn be shared with their parents; respondents argued this would mean that on reading local press coverage of the case, such parents/others would be likely to recognise the child/young person concerned.
- 4.32 Researchers identified similar categories of additional information in 14/18 judgments, covering information about parents/extended family, parents' histories, immigration issues, use of children's and specialist services, and religious/cultural contexts. For example:
- Names of parents, multiple locational details (towns where parents spent time), location and dates of family holidays, homes/origins of grandparents, specific details about a parent's work, life changing events for a parent with dates, references to previous media campaigns by parents
 - Details of involvement with children's, and other specialised services
 - Detailed histories of parents covering periods in care, sexual abuse, previous children removed, periods in prison - with dates and offences
 - Immigration issues, and details of new arrivals in households and related immigration questions
 - Specific cultural issues pertaining to a community which is numerically small - along with locational detail of place of worship.

Potential for recognition of children and families

- 4.33 Young people were also asked to assess whether, overall, judgments contained sufficient information to make it possible for friends/peers at school, and people in local communities to recognise the children in judgments.
- 4.34 In 10/12 judgments they said children would be recognised; in two judgments they said the children/young person would not be recognisable.
- 4.35 In the judgments evaluated by researchers, 16/18 contained sufficient information to make it possible for children to be recognised by friends/peers at school and others in local communities; in 2/18 judgments, children would not be identifiable.

Key findings: Naming agencies/professionals and local identification

4.36 Overall:

- Young people repeated concerns about the implications of naming local family courts and local authorities for determining geographical boundaries to the location of children/families. This remains key to potential jigsaw identification:
 - In 2015, all courts were named; in 2020, a majority (21/30) were named.
 - In 2015, all local authorities were named; in 2020, most (23/30) were named. Where this detail was anonymised (a) it was often compromised by subsequent naming in the text (b) where a family court served a single local authority which was not named, geographical boundaries to the location of children/families were nevertheless revealed.
- Young people recognise the principles underscoring the naming of courts and local authorities. However, they argued naming these agencies was an ‘amber’ warning: a decision to name one or both needs to be taken within an overall review of the risks a judgment poses for children and families.
- In 2015 young people identified variations in naming individual professionals. Variations continue in 2020 but like 2015, most social workers (bar independent social work experts⁵⁸) and Children’s Guardians are not named, while doctors (treating and expert witnesses) are named.
- As with 2015, in 2020 young people were concerned about naming professionals likely to be known in neighbourhoods (e.g. social workers in neighbourhood teams, some guardians, doctors in community/local health centres). A decision to name should thus also serve as an ‘amber’ warning, considered alongside other potentially disclosive information in a judgment.
- In terms of ‘praise and criticism’, the ‘direction of travel’ was broadly similar for the range of professionals subject to criticism by judges. In both samples, over half of judgments contained criticisms (57% in 2015, 67% in 2020) with less praising of agencies/individuals (33% in 2015, 40% in 2020).

⁵⁸ Commissioned by the court under family procedure rules determining the appointment of experts (https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25)

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- Most judgments (22/30) contained additional information to that identified in Section 2 and 3 above, contributing to identification of children/families.

- Overall, a majority of judgments (26/30) contained sufficient information to make it possible for children to be identified by friends/peers and within local communities; 4/30 judgments were anonymised sufficiently to make them unrecognisable.

SECTION FIVE

INFORMATION THAT YOUNG PEOPLE LIKED, THOUGHT SHOULD OR SHOULD NOT BE PUBLISHED, AND THE NEEDS OF LAY READERS

Introduction

- 5.1 Young people were asked to identify information in judgments which they liked or disliked, what they thought should and should not be posted, and whether they thought judgments provided enough information to enable a lay reader to understand the application, and the decisions the judge made.
- 5.2 About a quarter of judgments in 2015 contained information young people liked along with specific details they thought should - and should not be posted. Notwithstanding differences in method between 2015 and 2020,⁵⁹ some similar and interconnected themes emerged. These themes are explored below, along with findings from the researchers' evaluation of judgments in meeting the needs of lay audiences.

Likes and dislikes, and the needs of lay readers

5.3 *Explaining the tasks and duties of family judges*

In 2020, in the majority of judgments (9/12), young people identified the importance of judges setting out and explaining the legal framework for the application, how the law (and with some reservations, case law⁶⁰) related to the allegations made by the applicant and how it should be applied by the judge in considering the evidence filed. They welcomed clarity in explaining this task, both for a lay audience, but also for the subject child/young person, when they eventually came to read the judgments.

5.4 *Explanation of technical issues/terms for a lay audience*

Young people focused on a range of issues, terms and concepts in judgments - some of which they said were carefully explained, others less so - bearing in mind an intended 'non-legal' audience. For example, some judges set out the principles and

⁵⁹ A change of method with young people (from workshop to 1-2-1 video interview with a researcher) but also time for this exercise – the 2020 exercising giving them much more time.

⁶⁰ Extensive pages of case law received criticism; it was hard work even for people with some knowledge and it was suggested that this could be summarised for lay audiences.

procedures necessary for Achieving Best Evidence,⁶¹ identifying poor/inadequate professional practices – and in the latter context, explaining why the court might nevertheless rely on evidence from children where ABE procedures (by police/social workers) were poor/failed to meet the required standards:⁶²

‘Yes, I believe [coverage] of the ABE procedure in this judgment meets the needs of a [lay audience] - the judge sets out the procedure required in order to Achieve Best Evidence, the process -...and it is [also] good on explaining the role of the trial judge...’ (male)

- 5.5 They especially liked explanations of *significant* harm and were critical of judgments where this was not explained; they liked clear links between alleged harms and the impact on the health and development of children. They were critical of limited coverage of the welfare checklist and argued for full coverage in judgments. That was important for the child/young person, family members, and a lay readership.
- 5.6 They also liked those judgments which contained straightforward explanations of how complex medical evidence was evaluated, for example, where judges explained how they came to determine whether injuries to a child were caused deliberately, or through carelessness, for example.
- 5.7 Young people liked judgments in which, in coming to fact finding statements (and thus decisions about the orders they would make), judges linked back to a summary of key features of evidence (accepted and rejected). As one young person reported about a judgment, it was:

‘[This judgment] is very informative, detailed, easy to read and to understand why the judge made the decisions.’ (male)

⁶¹ Guidance – see <https://www.cps.gov.uk/legal-guidance/achieving-best-evidence-criminal-proceedings-guidance-interviewing-victims-and>

⁶² Explaining, for example, that while interviewing practices fell short of the required standard, children remained consistent over time/number of interviews in their language and descriptions of sexual abuse.

- 5.8 *Demonstrating fairness and due process: the position of parents*
Young people liked discussions of the importance of fairness in relation to parents, how that would be achieved, and how the judge would balance the competing interests of parties. They said this was important in judgments posted on BAILII.
- 5.9 The distinction made by judges between parental failures, and those due to issues of 'limited capacity' was appreciated by young people. They also liked judgments which recognised the efforts made by some parents to try and improve behaviours/parenting - even where these were subsequently deemed insufficient.
- 5.10 Equally, young people liked statements in judgments which recognised that while parents were not always successful at change, many wanted to care for their children. Thus, they welcomed statements from the judge that demonstrated an understanding that it was not necessarily that parents would not change, but rather that they could not do so within the timescale needed for a child. They argued that from the perspective of the child/young person as future readers, where possible judgments should detail positive features of parent(s)/parenting.
- 5.11 *Adults known to be a sexual risk to children*
Young people argued that evidence of a parent's association with known sex offender(s) should be included - but as they outlined earlier (see Section 3) with care to certain details and the capacity to enable jigsaw identification of children
- 5.12 *Detailed histories*
Young people took this opportunity to again argue for more careful reflection by judges on the reasons for a detailed background/history of a parent/family in judgments: as detailed above, it should not be there 'just for completeness'. Where they could not identify a direct relevance, they disliked its inclusion.
- 5.13 Where aspects of family history were evidenced as continuing to affect current parenting or where it related to the suitability of an extended family member to care for a child, young people said this information should be included in judgments. Young people understood the reasoning; they also said it would help readers, both lay and the family - and (eventually) the child/young person - to fully understand the decisions made by the court. As one young person argued:

'It is valid [here] to [include] details about the history of this family so anybody can understand why the children are at risk and need to be removed.' (female)

However, even where histories had a clear bearing on current decision making, young people said these should be summarised, and fully anonymised to Practice Guidance standards.

5.14 *Placement decisions and the position of extended families*

Young people identified the importance of clarity in judgments as to why a child could not be placed with extended family members; this was important for the family, but also for wider audiences who may be critical of the work of family courts in this regard (for example, where parents/extended family members may subsequently argue that they have been unfairly treated). However, in so doing, young people raised two issues: firstly, the judgment must be very carefully anonymised so that extended families and thus children could not be identified/traced; secondly, care must be taken in explaining the legal framework, and the terms/language to a lay audience. Addressing one such judgment a young person argued:

'Yes, but it's not clear enough - and the language, it's too complex for the public, you need simpler language...this is not transparent!' (female)

5.15 *Details of ill-treatment*

Young people again repeated they understood the need for judgments to set out clear findings of fact in relation to alleged harm to a child. However, they repeated earlier views (Section 3 above): graphic, repeated, salacious descriptions of the sexual abuse of a child were not necessary to this exercise. They again identified efforts by some judges to summarise/abridge descriptions of child sexual abuse – albeit these did not entirely replace the appearance of graphic material. As one young person commented in endorsing a judgment, this judge had the *'Guidance in mind'* when preparing evidence for inclusion in a public document.

5.16 *Publication and the views and rights of children/young people*

Among the 12 judgments evaluated by young people there was one judgment about which the young person could find nothing to like, stating forcefully, *'No; I didn't like anything about the judgment.'* Proceedings concerned more than one young person and several allegations and graphic descriptions of sexual abuse; the respondent

was shocked by the descriptions included in the judgment. It should also be noted, the judgment contained 5/5 area indicators.

- 5.17 However, the dismay and anger expressed at this point in the evaluation was also rooted elsewhere: graphic descriptions of sexual abuse appear to have been published without the knowledge or consent of the young person concerned. The young person expressed incredulity – this was utterly shocking. Equally shocking to her was the fact that professionals - including the young person’s advocate, appeared to think it was not necessary to question this level of detail, or to consult with or inform the young person that highly graphic, sexually explicit detail about the abuse was to be available on the internet.⁶³ She argued:

‘Young people should be told about any judgment in the public domain which concerns them or their family...’ (female)

- 5.18 Beyond what the young person said was the right of young people to know – and an ethical responsibility on the part of professionals/courts to inform young people about posting judgments on BAILII, young people also argued that at some point, the subject child/young people may well wish to read it. This consideration had several implications, but in the context of what young people liked, they identified judgments where the judge made it explicit that the children were not in any way to blame or at fault for a decision to remove them from a birth parent(s). Young people said that given the emotional/mental health issues ‘carried’ by children subject to parental ill-treatment, that statement was important for them as current/future readers.

- 5.19 *The importance of siblings*

Explicit attention by judges to the importance of maintaining sibling relationships was liked by young people: a focus on placing children together, and on maintaining

⁶³ Article 12 of the Convention on the Rights of the Child provides: “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.” <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

sibling contact where that was not possible was deemed important. Young people stated how important siblings are for most children removed from birth parents. They highlighted many judgments concerned sibling groups and argued that where children faced different care pathways, judges should address how sibling relationships could be fostered.

- 5.20 As indicated above, they welcomed attention to children's needs and the timeframe necessary for meeting their needs. They also welcomed discussion of the pros and cons of placements (parental, extended family, and fostering or adoption). But as one young person argued, ultimately:

'children deserve permanence' (female)

- 5.21 *Appraisal of the work/activities of professionals*

The activities of professional services were also identified by young people as details which should be included in judgments. They highlighted criticisms of social workers and other failures of local authorities to protect children, for example, in delays taking safeguarding measures. They also identified failures of police to comply with ABE guidance, and failings in the management of disclosure processes between crime and family courts, and poor work by professionals such as a Children's Guardian. However, they argued this did not mean these professionals should be named – as identified above (Section 4) this could contribute to jigsaw identification of children and thus compromise their privacy and safety. Holding a service/individual to account does not – save in exceptional circumstances, equate with 'naming and shaming'. Young people argued that there are other ways to address accountability and engage with agencies for improvements – and where individuals do not necessarily hold the key to solving some failures of practice. For example, in reflecting on extensive delays by a local authority in which a young person was left in a highly dangerous household, one young respondent ran through a catalogue of failures by agencies documented in the judgment and added:

'[I] loved this... the judge criticises this local authority... and sets out [several months] delay following the child's [reporting of abuse] before issuing care proceedings!' (female)

Young people endorsed mentions of good work by judges - mainly reports by social workers, independent social worker experts, and clinical/medical experts.

5.22 *Explicit attention to issues of anonymisation*

Young people again identified efforts by judges to improve anonymisation of judgments pointing to a range of examples, such as withholding the name of a local authority or the generalisation of dates, as evidence of efforts by judges to limit the potential for jigsaw identification of children. For example:

'[There was] commendable efforts by this judge to anonymise...which shows due diligence to young people and safeguarding' (male)

'[reading this] it feels like the protection of the children has been at the forefront throughout' (male)

'[this is a] very good judgment not giving anything [disclosive] away. A reader would have to work really hard to find something which means the judge has done their job and followed anonymisation. I like that.' (male)

5.23 *Criminal proceedings*

Young people again argued certain details about criminal convictions should be published, not least where parents were serving custodial sentences, but were careful in their reasoning and caveats. For example, they argued that certain information about criminal offences provided a context to parenting and therefore should be published, however, *'care should be taken to remove details which might lead to identification [of a child/young person or family]'* (male).

5.24 *Judgments for the public arena: issues of readability*

While young people stated that 8/12⁶⁴ judgments contained sufficient information to enable a lay reader to understand the reasons for the application and the order(s) made, they nevertheless had concerns about the readability of judgments. They were critical of judgments with no headings, and limited explanations of the task and framework for the work of the judge. They questioned the point of placing complex judgments in the public arena if it was unlikely they would be read.

⁶⁴ Data for two judgments was missing.

- 5.25 They liked judgments with a clear structure indicated by paragraph headings (assessing that 9/12 judgments were well structured); they argued this gave readers a ‘route map’ to the judgment.⁶⁵ They also argued that in the case of lengthy, complex judgments (e.g. with several children, multiple adult parties with contesting applications as to placement, and medical and other evidence from several experts) – an index or opening paragraph explaining how the judge would approach the issues - with relevant paragraph numbers, would be helpful.
- 5.26 They identified, with approval, elements which they felt demonstrated judges were mindful of a ‘non-legal’ audience – in both structure and content. For example, one judgment was highlighted where the judge explicitly stated it was written to be understandable by the parents whom it was felt might struggle with more than simple/straightforward language.
- 5.27 *The needs of lay readers: researchers’ evaluation*
As indicated in Appendix IV, researchers independently reviewed a further 18 judgments and considered if these provided enough information for a lay audience to understand reasons for applications and decisions made by judges. All 18 judgments provided enough information for lay readers. However, variations in the structure of judgments, in particular limited use of paragraph headings to help readers navigate the text, were likely to make some a considerable challenge for a lay reader.⁶⁶ While 11/18 judgments contained paragraph headings as indicated in Practice Guidance,⁶⁷ 7/18 judgments gave no route map/index or headings to paragraphs, and some had a poor structure – at least for a lay audience.

⁶⁵ There are various ways in which this was done by judges and tailored to key issues in cases but for example, headings as: Introduction, Essential Background, Allegations, Position of Parties, the Law and Legal Principles, Professional Evidence, Expert Evidence, Evidence in Chief, Findings, Orders.

⁶⁶ For example, a judgment of 40 plus pages, single spaced text, with complex and competing evidence from several medical experts, multiple adult parties, and previous proceedings, without headings or index, however well drafted, may struggle to hold the attention of a lay reader or help to convince a lay audience of the highly detailed work and analysis which the judge undertook in holding all parties - and experts, to account for their actions and evidence.

⁶⁷ In the context of these data, it is not possible to say whether these judges were already using a similar structure prior to Practice Guidance; it may be more likely for judgments emanating from the High Court and particularly the Court of Appeal, but some of this may be down to personal practice.

- 5.28 Among the 18 judgments reviewed by researchers, almost all those from the Court of Appeal (4/5) contained a clear structure with paragraph headings: most judgments from the High Court (5/8) did so, but fewer (2/5) from the Family Court.
- 5.29 Some judgments were clearly drafted with parents in mind - and thus arguably a lay readership, for example, explaining legal concepts in non-legal terms. Like the judgments reviewed by young people, there was variation in the degree of explanation, for example, regarding harm/risk of harm,⁶⁸ the burden and standard of proof which the local authority applicant had to meet,⁶⁹ use of the welfare checklist, issues of credibility and the treatment of lies, referring to the 'Lucas Direction'.⁷⁰

⁶⁸ Some setting out the conditions under s.31(2) (a) (b); (9) (10), Children Act 1989.

⁶⁹ Making it clear the burden of proof lies with the local authority applicant, added case law as is normal practice (for example, *Re Y (Children) (No 3)* [2016] EWHC 503 (Fam), [2017] 1 FLR 1103, Sir James Munby P) with the added statement that parents have nothing to 'prove' in this regard. The fact that a respondent fails to establish an alternative case, does not absolve the claimant from their duty to prove their case. The standard of proof is 'the simple balance of probabilities' (e.g. *R B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141) – but perhaps with more explanation than would normally be provided to a legal audience.

⁷⁰ With regard to the issue of lies in evidence, a judge will usually refer to the 'Lucas Direction' (*R v Lucas* [1981] QB 720 ([12]-[14]) as explained by McFarlane LJ in *Re H-C (Children)* [2016] EWCA Civ 136, [2016] 4 WLR 85) – explaining that for parents/lay audience; the judge may go on to explain that findings of fact must be based on evidence or inferences properly drawn from evidence, not on suspicion. Trial judges frequently also refer to the demeanour of witnesses and the ways in which they gave their evidence – and reasons why the judge accepts or rejects their evidence; this may be carefully worded, for example, when dealing with a parent deemed vulnerable by way of language/comprehension difficulties.

Key findings: Likes and dislikes and the needs of lay readers

5.30 Overall:

- Young people liked clear explanations of the tasks and duties of judges, and how these would be addressed – and in language accessible to lay readers.
- They questioned the point of posting judgments which did not consider lay readers: they identified judgments where that was achieved, indicating that it could be done – even in highly complex cases.
- Young people liked judgments which stressed the importance of fairness and due process for parents, highlighting this throughout the process. Also, in light of criticisms of courts by families/others, they liked clarity as to why children could not be placed with extended family members.
- They liked recognition that a parent(s) had tried to change, reasons why they had not succeeded, identifying factors beyond the capacity of a parent - at least in a child's time frame. Where it was possible, they liked some recognition that despite underlying and unresolved problems/failures, that a parent(s) wished to care for their child(n).
- Young people liked statements in judgments that children were in no way at fault in decisions to remove them. They said children placed in care carry many emotional and mental health burdens: shame and responsibility being just two. They argued that, as future readers of judgments, a statement of lack of any responsibility on the part of a child(n) was important.
- Young people repeated their rejection of graphic descriptions of sexual abuse of a child in a public document: they pointed to summaries/abridgment of those details, again demonstrating that a different treatment was possible.
- They welcomed statements in the body of judgments about the importance of anonymisation for children.
- They liked judicial attention to the centrality of sibling relationships and how judges sought to continue these, in placement/contact plans.

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- They said where appropriate, judges should address the work of professionals and agencies – both positive and negative; that did not however extend to naming individuals, save in exceptional circumstances. A policy of ‘naming and shaming’ was not generally viewed as in the interests of children; it was also too late for the subject children and might compromise their privacy and safeguarding needs.
- Young people said criminal convictions of parents should be included in judgments, but more care must be taken to remove those details that facilitate the identification of the child/young person.
- Almost all judgments (28/30) conveyed the reasons for the application and the order(s) made by the court; however, there were some gaps and obstacles for a lay readership.
- While most judgments (20/30) provided a route map to the content of the judgment – by way of paragraph headings, a third (10/30) provided no such assistance. No obvious structure or signposting or paragraph headings is likely to make the experience of a lay reader, at best, a significant challenge.

SECTION SIX

MEDIA ACCESS AND REPORTING OF CHILDREN CASES, AND COVERAGE OF JUDGMENTS ON MEDIA AND SOCIAL NETWORKING PLATFORMS

Introduction

6.1 As outlined in the Introduction, young people were asked whether there was anything they wished to say about media access and reporting of children cases.⁷¹ Following the 2015 model, they were then asked to undertake an internet search for any coverage of cases/judgments they had read. Below we begin with their views about media access and reporting of children cases, we then report findings from a search of news outlets and social media platforms.

Media access and reporting: the views of young people

6.2 Most young participants had further comments regarding the media and the posting of judgments on BAILII – a public website. While some referred to the importance of the work of family courts – and were well aware of debates about issues of ‘transparency’ over a number of years, they were concerned that the privacy and safeguarding needs and rights of children have been lost, ignored or subsumed in this policy debate.

6.3 Their comments fell into three categories. First, and in relation to the judgments they evaluated concerning the sexual abuse of children, they again expressed shock and anger at graphic descriptions of the sexual abuse and rape of children/young people in a document placed in the public arena.

6.4 Second, they reiterated that neither the press nor the public should have access to this level of detail of sexual abuse of a child: it served no purpose, it could be summarised/abridged in judgments intended for BAILII – without loss of gravity as to alleged offences against children. The graphic descriptions – already contained in other documents in the court file, should be removed from a judgment intended for BAILII – these placed in an annex in the court file, with controlled access.

⁷¹ In this context we also explored whether judgments gave any indication of press/media, other permitted observer attendance, and whether any party representations were heard regarding anonymisation or a decision to publish a judgment. Results reveal 1/30 judgment where there was an indication of an application re anonymisation.

For example:

'Judgments which contain sensitive information should be removed and placed on a separate database which requires control ...perhaps by judge, as to who should have access to it, and what can then be published from it ...[And] all the details should be available to the young person – at an appropriate point in their [later years]' (female)

'The descriptions and language repeated in this judgment...it's [too graphic] ... the public don't need this level of intimate graphic descriptions of what he did to children...(Ch1) and XX when a minor, who [he] raped [and again raped her during her stay with [M] and stepfather in [city]...these are details the media would pick up....'(female)

'...the judge could [simply] say ... 'disclosure of sexual assault'; the judge needs the detail - yes, but the public don't need this level of detail – this girl is [a young teenager]!!...[she] was [under 12 years] on the first occasion of rape, these graphic descriptions of assault and rape will be in public arena for rest of their lives...'(female)

'If the details are too [graphic] – there should be one [detailed] judgment for court files – another, abbreviated/summarised for BAILII'. (male)

- 6.5 Third, young people again expressed anger that nobody appears to ask the child/young person if this level of detail should be placed in the public arena - and for the rest of a young person's life. Further, they again argued nobody appears to consult with or inform the young people that a judgment – with this level of graphic detail about their lives, will be posted on BAILII and that the media may report aspects of the case:

'...children and young people should be asked – "are you OK with this detail going in a public document – is it ok to put it in the public arena? – these girls...the [x] year-old may have views... [was she asked?]and she may want to see it [the judgment] herself, later.'(male)

'...first, the media should not have access to this judgment, and second, access to it [via BAILII] will be without consent – nobody asks the child or

young person if it should be a public document! And ...what about local gossip about these children...this could add to that... [this] is likely to be a known family...’ (female)

- 6.6 In the context of safeguarding risks and ongoing mental health issues for children subject to sexual abuse, young people were appalled at what they felt was a judicial and professional disregard of the risks they associate with publication of graphic descriptions of sexual abuse and rape of children; they again refer to such children as more vulnerable to grooming and sexual exploitation in wider communities.⁷²
- 6.7 While young people acknowledged that parents should be allowed to tell their story – that should not be an absolute right where the detail as told had implications for the long-term privacy and safeguarding of children. Similarly, referring to issues of accountability for poor public services and thus naming agencies (sections 4 and 5 above), young people felt this issue has not been resolved and needs further thought:

‘Parents may have a right to tell their story – but there are ways of doing that without putting children at risk...and there are also other ways to hold local authorities – and courts, to account and for bad practice without putting children at risk...we need more imagination as to the best way forward, there

⁷² This vulnerability is discussed further in the conclusions in the context of a number of inquiries into the targeting, grooming, trafficking and sexual abuse of vulnerable teenagers – for example, those targeted in "honeypot locations" across the Midlands and north of England such as Rochdale, Greater Manchester (see, Berelowitz, Sue; Clifton, Jenny; Firimin, Carlene; Gulyurtlu, Sandra; Edwards, Gareth (Nov 2013) *If Only Someone had Listened*. Office of the Children’s Commissioner. https://www.childrenscommissioner.gov.uk/wpcontent/uploads/2017/07/If_only_someone_had_listened.pdf (re- accessed, 21 Feb 2021). The Rochdale child sex abuse ring involved underage girls in Rochdale, Greater Manchester. Nine men were convicted of sex trafficking and other offences including rape, trafficking girls for sex and conspiracy to engage in sexual activity with a child, in May 2012. This resulted in Greater Manchester Police launching Operation Doublet to investigate further claims of abuse with some [19] men; some forty-seven young girls were identified as victims of child sexual exploitation during the police investigation. This was followed by the Independent Inquiry into child sexual abuse – The Sexual Abuse (IICSA), which was set up in 2015 to investigate organisations and institutions that have failed to protect children from sexual abuse. The Truth Project (part of the work of the IICSA) was due to close during 2021 with a plan to publish a final report in 2022 with findings and recommendations to help improve child protection. Interim Report (2019) - <https://www.iicsa.org.uk/publications/inquiry/interim>; <https://www.iicsa.org.uk/document/full-interim-report-independent-inquiry-child-sexual-abuse>.

still needs to be a conversation...this issue is not resolved by ignoring young people's views...' (male)

Media outlets and social networking platforms

- 6.8 As identified in 2015, a key factor underlying the need to improve anonymisation practices in judgments is the concern of young people and others that information in judgments can be shared widely and downloaded with ease in the contemporary digital world, and a media driven culture. In 2015, young people searched the internet to explore if and how information from judgments appeared in news outlets and social media platforms. Results showed that just under 24% of BAILII judgments were covered in some way by local or national media outlets while some 33% were reported on social networking sites – most of which appeared on Facebook.
- 6.9 The 2020 evaluation adopted the same method but in a more extensive exercise (regarding the time allocation and number of judgments – see Appendix IV para A.37). The same methodology was followed in which young people identified their own search terms from judgments (details such as locations, descriptions of parents/children, allegations, etc.) to explore coverage on the internet. These were supplemented by researchers who had also read and evaluated the same judgments.⁷³
- 6.10 A parallel approach was used to explore coverage on the internet of the further 18 judgments evaluated exclusively by researchers: full details are provided in Appendix IV. In summary, the searches used words and phrases likely to appear in newspaper headlines, and where applicable, names of parties to proceedings and professionals and agencies named in judgments, nature/type of abuse. Where criminal proceedings were detailed in judgments, searches used details about the offence and any dates of arrest, trials, convictions and sentencing.

⁷³ There were some judgments for which young people were unable to carry out or complete the task. Where possible, researchers used their terms for the searches, supplementing these if necessary from the researcher's reading of the same judgments – and the extra time researchers had for reading and searching.

6.11 *The search results*

Of the total sample of 30 judgments, internet searches revealed that 50% (15/30) were reported in mainstream media, including local and national newspapers, online news channels, legal press and professional journals, and blogs, and just over 13% (4/30) featured parents who were also locatable on social networks such as Facebook:

- Eight judgments were found on national press outlets, including the BBC, The Guardian, The Mirror, The Daily Mail, The Independent, The Times, The Sun, and BuzzFeed
- Ten judgments were reported across a variety of local press and news outlets
- Two judgments were discussed in specialist outlets⁷⁴
- Nine judgments were reported on legal sites, in magazines for care professionals or on blogs.

6.12 The profile of judgments producing media coverage were:

- Two-thirds (11/15) involved proceedings where there was an allegation and thus a description of child sexual abuse/risk of such harm
- Four judgments came from the Family Court, nine from the High Court and two from the Court of Appeal
- Three judgments were posted on BAILII in 2017, five in 2018, four in 2019 and three in 2020.

6.13 The material reported in the local and national press/media sites encompassed a wide range of detail from the content of judgments.

- Commercial legal journals/law updating sites and other professional sites (e.g. The Local Government Lawyer etc) often published judgments in full or with a summary of key issues.
- Articles in mainstream and local media included [more] details about parents and failures of parenting, criticisms of individuals and organisations, and information about offences.
- Lurid headlines sometimes accompanied the coverage in local papers and text was often supplemented with photographs of the parents.

⁷⁴These are not identified here as naming would be disclosive of the content of the sample judgments.

- 6.14 Although concurrent care proceedings were not always referenced in coverage of criminal proceedings, where the latter were related to abuse or neglect of children, internet searches provided details about the number and ages of the children in the family and names of parents. Criminal proceedings for other issues sometimes indicated that offenders had children and, by revealing the offender's name(s), contributed to the identification of children.
- 6.15 Material in local press outlets was found on both commercial and free to read websites, with some material (for example, that detailing outcomes of criminal proceedings) further replicated on other free platforms both within the UK and overseas.
- 6.16 The publication of articles in dedicated regional papers confirmed the geographical location of children and families for some of the judgments. Similarly, the publication of articles on 'regional' pages of national news sites (for example, the BBC) also served to confirm the geographical location of children and families.

Judgments and jigsaw identification: five examples

- 6.17 The internet searches indicate that details posted on BAILII permit jigsaw identification of some children and families. The results of this exercise for five, very different judgments demonstrate the ease with which material in judgments can be used to track and trace children and families. Note that in all five judgments, judges were clear that the anonymity of children should be protected in any reporting.

❖ **Judgment 1**

This judgment concerned neglect of a sibling group by parents. Among other items, the press coverage, identified by an internet search, indicated that an arrest had been made, and also suggested that a Serious Case Review (SCR) had been undertaken by the relevant local authority. A reading of the SCR revealed a number of other details about the family which had not been disclosed in the judgment, including the age and gender of another child of the father; it also provided facts about the progress of charges in the criminal courts and associated dates.

These dates were used to fine tune the media search in the local press which revealed extensive local coverage. These articles provided more details about the family, again not included in the initial judgment, including the ages of the parents, their conviction and sentencing details, the number of children and their ages, the name of the town in which the family lived and the name of the estate in the town in which their home was located.

❖ **Judgment 2**

This judgment involved the removal of a child from the care of its parents because of suspicious injury. The internet search disclosed that the parents had been involved in criminal proceedings and there was extensive national and local coverage of the case which revealed the names and ages of the parents.

These names were used to investigate social media platforms to identify any personal pages relating to the parents. In this instance, the first name of one of the parents had an unusual spelling making the account quick to locate. The privacy settings in this account had not been secured so it was possible to examine the 'friends list' as well as scroll through all the photos and videos that had been uploaded over a number of years, including photos of the parents and child.

Tagging of other people in these photos provided immediate access to other family members, for example, the father, a grandmother and an uncle. This search enabled the name of the child to be identified, as well as its birth date, found in a photograph of the father's 'new' tattoo. Other information was readily accessible through friends' comments on photos and posts, such as the child's birth weight, the age of a young uncle and so on.

❖ **Judgment 3**

This judgment involved parents tried and convicted of serious offences. The search revealed extensive media coverage in local and national newspapers and online news websites. Coverage also featured on the website and social media pages of a group dedicated to exposing sex offenders. The press articles gave the names of both the parents, permitting a search of social media platforms. While the parental names were common, the locational detail given in the judgments, and confirmed in the press reports, allowed a quick sifting of Facebook pages of adults with the same name and the relevant page of a parent was located. The friend's list was not protected on the relevant page allowing ready access to the social media accounts of other family members.

A search through the parents' profiles and posts enabled the identification of the full names of all the children involved in the proceedings and full dates of birth for at least two of them. Photographs uploaded also showed street scenes of the family home, detail which would allow the home address of the children to be further narrowed.

❖ Judgment 4

This judgment named both the father and the mother in proceedings, although the judge explicitly ordered that the name of the child should not be revealed. An internet search generated a multitude of articles in the national and local press which were accompanied by photographs of the parents. These articles included more details about the family and pertinent information in relation to the child that had not been disclosed in the judgment. The names were used to search social media platforms and the Facebook page of the mother was quickly found, in part because the photographs which had accompanied the newspaper coverage enabled a quick sorting of social media pages of adults with the same name.

An exploration of photos, posts and accompanying comments and replies on these pages revealed the name of the child and its date of birth.

There were also photos of the child before it had been placed into the care system. It became apparent from the Facebook page that the mother often used a diminutive of her own name and this was used in conjunction with her family name to find her Twitter account. A further social media page on yet another platform was identified for the father.

❖ **Judgment 5**

These proceedings involved two children and, although the parents were not named, mention of family details by the judge permitted a search of the internet using this information. This search generated a number of news items which identified the names of both parents and at least one of the children. A search of social media using the name and location of the family gleaned from the judgment and media coverage led to the Facebook page of a parent.

The name of this parent is 'common' and therefore the photos from the press helped narrow down the possible pages on Facebook which were relevant for this family. Although the privacy settings on this person's pages had secured the list of friends, the settings had not been extended to the photos, uploaded videos or posts. Searches of these revealed the names of multiple family members, including another child included in the care proceedings and a birthday for a child.

Crime reporting: new players exposing paedophiles, platforms used for trading materials

- 6.18 Reporting of criminal proceedings has further potential to put children at risk, especially when proceedings relate to harms against children or sexual offences. In recent years there has been a growth in the web presence of communities (individuals connecting together with a shared interest) dedicated to ‘exposing’ adults who have been accused or convicted of harms against children. Many of these are national but with local and regional offshoots; examples include T.E.D (Track ‘Em Down), Predator Hunters, Predator Catchers, Predator Exposers and Dark Justice. In addition to websites, these organisations have Facebook pages and a presence on other social media platforms like Twitter. While they all operate differently, they share the aim of publicising the trials and convictions of “paedophiles and child abusers” and sex offenders across the United Kingdom.
- 6.19 New entries on these platforms name perpetrators, sentencing and locations, with commentary about the age(s) of child victims frequently uploaded and supplemented with links to local and national press reporting. A search of these websites shows that entries include parents convicted of harms against biological, step and foster children. While these websites have protocols which govern the naming of offenders - restricted to those convicted of an offence - this offers little meaningful protection for the children in these cases, especially when links to local reporting are provided. The parents from one of the sample judgments featured on the web and Facebook pages of one of these groups. Groups of men with a sexual interest in children are using Facebook to locate, and trade in obscene materials (narrative and images) of the sexual abuse of children – this material, downloaded and shared from a variety of sources includes sexually explicit material posted by users, which is then trading on Facebook with/without the knowledge/consent of the account holder.
- 6.20 The preoccupation of local press coverage with features which ‘Name and Shame’ local offenders exacerbates these risks. Many regional papers draw in readers using ‘click bait’ headlines such as “Monsters and Manipulators, Paedophiles and Convicted Sex Offenders in [town/city] in [20xx], cataloguing offenders with details of assaults, locations and names.
- 6.21 The power of social media and social networking sites to place children at risk has increased as a result of the growth in the number of networks to which individuals

now belong. Social media connections span individuals, families, neighbourhoods, villages and towns and cross groups with shared professions, leisure interests, political affiliations and faith systems. Moreover, they have moved on to a wider range of platforms, such as Instagram, WhatsApp, and Snapchat. Social media networks and apps such as Facebook, Tumblr and Kik can, and are, being utilised to connect paedophile network groups.⁷⁵ As young people identify, all such networks allow the rapid dissemination and sharing of information, making the challenge of protecting sexually vulnerable children in family court proceedings harder and the containment/control of sexually explicit material, once published, virtually impossible.

- 6.22 The 2020 internet search supports the view and findings of those of young people in 2015 regarding concerns about jigsaw identification; it also indicates that risks may be more profound and serious. As one young person argued regarding judgments concerning child sexual abuse: *'the media would have it everywhere'*; the internet search showed that they were right. The resultant press coverage breached the children's right to privacy and presented safeguarding risks, because the names of these children were quickly identified through social media searches.
- 6.23 Even though the graphic descriptions of the sexual abuse of the children were not included in the press articles, that information remains available permanently on BAILII. Moreover, there is symmetry in the searchability of the press and of judgments. Key words gleaned from the press (local and national) in relation to offences can be used as search terms on BAILII and quickly return the relevant judgments – with all the graphic details. These details remain available indefinitely and with the potential to surface at any point in the remainder of a child's life – and for any person wishing to read and identify a sexually vulnerable child.

⁷⁵ A BBC investigation found a number of secret groups on Facebook, created by and run for men with a sexual interest in children. Crawford (2016) reported paedophiles are using secret groups on Facebook to trade obscene materials and images of children. Crawford argues the groups have names that give a clear indication of their content and contain pornographic images, many purporting to be of children, and appeared to be stolen from a variety of sources (newspapers, blogs etc) - and include sexually explicit material posted by users, including pictures of young girls accompanied by obscene posts. Settings on Facebook mean secret groups are invisible to most users; only members can see the content. Crawford identified that salacious comments regarding images of children were not necessarily taken down by Facebook – see <https://www.bbc.co.uk/news/uk-35521068>

Key findings: Media access and reporting and media and social networking platforms

6.24 Overall:

- Like previous cohorts of young people a major concern was that judgments which contain graphic descriptions of the sexual abuse of children are placed in the public arena: they were shocked and angry at the level of detail made available to anyone, for downloading and uploading – worldwide, and for their lifetime.
- They continue to argue that neither the press nor the public should have access to this level of detail: it served no purpose and could be summarised/abridged without loss of gravity as to harm to children.
- They were concerned and angry that nobody appears to ask the child/young person if graphic salacious descriptions of sexual abuse should be in the public arena. Further, nobody appears to inform a young person that a judgment with this graphic and shaming detail will be posted on BAILII.
- In the context of safeguarding and health vulnerabilities for children subject to sexual abuse, young people were appalled at what they felt was a disregard of the risks they associate with publication of explicit descriptions of sexual abuse.
- Judgments gave no indication of press/media, other permitted observer attendance at hearings, or of party representation as to anonymisation practices, or a decision to post a judgment.
- Young people acknowledged that parents should be allowed to tell their story but that should not be an absolute right where its format/mode of presentation had implications for the privacy and safeguarding needs of already vulnerable children.

Media and social networking platforms

- A major concern of young people is that unredacted and explicit information in judgments can be download and shared locally and worldwide with ease in the digital and media driven world. The internet search confirms that view.

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- Half the judgments were covered in national media and local press and news outlets (commercial and free to read): some were covered in both outlets.
- Coverage in local regional outlets confirmed the geographical boundaries for the location of children and families.
- The profile of judgments reported in outlets included 11/15 judgments concerning the sexual abuse of a child/young person.
- Coverage in professional journals/law and practice updating sites frequently publish the judgment in full, or a summary of key issues for professional practice.
- Local and mainstream press/media were more focused on details of the failures of parenting and judicial criticism of agencies and practitioners - and where indicated, details about offences, and allegations of harms to children, including child sexual abuse.
- Lurid headlines were sometimes accompanied with pictures of parents.
- In press coverage of criminal proceedings concerning offences against children, not all concurrent public law proceedings were cited but coverage identified the number and ages of children. In other criminal proceedings, coverage might indicate that an offender had children; naming offenders identifies children.
- A sample of judgment case studies demonstrates many parents have Facebook accounts, many disclose details about their children on this site, many post pictures of children. The search exercise demonstrates the ease with which disclosive information can be accessed, the level of disclosure relating to children, and the links to wider family and others, it facilitates.
- The search also identifies the presence of web communities: some target and expose adults who have been accused/convicted of the sexual abuse of children. Others aim to facilitate the interests of paedophiles, sharing explicit materials (both images and narrative) of the sexual abuse of children.

- Paedophile networking groups are using Facebook to locate, and trade in obscene materials (narrative and images) of the sexual abuse of children – this material, downloaded and shared from a variety of sources includes sexually explicit material posted by users, which is then trading on Facebook with/without the knowledge/consent of the account holder.

- Both categories of ‘communities of users’ use platforms such as Facebook and Twitter but the search demonstrates interconnectedness across a wider range of platforms.

- The search also demonstrates the symmetry in the searchability of press/media and other coverage of judgments. Key words used by media/press/other platforms in relation to judgments can be used to search BAILII. That will take a reader directly to the judgment - with full graphic, salacious descriptions of the sexual abuse of a child/young person – as described in detail by the child. Those descriptions can be cut and pasted, shared and traded national and internationally, by individuals and communities.

SECTION SEVEN

CONCLUSIONS AND RECOMMENDATIONS

Guidance: Annex 1 CL1: jigsaw identification

7.1 Checklist 1 of Guidance focuses on five, within county/borough geographical and personal categories of information which have the potential to narrow down considerably the area where a child/family resides. It offers suggestions as to how this information can be better anonymised to reduce/eliminate the potential for jigsaw identification of children from information routinely included in judgments, and at the same time, aims to ensure judgments remain coherent and intelligible.

7.2 *Progress: the successes*

There has been progress in relation to the 'big five' within county indicators.⁷⁶ Key improvements in the following contributors to jigsaw identification were:

- removal of child's/young person's date of birth
- removal of names of schools/nursery/colleges attended
- progress in avoiding naming a town where a family live/have lived
- use of initials to indicate parents/other adults and children.

7.3 *Limited progress*

A substantial minority of judgments however continue to report:

- detailed accounts of issues and problems at school – some of which may not involve the child directly, rather, parents/extended family members
- details about the cultural/religious backgrounds of families.

7.4 *Progress undermined*

Two key issues have served to undermine progress in anonymisation practices:

- failure to address how geographical boundaries can be revealed

⁷⁶ See Appendix II p110: in 2015 young people identified five categories of information in judgments with potential to narrow down considerably the geographical area where a child or family reside. These include information about an area (e.g. naming a town), information about a school or school issues, a child's date of birth, information about extended family members, and information about religious/cultural customs within households; and, county/borough boundaries being set by naming the local authority applicant.

- importation of extensive, unredacted information from criminal proceedings.
- 7.5 While there has been a shift away from the naming of towns, this has not eliminated geographical specificity as to the location of children and families. Where a local authority/borough applicant is named, this confirms geographical boundaries; where it is not named, naming the trial family court (where this serves a single authority) confirms geographical boundaries to the location of a child and family.
- 7.6 Moreover, within those geographical boundaries, where judgments also name professionals (e.g. social workers in neighbourhood teams, doctors in community/local health settings), this narrows the likely location of families to specific, urban neighbourhoods. A limited number of judgments continue to name towns which children/families visited or in which they accessed public services.
- 7.7 The inclusion in judgments of extensive details regarding parents' involvement with the criminal justice system, with details of offences, arrests, evidence filed and sentencing, enables defendants to be traced and increases substantially the chance of children and families being identified, locally and nationally. Indeed, inclusion of such details demolishes other attempts to improve anonymisation practices.
- 7.8 *Little progress so far*
One factor showed little change:
- extensive details of family histories
- 7.9 A majority of judgments continue to include extensive details about extended family members and family histories, a picture little changed since the (pre-Guidance) evaluation of 2015. This is a complex issue as *some* - but not all - details are recognised as relevant to the issues before the court. However extensive details (about household composition, asylum and immigration issues, occupation of parents and extended family members, countries of origin, and languages spoken – perhaps included for 'completeness') were all features which young people said had potential to make households identifiable.
- 7.10 Young people were especially concerned about detailed 'Backgrounds/Family History' which did not link these to specific questions before the court. They argued that unless the level of detail had a direct relevance for current allegations and

decision making, this approach was too disclosive, providing several clues to the identity and location of children. In the light of public availability of judgments, this approach requires urgent attention by judges: the aim is to achieve a better balance between information *necessary* to understand the case and orders made, and children's rights for privacy in a digitally driven media and social networking age.

- 7.11 There has been a reduction in the number of judgments with four or more within county indicators covered by CL1. Nevertheless, a majority continue to have three or more indicators. Given the combined potential for jigsaw identification of children, there is thus room for further improvement in the application of CL1.
- 7.12 Young people said that all communities have 'known families' with unique features, making them readily identifiable to neighbours and locally recognisable. Publicly visible, poor home conditions also made such families identifiable. Neighbours sometimes played a role in raising concerns about ill-treatment of a child with police and children's services – resulting in home visits. All these features exacerbated the risk of identification of children. Anonymising judgments for these families was a litmus test of the extent to which CL1 was seen to be working.
- 7.13 Young people made two further points. First, certain details/failings of parenting continue to be included in judgments even when they appear to add little to the issues before the court, or to a public understanding of proceedings. They suggested that the test for inclusion should be whether material was of direct relevance to an allegation, finding of fact, or a welfare decision.
- 7.14 Secondly, they argued more care is necessary with *some* of the language/terms used regarding *some* parents. Not all parents are gratuitously cruel/neglectful - albeit failures of care/judgment result. Moreover, there is often a great deal of shame and feelings of guilt/responsibility borne by children removed because of ill-treatment; being publicly labelled as the child of a 'failed parent' adds to that shame. Thus, save in appropriate circumstances, young people preferred the term 'failures of parenting'. They pointed out many children removed by courts and fostered will eventually return/be in contact with their birth parents; that is made more difficult in the face of a public document that is unnecessarily damning.

7.15 *Locally 'unrecognisable'?*

The risks of jigsaw identification were not restricted to locally 'known families' - most judgments contained additional information contributing to the risk of identification.

Overall:

- few judgments (4/30) were sufficiently anonymised as to make children/families unrecognisable
- the majority (26/30) contained sufficient information to make it possible for children/young people to be identified by friends/peers and people in local neighbourhoods/communities.

7.16 *Reflective thinking*

The evaluation indicates that protecting children from jigsaw identification requires judges – and advocates and parties - to reflect further on what information to include post-Guidance, what is essential, how they detail information pertaining to the care and lives of children and families to avoid, inadvertently, placing children at risk of identification.

7.17 Young people argued that while no single indicator in the 2020 sample judgments would lead to jigsaw identification, the cumulative impact of a number of potentially 'disclosive' factors raised the risk that children/families would be recognised. Judgments which cover long, complex histories of parents result in an accumulation of details which greatly exacerbate the potential for jigsaw identification.

7.18 The evaluation indicates that more consideration needs to be given to the 'amber' warnings across the key five, jigsaw identification factors indicated above - before decisions are made about posting judgments on BAILII. A decision to include any single unit of detailed information needs to be taken within a review of the overall risks to children of posting a judgment. In some cases, it will not be possible to anonymise a judgment to the standard required; as Practice Guidance indicates (Appendix I – Final Check (1) (d)), those judgments should not be posted.

Guidance: Annex 2 CL2 - descriptions of sexual abuse

7.19 Guidance (CL2) aims to assist judges in demonstrating how graphic, salacious descriptions of the sexual abuse of a child/young person can be summarised/abridged without loss of clarity as to the seriousness of allegations, the time frame involved, and how the court comes to a decision as to findings of fact.

7.20 Of the sample, 21/30 judgments contained allegations of sexual abuse or risk of such harm to a minor. Evaluation of these judgments indicated limited progress in the implementation of CL2.

7.21 *Some progress*

Overall, 5/21 CSA judgments indicated attention to CL2:

- descriptions of sexual abuse/rape were kept to an absolute minimum, limited to one paragraph in the judgment
- where descriptions were imported from other documents, they were summarised/abridged for the judgment
- even in the best examples however, there was some 'slippage', with a graphic description appearing later in the judgment.

7.22 *Little/no change*

Most CSA judgments (18/21) continue to contain graphic, descriptions of the sexual abuse/rape of children:

- one-third (7/21) contained such descriptions in multiple places
- in two-thirds (14/21) such descriptions were imported, verbatim, from ABE transcripts/other police reports in criminal proceedings or from trial family judgments.

At some point however, most judgments (19/21) *also* included a summary of graphic descriptions of sexual abuse/rape. No judgment made use of an annex for this material, as recommended in CL2.

7.23 *Court tier*

Analysis of CSA judgments by court tier and type of hearing showed limited adherence to CL2 across all tiers. Judges in all tiers imported verbatim, large sections of the transcript of children's evidence in ABE interviews.

7.24 The evaluation identifies that at some point, most judgments - by error or design - contain graphic, salacious descriptions of sexual abuse/rape of a child in a document intended for the public arena and now available for a world-wide audience.⁷⁷

Community and wider risks to children subject to sexual abuse

7.25 A substantial minority of judgments (9/21 – 40%) contained evidence of grooming/trafficking of children/young people; a small number also contained references to modern day slavery. A similar proportion (8/21 – 38%) contained evidence that adults, almost always a male perpetrator, took photographs during the sexual abuse of a child/young person. These images were digitally recorded, frequently uploaded, shared and traded on the internet.

7.26 The 'direction of travel' with regard to these findings is especially worrying. It supports the concerns of young people regarding the vulnerability of sexually abused children to identification, further grooming and sexual abuse.⁷⁸

7.27 Checklist 1, taken together with the findings to date for CL2 where there are related criminal proceedings, indicates the interface of crime-family practice requires urgent

⁷⁷ While implementation of CL2 may be slower than anticipated – and especially in the Court of Appeal where arguably the opportunity to summarise/redact is in some ways easier - nevertheless, very recent case law might signal a change not apparent in the sample judgments. In *R (Children Control of Court Documents) [2021] EWCA Civ 162*, Jackson LJ addressed a different but related scenario. In that case, an intervener (a convicted paedophile who is serving a lengthy custodial sentence) wanted copies of unredacted documents containing graphic details of sexual abuse perpetrated by the intervener, and claimed he was entitled to have those documents. At first instance, this was refused and the court instead ordered the release of a summary of the court's findings and a redacted version of the judgment (with explicit sexual references removed), in order to protect the children concerned. That decision was upheld by the Court of Appeal. While this was a very specific and an extreme case (reference to Art 3 by the Court of Appeal was a clear signal that this is so) – the basic principles underscoring Guidance CL2 apply, i.e. the need to protect highly vulnerable children from identification, locally, and from paedophiles nationally/internationally.

⁷⁸ The Internet Watch Foundation (IWF) highlights that The National Crime Agency (NCA) estimates that 300,000 people in the UK present a sexual threat to children. IWF tracks and removes child sexual abuse content from websites. In 2019, the IWF assessed 260,426 reports of web pages suspected to contain child sexual abuse imagery. Of these, 132,676 were confirmed to contain images and videos of child sexual abuse, an increase of 26% on the 105,047 reports actioned in 2018. In 2019, almost a third of all web pages actioned by IWF (38,424 web pages, 29%) contained self-generated imagery. In some cases, children are groomed, deceived, or extorted into producing and sharing a sexual image or video of themselves. Of these web pages, 76% (29,312) showed a girl aged 11 to 13 years old. On average, IWF analysts identified imagery of these girls 118 times every day; 13% (5,026) showed a girl aged 7 to 10. IWF Briefing: <https://www.iwf.org.uk/report/iwf-2019-annual-report-zero-tolerance>

review in the context of children's privacy rights and safeguarding needs. Findings highlight the interconnectedness of information with the transfer of unredacted details and dates from criminal to family proceedings, along with graphic descriptions of sexual abuse/rape of children - both then placed in the public arena by family judges.

Child sexual abuse and jigsaw identification

7.28 Young people noted that the risks posed by posting graphic descriptions of sexual abuse are not reported in a vacuum; they also carried risks of jigsaw identification. Two-thirds (14/21) of judgments contained three or more 'within county' indicators, just under a quarter (5/21) had four or more indicators. Judgments thus also provide locational 'clues' creating a cumulative risk of jigsaw identification of some of the most vulnerable children in the sample judgments.

Health costs to children subject to sexual abuse

7.29 Young people talked about the impact of sexual abuse on self-worth, the burden of a pervasive sense of shame, a loss of childhood and confidence, feelings of fear and being unsafe, and long-term emotional/mental health problems. The knowledge that every graphic detail of that abuse is also in the public arena, to be downloaded and shared by anyone and at any time, was said to be an unacceptable additional burden for children/young people, and one which is preventable.

7.30 While this project does not permit a review of research on the long-term health and wellbeing of children subject to sexual abuse, a cursory search of North American materials (from where arguably, many/most of the interventionist and longitudinal studies emanate) lends support to their view. Sexual abuse of children can have a substantial and long-lasting impact on a range of psycho-social, emotional health indices.⁷⁹ Much of that cost remains hidden – at best, on the peripheral vision of

⁷⁹ For example, Li M, D'Arcy C and Meng X (2016) [Maltreatment in childhood substantially increases the risk of adult depression and anxiety in prospective cohort studies: systematic review, meta-analysis, and proportional attributable fractions](https://doi.org/10.1037/a0037767). *Psychol Med*. Mar;46 (4) pp:717-30; Lindert et al. (2014) Sexual and physical abuse in childhood is associated with depression and anxiety over the life course: systematic review and meta-analysis. *Int J Public Health* Apr; 59 (2) pp 359-72; Pynoos et al. (2014) Modelling constellations of trauma exposure in the National Child Traumatic Stress Network Core Data Set. *Psychological Trauma: Theory, Research, Practice, and Policy*, 6 (Suppl 1), S9–S17. <https://doi.org/10.1037/a0037767>

family justice professionals – it is however recognised in the context of CPTSD.⁸⁰ In the light of increased knowledge of child sexual abuse and the grooming of children in recent years, a meta review of studies would be helpful for this area of medico-legal policy and for family justice practitioners.⁸¹

Coverage of BAILII judgments in mainstream and social media

- 7.31 Young people were shocked about the level of detail in judgments placed in the public arena and especially those containing graphic descriptions of the sexual abuse of children. They argued that neither the press nor the public need this level of detail; it served no purpose and could be summarised/abridged without loss of gravity as to harm to children and reasons for a court order.
- 7.32 They raised serious questions about the fact that the subject young people were not consulted about the detail or told the judgment would be posted on a public website thus available worldwide and throughout a child/young person's life. In addition to a lack of regard and respect for young people, key concerns were (a) a lack of awareness on the part of judges about the growth of the internet and the massive amount of material on it depicting the sexual abuse/rape of children and (b) a lack of judicial understanding about the digital world and how graphic details from judgments can be downloaded and shared across multiple platforms, by anyone.
- 7.33 The internet searching confirmed the worst fears of young people, noticeably the media attention to judgments and the ease with which children can be identified. Half

⁸⁰ 'Complex post-traumatic stress disorder' describes the pervasive developmental impact of complex trauma and its disruptive effect on core developmental processes including attachment, identity and self-regulation. Although not yet recognised in DSM-5 or ICD-10, the term is becoming more widely used by clinicians because it is clinically meaningful and provides a useful framework for treatment. Diagnostic criteria for CPTSD will appear in <https://icd.who.int/en> Brewin et al, 2017; <https://pubmed.ncbi.nlm.nih.gov/29029837> The rationale for the clinical construct of complex post-traumatic stress disorder (CPTSD) in children is that it provides a coherent conceptualisation of the presenting symptoms resulting from severe and usually prolonged or repetitive interpersonal trauma. CPTSD is seen as a complicated adaptation to this traumatic experience. In cases of child abuse the perpetrator is often in a care-giving role. Other causes in children and adults include experiences relating to war and refugee status; victims of torture or domestic abuse may also develop CPTSD.

⁸¹ A brief search by colleagues at the NSPCC library indicates there is little research and no indications of a meta-analysis of UK/EU work in this field. This requires further exploration which should include key issues/findings from North American meta-analyses on the long-term health implications for children. This may be something that Family Justice Council might consider taking forward.

the sample judgments were covered in national media and local press and news outlets, both commercial and free to read. The profile of judgments reported in outlets included eleven judgments concerning the sexual abuse of a child/young person. Coverage in local and regional outlets confirmed the geographical boundaries for the location of children and families, increasing the risk of harm to already vulnerable children/young people.

- 7.34 Graphic descriptions of the sexual abuse of children in posted judgments – frequently reported in children’s own words, suggests that judges may indeed lack awareness of the amount and marketability of images *and* narrative on the sexual abuse/rape of children on the internet where child pornography circulates and is traded. Equally judges may be unaware of a substantial growth in online communities aiming to track and expose paedophiles, with a focus on those who have been convicted of the sexual abuse of children – and the attendant risks to vulnerable children that exercise brings.
- 7.35 The key issue is that both categories of ‘communities of users’ utilise platforms such as Facebook and Twitter, but the search demonstrates interconnectedness across a wider range of platforms. The growth of internet connectivity of individuals across time and space has created a concomitant increase in the risks for privacy and safeguarding of vulnerable children/young people - where they are without a voice or representation: they are, in effect, in a space in which they are ‘collateral damage’.
- 7.36 The internet search also demonstrates a symmetry in the searchability of press/media and other coverage of judgments. Key words used by media/press/other platforms in relation to judgments can be used to search BAILII. That will take a reader directly to the judgment - with full graphic descriptions of the sexual abuse of a child/young person – as described, by the child. In effect, the painful details of sexual abuse detailed in their ABE interview(s) can become ‘click bait’. Those descriptions – more graphic, salacious and sexually explicit than that which can be purchased over the counter in publications in mainstream bookshops, can be cut and pasted, shared and traded with ease, facilitated by a digital and media driven world.
- 7.37 The internet search and case studies demonstrate that there is an ongoing, material risk of jigsaw identification of children and families. While judgments assert a right to

anonymity for children in proceedings, in the contemporary digital world and a media driven culture, anonymising judgments to protect children's right to privacy is a complex undertaking and one which many judges fail to fully appreciate.

- 7.38 The evaluation demonstrates a need to realign anonymisation practice with the reality of the digital world in which children's lives are shaped and lived. The internet search also exposes the reality that some parents involved in proceedings are often negligent with respect to their children's needs for safety and privacy; a failure/inability to protect children and prioritise their needs may well be mirrored in the digital lives of those same parents/carers. Judgment case studies demonstrate many parents have Facebook accounts, many disclose details about their children on this site, many post pictures of children. The search exercise demonstrates the ease with which disclosive information can be accessed, the level of disclosure relating to children, and the links to wider family and others, it facilitates. This material remains a permanent, digital shadow in children's lives, even when parents have faced the ultimate sanctions of losing their children and facing prison sentences.

Primary and secondary purpose of judgments

- 7.39 At this point there are no indications that judgments applying CL1 failed to meet the fundamental and primary purpose of judgments – to enable those who have not been granted what they sought, to understand how and why the court has decided as it has.⁸² Equally, there was no identifiable failure of judgments to meet secondary needs - of professionals, family members, the child (in due course) and the appellate courts⁸³ and lay readers. Almost all judgments met the needs of lay readers to understand the reasons for the application and the order(s) made - but there were some gaps and obstacles. A key obstacle – in a third of judgments, was lack of paragraph headings: this is likely to make the task of a lay reader, at best, challenging. Given the limited progress on implementing CL2, it has not been

⁸² Guidance is set within a primary framework which guarantees parties a right to a fair trial; this includes a right to have the outcome of proceedings explained in a reasoned judgment expressed in clear accessible language explaining how and why the court has reached its decision

⁸³ Professionals (including judges) involved in making further assessments/decisions about a family; parents and family members identifying baseline deficits in parenting that require addressing through therapy or other intervention; The child (in due course) in understanding why events in her early life occurred as they did, and where relevant, how the judge dealt with her wishes and feelings; appellate courts in auditing the judicial exercise (See Brophy 2016).

possible to determine the impact of full compliance with CL2 of Guidance on the primary and secondary purposes of judgments involving child sexual abuse.

Policy implications

- 7.40 The features incorporated into CL1 of Guidance appear to be about right at this stage and are having an impact. There are however some ‘bedding in’ problems and some room for improvement. Once anonymised, it is necessary to take an overall perspective on locational indicators in judgments – including those currently embedded in sections on family backgrounds and extended families, and potential for jigsaw identification. A final search would identify terms/details/dates previously anonymised and any slippage which had occurred. This has implications for the scale of judicial time needed to prepare judgments.
- 7.41 The findings indicate greater consideration should be given to the privacy needs of children in decisions to post judgments on BAILII in the context of issues of open justice – which permits publication of judgments. While personal data processed by a judge acting in a judicial capacity is exempt from the protections afforded by the General Data Protection Regulations (GDPR)⁸⁴ – in the context of children’s data, that view may benefit from some scrutiny and reflection; and at the very least given findings herein, on how the principle of data minimisation and practices to avoid substantial damage or distress to subjects⁸⁵ might be better applied to children judgments. It may be a surprise to young people – and to members of the public, that laws that protect children’s personal data and welfare in other realms do not extend to public law judgments, making this arena somewhat anomalous. In the absence of a review and a test case contextualised within the digital world and CPTSD issues for abused children,⁸⁶ improved use of Guidance - CL1 (privacy) and implementation of CL2 (safeguarding) by judges would better meet the principle of

⁸⁴ <https://www.judiciary.uk/about-the-judiciary/judiciary-and-data-protection-privacy-notice>

⁸⁵ Article 89(1) GDPR says that you must have appropriate safeguards in place to protect individuals, and in particular technological and organisational measures to ensure data minimisation. Section 19 DPA 1989 – the processing for archiving, research and statistical purposes and safeguards makes provisions at s (1) (a) about the processing of personal data that is necessary for archiving purposes in the public interest; it provides (s (2)): ‘Such processing does not satisfy the requirement in Article 89 (1) of the GDPR for the processing to be subject to appropriate safeguards for the rights and freedoms of the data subject *if it is likely* (emphasis added) to cause substantial damage or substantial distress to a data subject.

⁸⁶ See para 7.29 and footnote 83 above.

proportionality between open justice and the privacy needs of the most vulnerable children – in the spirit of the GDPR.

7.42 Checklist 2 may need more time to bed-in – in the light of findings in this evaluation and with a careful eye on developments in the Court of Appeal where arguably options to summarise/abridge graphic details of child sexual abuse/rape are easier. A key problem at this point remains the importation into judgments, verbatim, of large sections of ABE interview transcript detailing graphic accounts of sexual abuse by children/young people. Most other evidence in public law proceedings is not routinely treated in this way. Only a minority of judges have changed their practice in the context of CL2 and moved to summaries, albeit not consistently applied.

7.43 *Judge craft in the digital age*

Where risks to children are high (e.g. in cases concerning sexual abuse, and where households have a particular profile) a change of practice to a more narrowly focused judgment is necessary. While a detailed narrative of complex parental histories has been common practice, that approach can sabotage anonymisation efforts. While judges rightly wish to demonstrate an awareness and understanding of the pressures and adversities faced by parents – and their efforts to change - detailed histories for the ‘sake of completeness’ are counter-productive in the context of preserving children’s privacy. Where a history is deemed essential (to fact finding and orders), a summary with key points for the court’s decision-making process would better demonstrate awareness of a parent’s background without compromising the application of CL1. In appropriate cases, acknowledgment of complex histories and a parent’s efforts to change can be made in the judgment – and indeed verbally in hearings at which parents are present. A related issue can arise in judgments regarding child sexual abuse where allegations and evidence are summarised/abridged in line with CL2. Where it remains appropriate to demonstrate to children that they are believed by the court, a statement to this effect can be included in the judgment.

7.44 *Abridgment/summaries of graphic descriptions of sexual abuse*

The pre-Guidance – and dominant approach by judges to the treatment of graphic descriptions of sexual abuse in judgments may be an issue of personal choice/principle, or tradition (‘that’s the way we’ve always done it’), or – more probable, a result of on-going pressures of time, enormous workloads, and thus ‘fire-

fighting’. Cutting and pasting across from ABE evidence to judgments may be viewed as easier/quicker. It may be a case of, ‘if I had more time, I would write a shorter letter.’

7.45 Nevertheless, the treatment of graphic descriptions of child sexual abuse in judgments posted on a public website has to reflect the current landscape: previous practice did not have to contend with the internet or the growth in online tracking, grooming and sexual exploitation of children. Children and young people did not have to live with knowledge that this detail about their lives was publicly available and indefinitely accessible. While judges exercise judicial discretion in writing judgments, this is exercised within boundaries. They also have the discretion to change practices in the presentation of evidence - in line with contemporary knowledge and research on the digital world and footprint, and the risks to already vulnerable children and young people identified herein. In the case of posting judgments on BAILII, risks can be neutralised with careful practice in line with the standards outlined in Practice Guidance - CL1 and CL2. The default position in drafting judgments - given that the purpose of proceedings is the protection and safeguarding of children - should be to question how, in the light of these findings, information can be misused. The outcome of proceedings should do no further harm to children; judges must understand that any digital record is a potential hazard and take steps to mitigate it.

7.46 *The ‘crime-family’ interface*

This interface needs urgent review with a specific focus on how inter jurisdictional and inter agency practices can better protect the privacy and safeguarding rights and needs of children. One option is to revisit, update and strengthen the Protocol and Good Practice Model (2013).⁸⁷ This could include reviewing other protocols which exist regarding procedures for disclosure of information during investigations and prosecution for child abuse and involving several agencies (e.g. Local authorities,

⁸⁷ Protocol and Good Practice Model (2013) Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings. The protocol was signed by the (then) President of the Family Division, the Senior Presiding Judge and the Director of Public Prosecutions on behalf of the Crown Prosecution Service (CPS), the Department for Education, the Welsh Government, the Local Government Association and the Association of Directors of Children Services. It urged all Local Authorities to adopt disclosure practices within the protocol – aiming to improve better outcomes for minors subject to the relevant proceedings. <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/protocol-good-practice-model-2013.pdf>

National Crime Agency, the Crime Prosecution Service).⁸⁸ The review could draw on the expertise in Child Exploitation and Protection Command (CEOP) which has knowledge and experience of the risks to children in the cyber world.

7.47 The stated fundamental purpose of the 2013 Protocol between crime and family proceedings is the protection of children.⁸⁹ The Protocol should thus be updated to include best practice in the redaction of disclosive details and control of graphic images *and* narrative of the sexual abuse/rape of children in a digital age. Extending the protocol to include the control of images and redaction of records between courts (and utilising joint management and linked directions appointments for individual cases) may be the quickest way to achieve change. Caution is necessary, however; the 2013 Protocol has not been identified as universally successful. The reasons for that – and the issue of statutory force in the context of children’s privacy and safeguarding, would need to be part of a review.

7.48 *Operational changes to facilitate implementation of CL1 and CL2*

As the authors of judgments posted on BAILII, judges bear ultimate responsibility for what is written. Where a decision is made to post a judgment, the judge has a responsibility to ensure the judgment does no further harm to children. While Guidance is not being re-opened – this work is a measure of its application - some operational changes could facilitate the work of judges in realising the aims of CL1 and CL2. A number of options are implicated:

- (a) Firstly, an increase in the time allowed for the preparation of judgments. An increase in judicial time would allow reflective practice by judges, allowing them to review whether the overall aims of Checklist 1 (jigsaw identification) have been achieved in the written judgment. Moreover, additional time would permit

⁸⁸ National Crime Agency – child sexual exploitation: <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/child-sexual-abuse-and-exploitation>; the NCA note the vulnerability of young people in care to further exploitation. The Crown Prosecution Service (2003) Protocol between the Crown Prosecution Service, police and local authorities in the exchange of information in the investigation and prosecution of child abuse cases: <https://www.cps.gov.uk/publication/investigation-and-prosecution-child-abuse-cases> . This protocol on the exchange of information in the investigation and prosecution of child abuse cases, was developed by the Crown Prosecution Service, Association of Chief Police Officers, Local Government Association of England, and Association of Directors of Social Services and endorsed by the Home Office, the Department for Education and Skills (as was) and the National Assembly for Wales.

⁸⁹ See note 87 above: para 3, Executive Summary

judges to implement CL2 by producing summaries and abridging graphic descriptions of the sexual abuse of children.

- (b) A second option is a change in practice to ‘front-load’ the preparation of documents at the start of proceedings in a way that is non-disclosive. An existing procedure under FPR 2010 Practice Direction 27A about court bundles indicates that there is precedent for such an anonymisation process.⁹⁰

- (c) A third option is assistance provided by advocates in ‘front-loading’ anonymisation of documents *during* proceedings utilising CL1 and summarising/abridgment of sexually explicit narratives using CL2, addressing both agreed and disputed issues. There is some limited evidence in the sample judgments of advocates doing this. Key features of a scheme could include: counsel/advocates agreeing a ‘dramatis personae’ to anonymise all family members, professionals and experts, and even the local authority; an agreed summary/abridgment of sexually explicit narratives regarding both agreed and disputed facts; an agreed summarised form for children’s evidence; a return to use of an ‘advocate’s’ or ‘agreed’ chronology (part of the original Public Law Outline – PD 12A) following directions for the applicant to provide relevant background for the court and later appended to the judgment; and, pending changes to the 2013 Protocol (as above, para 7.47), parties could agree the approach to concurrent criminal proceedings. Annexes can travel with case papers for any future reference or further proceedings; they do not need to be made public. This would meet anxieties regarding the unspoken purpose of judgments: to avoid criticism from the appellate court. However, the volume of work and pressures on the family justice system is a key risk factor: the additional contributions of counsel and child care solicitors must be addressed

⁹⁰ The PD requires the advocate to prepare, *inter alia*, a summary of the background: “Where proceedings relating to a child are being heard by magistrates the summary of the background shall be prepared in anonymised form, omitting the names and identifying information of every person referred to other than the parties’ legal representatives.... Identifying information can be contained in all other preliminary documents” https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27a

– if judges are to achieve improvements to judgments intended for the public arena.

7. 49 Any operational change will place additional burdens on those working in family justice who are already working with high caseloads; additional work in this regard therefore would require costing and increased resources. Practitioner consultation would have to be undertaken with key counsel and advocates before agreement could be reached on realisable changes.

7.50 *The digital world and judicial training*

The rapid growth in platforms and connections means that the risks to privacy and safeguarding of vulnerable children are constantly evolving. Judicial practice in anonymisation needs to be forward-looking, informed and periodically updated. This requires an understanding of:

- how information moves across the digital world at speed
- how search engines operate, and the use/misuse of key words
- the ease with which children and families can be tracked and traced
- the permanence of the digital footprint.

7.51 *Parents' on-going failures to protect: the digital world*

As indicated above, the inability or unwillingness of some parents to protect children extends to the digital lives of parents. There needs to be open consideration as to whether there is a role for family courts in requiring social media accounts of parents to be deleted or, at a minimum, to remove materials which breach children's privacy and safeguarding needs, and/or to meet certain privacy settings. This is a controversial and complex issue but at the present time, unsecured social media accounts represent a real, and ongoing danger to children because the material placed there by parents allows children to be identified (a privacy risk) and to be traced (a safeguarding risk). Any decision by either the court or the local authority to restrict a parent's use of social media would require a balancing of exercise between a child's Article 8 rights and the Article 10 rights of parents under the HRA 1998. In this exercise while the child's welfare would be a factor, as things stand, it would not be paramount.

7.52 *Consulting and informing children and young people: ethics and rights*

Young people pointed out that children are parties to proceedings and stakeholders in family justice policy. They highlighted a lack of respect for their position and views: 'we are people too' – and a lack of consideration of children's rights. This issue has been highlighted several times in research in this field over the last decade. It applies to the work of Cafcass and Children's Guardians, LA social workers and to child care lawyers. Organisations and professional bodies do not have a discernible policy to inform young people of the potential for media attendance at hearings, or the posting of judgments on BAILII. As young people have argued since 2009, public statements supporting the voice and rights of children under the UNCRC are simply platitudes when not reflected in practices. Equally, they argued decisions made not to tell them about these issues - 'in their best interests'/ 'for fear of upsetting them', was unethical, and more in keeping with the needs/fears of professionals, than adherence to the rights and needs of young people. As evidenced herein it is also not in their best interests where judgments themselves can be misused and become currency and a tool for abuse. Proceedings are a snapshot in the lives of young people, but they have long-term welfare, privacy and safeguarding needs - as a consequence of proceedings and decisions to post judgments.

Recommendations

7.53 Immediate priorities:

1. Judgments concerning the sexual abuse of a child/young person

Posting judgments on BAILII with unabridged graphic descriptions of sexual abuse/rape of children and young people should be halted: those already posted should be removed.⁹¹

2. Crime-Family Interface

In a digital world, an inter-department review of the crime-family interface is necessary to achieve an updated practice protocol with regard to the treatment of images (photographs), videos, **and** narrative of child sexual abuse in documents exchanged and a judgment intended for the public arena. Use of a

⁹¹ Clarification is also necessary regarding remote working and whether E-bundles sent to alleged perpetrators include graphic narrative of the sexual abuse of a child and if so, whether there is any means of monitoring what they do with the material regardless of the outcome of proceedings.

schedule of abuse (as used in images in criminal proceedings) should be explored regarding sexually explicit narrative, the latter to follow the approach/protection afforded to images.

3. Judicial training

Family justice policy has to catch up, and quickly, with the digital world and its footprint: this is the landscape within which the contemporary privacy, safeguarding and welfare needs of vulnerable children should be placed. Policy must be forwarding looking given the digital world is evolving at an unprecedented rate. Current safeguards are ineffective, and outdated. Family justice needs a vision to address the current and evolving landscape; CL1 and CL2 provide the policy framework. This needs to be delivered through training which should be fully ticketed. The public and young people need to know that judges are fully trained and responsive to this challenge and will exercise their discretion to protect the privacy and safeguarding needs of vulnerable children.⁹²

4. Judgment structure and method of citation

In order to facilitate future monitoring of the implementation of Practice Directions, judgments should reference Guidance within a sub-heading titled 'Law and Guidance'. Monitoring would be further aided if judicial citations were made more uniform, using a standardised system for all children judgments posted on BAILII.⁹³ This should be a precursor to any resumption of posting judgments on BAILII concerning the sexual abuse/rape of a child/young person as it would assist monitoring CL2, by making judgments concerning allegations of sexual abuse readily identifiable.

⁹² It is surprising and regrettable that before the decision to start posting children judgments on BAILII a Children's Rights Impact Assessment (CRIA) was not undertaken. It is not therefore surprising that neither judges nor civil servants fully understood the risks or the damaging consequences of the content of judgments being made public. It is not mandatory to undertake a CRIA; it is however considered best practice albeit inconsistently applied by Government, when changing/introducing new policy/practices concerning children. <https://www.unicef.org.uk/publications/unicef-uk-cria>

⁹³ A further issue which requires attention is that the file names of judgments sent out by family courts can give the actual family name/first names of those involved (even though they've been anonymised in the judgment); depending on how they are processed, this information can be automatically included in the body of the published judgment e.g. pdf file or in the metadata of the html or in the properties of the pdf.

5. Presumption of 'publication'

There should be no automatic presumption of 'publication' of public law children judgments. Practices in posting judgments concerning allegations of child sexual abuse should only be resumed where these can fully comply with CL2. In non-CSA judgments, there should also be a pause to permit a review and a decision on operational changes outlined above, this to be accompanied by a Child Rights Impact Assessment of the changes. This should be followed up with a further, limited evaluation of practice progress.

APPENDIX 1

EXTRACT - PRACTICE GUIDANCE (2018) - CHECKLISTS 1 AND 2

ANNEX 1

CHECKLIST 1: GEOGRAPHICAL/PERSONAL DATA INDICATORS IN JUDGMENTS AND 'JIGSAW' IDENTIFICATION



Consider/recommended practice



Practice to be avoided

| Information | | Comment, pros/cons | Text examples/suggestions, and open redaction |
|---|----------|---|--|
| <p>Naming protocols for children, parents and other family members</p> <p style="text-align: center;">Use of Pseudonyms</p> | <p>✘</p> | <p>Avoid the use of pseudonyms: although said to make for easier reading, making the case and children 'come alive', some children do not like the use of pseudonyms and such practices can present problems for some minority ethnic families.</p> <p>Random name generator websites are used in some jurisdictions; sites generate a list of the most popular names by year of birth and gender; some sites enable a search by 'country of origin'.</p> | |
| <p style="text-align: center;">Initials</p> | <p>✘</p> | <p>However, concerns are emerging from some cultures/religious groups indicating use of pseudonyms require specific knowledge of the family in question, supporting information, and a willingness to check proposed names with parties: inappropriate pseudonyms can cause offence.</p> | <p>In the text: If only one subject child, initial or 'the child'; If two children: 'A' and 'B' ..."</p> <p>For judgments concerning several children and multiple fathers consider a schedule (page one): 'This case concerns the mother, father A, father B and five children: Child A /male/aged 10 years (father B) Child B/female/8 years (father B) Child C/female/5 years (father A) Child D (male/3 years (father A) Child E (female) under 24 months (father A) And consider if:'... two pre-school children and three of primary school age' will suffice In the text: "...the mother..." ... "...the father..." If more than one father:</p> |
| | <p>✔</p> | <p>Overall, initials are a safer practice</p> | |
| | <p>✘</p> | <p>Do not use real initials (the child's or parents/others).</p> | |
| | <p>✔</p> | <p>Initials must be fictitious, but care should be exercised in choice some (e.g. 'Z' 'Q') may indicate an ethnic/religious group.</p> | |
| | <p>✔</p> | <p>Most cases concern no more than two children: unless there are good reasons, keep it simple and</p> | |

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| | | <p>consistent: child 'A' and child 'B'. For large sibling groups: fictitious initials should be selected with care, choice can make a child/family instantly recognisable/relatively easy to identify in communities. For parents, use 'the mother', 'the father', maternal aunt, paternal/maternal grandmother etc; rather than initials, this assists the reader in following the judgment.</p> | "father A" "father B..." |
| Date of birth of child | <p>✗</p> <p>✗</p> <p>✓</p> | <p>This is a key risk factor in jigsaw identification of children and can be especially so for children in small/rural, and minority ethnic communities.</p> <p>It is rarely necessary.</p> <p>If the text necessitates some specificity, consider using season and year or mm/yyyy; for rural communities use year only wherever possible.</p> | <p>"...child B was born in [2010]..."</p> <p>"...the child with whom I am concerned was born in [2009]; she currently lives with [a foster carer]..."</p> <p>"...by this time child D was [in her early teens]..."</p> <p>"By [the end of 2014] child B was living with [his stepfather]...child A went to live with her paternal grandmother in [the spring] of 2015..."</p> |
| Other specific dates in the judgment | ✓ | <p>Is the full date of an event essential? For example, the date of a criminal conviction can facilitate a search for the identity of a parent and can lead to the identity/location of a subject child.</p> | <p>"...the father was convicted in [year] for ..."</p> <p>"...the mother has [previous convictions] for..."</p> |
| Ethnic group | <p>✗</p> <p>✓</p> <p>✓</p> | <p>Judgments are not a source of data for ethnic monitoring purposes. The OPCS data 16+ categories will be used by local authorities – in the application/other documents filed.</p> <p>Consider why it is necessary to refer to a person's ethnicity. Where it is not relevant to the issues before the court, do not refer to it.</p> <p>Identifying a child/parent by ethnic group can be a key identifier -and with 'beyond border' implications where families have links with communities elsewhere. Information about abuse can have</p> | <p>See Appendix 3: additional information - Equal Treatment Bench Book</p> <p>In the paragraphs headed 'Background' or 'Introduction', do not say "...the mother was born in the Sylhet region of Bangladesh."</p> <p>Consider using a wider definition such as :</p> <p>"...of South Asian/Asian origin..."</p> <p>"...of Eastern European origin..."</p> <p>"...the mother is Chinese British..."</p> <p>"The mother is of [African] origin..."</p> |

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| | <p>✓</p> <p>lifelong economic, social and psychological consequences for family members; it can result in serious social stigma, rejection and trauma, impacting on marriage prospects and life chances.</p> <p>✓</p> <p>If it is necessary to specify ethnic group status (e.g. where a cultural/religious or language context is identified as a substantive issue to be addressed), consider using a generic term. Select the term with care however as some terms (e.g. ‘West Indian’, ‘mixed race’) may be considered offensive/racist.</p> <p>Where it is necessary to specify an ethnic group status, consider this detail alongside other geographical/personal indicators: does it contribute to jigsaw identification of a child/family? If so, consider whether the judgment should be published.</p> | <p>“The father is mixed heritage”</p> |
| Religion | <p>✗</p> <p>Do not refer to religion unless substantive issues indicate it is likely to be relevant or it needs to be addressed.</p> <p>✓</p> <p>If it has relevance, consider details about religion alongside other geographical/personal indicators in the judgment; does it assist jigsaw identification of a child/family? If so, consider whether the judgment should be published.</p> <p>✓</p> <p>Religious affiliation can be key personal information and an indicator of geographical location and/or a specific community. Some religious groups are small well connected communities although spread geographically; this makes it much easier to identify individuals within the group.</p> | <p>It may be necessary to describe a family as Jehovah’s Witnesses in a dispute about a blood transfusion for a child, but it will rarely be necessary to do so in a case concerning neglect.</p> |
| School, education issues/problems | <p>✗</p> <p>Do not reproduce detailed descriptions of problems a child/young person has experienced at school or incidents in which he/she was involved.</p> | <p>“...child D experienced [multiple difficulties] at school... [over an extended period]...”</p> |

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| | <p style="text-align: center;"></p> <p style="text-align: center;"></p> | <p>These problems/incidents will be familiar to other pupils, teachers and possibly other parents and when combined with a date of birth, gender and local authority area, are high risk geographical indicators for a child/young person aiding their identification.</p> <p>When considering incidents remember the details you include in a public document may be shared on media/social media and be available on the internet for the remainder of a child/young person's life. Consider whether details can be redacted and if timescales are key, whether a broad timeline would suffice.</p> <p>Do not routinely identify a faith, specialist or residential school: both types of school are easily identified by a Google search. Within a local authority catchment area there may be only one school of a particular faith (but a number of faith schools). Where a child attends a special school (e.g. for a physical disability/impairment, speech or mental health problems) these are very limited resources, for some facilities perhaps three schools exist in the UK.</p> | <p>"... child A was absent from school [intermittently] [over several months] ...during this period he lived with his mother."</p> <p>"...during this period child B was excluded from school for [disruptive/violent behaviour] [on one/more occasions] ..."</p> <p>"Child A engaged in [bullying activities] at school ...other pupils [were distressed] by her behaviour..."</p> <p>Do not say, "...child B attends TreeHouse School in Croydon on account of her diagnosis of Oppositional Defiant Disorder (ODD)".</p> <p>Rather: "...child B attends a specialist school because she has [emotional and behavioural] difficulties".</p> <p>"Child C attends [an educational facility] dedicated to meeting his [physical] needs" ...</p> <p>"...child A attends [a faith] school...."</p> |
| <p style="text-align: center;">Naming the local authority applicant</p> | <p style="text-align: center;"></p> <p style="text-align: center;"></p> | <p>Local authorities are public bodies with a statutory responsibility for the welfare and protection of children and support of families. Where that work results in proceedings the LA is held accountable for its actions with families by the court.</p> <p>The need for a public body to be identified when acting in respect of citizens is recognised to be important. Nevertheless, we now know that naming the local authority in a public document may set clear geographical boundaries to the location of some children; their location may be further narrowed down by</p> | <p>See Appendix 4 for background discussion.</p> <p>In the first instance, while the default position is that an applicant should be named, the judge should undertake a balancing act and naming a local authority should be confined to cases where:</p> <p>(a) After redaction/abridgment of a judgment intended for publication and following consultation with advocates and consideration of the number of potential applicants served by the court, the judge concludes</p> |

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| | <p style="text-align: center;">✔</p> <p style="text-align: center;">✔</p> <p style="text-align: center;">✔</p> <p style="text-align: center;">✔</p> | <p>geographical/personal identifiers in the judgment: can criticism(s) be drafted so as not to undermine work undertaken to improve anonymisation practices in the judgment?</p> <p>Consider whether it may be appropriate to,</p> <p>(a) warn the applicant/social worker and to give them the opportunity to address the criticism, for example, the LA or SW may have not gone into the detail appropriately or avoided some material which would be relevant to the merit of the intended criticism, and,</p> <p>(b) consider other options which may improve practices.</p> <p>Explain the balancing act undertaken.</p> | <p>that the LA has acted unlawfully consider a direction to provide the judgment to the Monitoring Officer.</p> <p>Place a statement about failures at the start of the judgment.</p> |
| <p>Naming a local family resource/assessment centre</p> | <p style="text-align: center;">✔</p> <p style="text-align: center;">✔</p> | <p>These centres are scarce resources: some are placed in/close to the communities/wards they serve; confidence and engagement in the service is important, not least for the child.</p> <p>When considering whether to name a resource reflect on other geographical/personal indicators and whether naming may assist jigsaw identification of a child/family and impede future engagement with the service/agency.</p> <p>Consider using a generic term but if naming is deemed necessary explain the decision in the context of risks to a child/family.</p> | <p>“...the mother and child B were assessed at [an assessment centre]</p> <p>“Mother and child A were assessed at [a residential centre] over [a 12 week period]...”</p> |
| <p>Naming a treating community-based clinician</p> | <p style="text-align: center;">✘</p> | <p>Do not do this as routine practice without considering the impact on a child/family and local communities. Consider the type of clinical expertise and whether naming a local health care provider narrows the geographical field of location of a child/family.</p> <p>Local people (informants,</p> | <p>Consider: “S was admitted to [hospital] onand seen by doctor [‘X’]”</p> |

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| Criticisms of clinical evidence | <p style="text-align: center;"></p> <p>teachers/Heads interviewed, foster carers etc.) and young people are likely to know the name of a local doctor/community paediatrician. Be aware that names can be key information to add to search engines in searches for judgments of certain categories of child abuse/media coverage.</p> <p style="text-align: center;"></p> <p>When considering specific incidents, remember the details you include may be shared on media/social media sites and be available on the internet for the remainder of a young person’s life. Consider if a redaction/abridged version of certain evidence will be necessary (see checklist 2); include only essential dates.</p> <p style="text-align: center;"></p> <p>If the aim is to identify clinical work which failed to meet the standard required, consider whether it may be appropriate to,</p> <p style="padding-left: 20px;">(a) Warn the clinician and to give them the opportunity to address the criticism;</p> <p style="padding-left: 20px;">(b) Consider intended text alongside other information: can criticism be drafted so that it does not undermine other improvements in anonymisation practices for children.</p> <p style="text-align: center;"></p> <p>Think carefully about naming a highly specialised doctor/hospital; some clinicians in specialist fields will see a relatively small number of children; this can narrow the geographical pool further.</p> | |
| Naming an expert witness | <p style="text-align: center;"></p> <p>These are a limited resource – and for some specialist areas in short supply: some work regionally, others nationally; both may also serve a ‘local’ community as a treating physician in an NHS hospital/mental health trust.</p> <p style="text-align: center;"></p> <p>Nevertheless, experts offer their services to assist the court in return for a fee and in some respects are in a different position</p> | |

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| | | <p>Naming the trial court and judge should remain but in the context of improved anonymisation practices where risks of jigsaw identification have been eliminated so far as practicable by cutting out other geographical/personal identifiers, and redacting /abridging certain details of the abuse of children (see checklist 2).</p> | |
| <p>FINAL CHECK</p> <p>Anonymisation of geographical/personal indicators</p> <p>Does the judgment contain details of sexual abuse of a child?</p> <p>Is this judgment suitable for publication?</p> | <p>?</p> <p>?</p> <p>?</p> | <p>(i) Do any of the ‘big five’ geographical/personal identifiers for a child remain (see Appendix 1, bullet point 6) - can these be further anonymised without loss to lay readers’ understanding of:</p> <ul style="list-style-type: none"> (a) the allegations and parties’ responses (b) the court process and how decisions were made (c) the legal issues and framework brought to bear <p>(ii) Consider any remaining geographical/personal identifiers alongside CHECKLIST 2 (details of the sexual abuse of children)</p> <p>(iii) In the light of evidence about jigsaw identification, the power of search engines and risks to already highly vulnerable children, do features remain which are essential but which make this child/family identifiable? If so, consider whether the judgment is suitable for the public arena.</p> | |

ANNEX 2

**CHECKLIST 2: TREATMENT OF DESCRIPTIONS OF THE SEXUAL ABUSE OF
CHILDREN IN JUDGMENTS INTENDED FOR THE PUBLIC ARENA**

| ABRIDGEMENT/SKELETON OF PARAGRAPHS WHICH CONTAIN EXPLICIT DESCRIPTIONS OF SEXUAL ABUSE IMPLICATIONS FOR THE STRUCTURE/STYLE OF JUDGMENTS | | |
|---|--|--|
| FACT FINDING | <ul style="list-style-type: none"> • The structure and style of judgments vary: some have numbered paragraphs but do not use headings, and headings are not consistent across some judgments of the same ‘type’. • The aim is not to reduce the capacity of judgments to meet forensic requirements or to suggest ‘one size fits all’, or to reduce the capacity to give judgments as soon as practicable. • Rather, to suggest where sexually graphic details might be annexed to an appendix and details abridged for a public document, with options which might assist that process. • Some structures lend themselves more easily to this exercise than others. Those without headings are likely to make a move to abridged/skeleton paragraphs more time consuming, and difficult to check for errors (even when using a Word search). • Consider whether some headings might assist drafting for abridgment purposes (e.g. Introduction, Essential Background, Allegations, Parties Positions, Law and Legal Principles, Professional Evidence, Expert Evidence etc.) • Where possible some consistency in the order of headings should speed up the process of abridgment over time and aid checking. • In some judgments, descriptions of sexual abuse are repeated under several headings/paragraphs: this may make abridgement of details and cross | <ul style="list-style-type: none"> ➤ The reasons for this early detail vary: it may be ‘for completeness’ or because ‘that’s the way we’ve always done it’ and/or to demonstrate to a mother that the judge understands her history and the issues with which she has struggled. However, in the context of the aims of guidance, consider if explicit historical details are necessary or could be abridged (if necessary, cross referenced to a document(s) in the bundle). ➤ If the <i>detail</i> is essential to a point in evidence/argument made later in the judgment, consider restricting it to the main body of the document (e.g. under the heading dealing with the Mother’s position/responses, expert assessment of mother etc.), abridge under that heading (if necessary, cross referencing to a document(s) in the current bundle). • There may also be paragraphs under Background/Family History dealing with previous proceedings about the sexual abuse of siblings. Care may be necessary when repeating the <i>detail</i> of that abuse; if it is essential to a later point in the current application, consider moving the necessary detail to the relevant section in the main body of the judgment, abridge therein (if necessary, cross referenced to the relevant court bundle/document(s)). <p>Final document intended for the public arena</p> <ul style="list-style-type: none"> • Annexe explicit details of sexual abuse to an appendix to the judgment, this to be available in the case of any appeal. • The judgment - with abridged paragraph(s) minus the appendix, to be |

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| | <p>checking, difficult and timing consuming. For example:</p> <ul style="list-style-type: none"> ➤ Some details are contained in paragraphs variously headed ‘Introduction’, ‘Background’, ‘Family History’; these can be lengthy and contain information not returned to in the judgment. They can contain details of the history of sexual abuse in a household which may be intergenerational, for example, details of a mother abused as a child, subsequently also abused ‘in care’ and later, by partners. | <p>the version agreed and released for the public arena (Baillii).</p> <p>Ex Tempore judgments</p> <ul style="list-style-type: none"> • This approach to abridgment of sexually explicit detail may also be adopted when giving an <i>ex tempore</i> judgment. These would need to be structured to facilitate the process and it may take an initial degree of mental agility and discipline but guidance may help structure the decision in such a way that abridgment and anonymisation (see checklist 1) can be readily done. |
|--|---|---|

| TWO EXAMPLES OF DESCRIPTIONS OF THE SEXUAL ABUSE OF CHILDREN/YOUNG PEOPLE IN JUDGMENTS ABRIDGED FOR THE PUBLIC DOMAIN | | |
|--|---|--|
| FACT FINDING | SAMPLE JUDGMENTS - CURRENT TEXT | EXAMPLE OF SKELETON/ABRIDGED TEXT FOR THE PUBLIC ARENA |
| Example 1 | <p>Para [30] sexual abuse: fact finding</p> <p>G was interviewed by police officers under the [ABE] procedures on [dates]. During these interviews she described regular and persistent sexual abuse by Mr C of the most serious kind, over several years, including:</p> <ul style="list-style-type: none"> • Fondling her breasts with his hands and mouth • Inserting his fingers into her vagina • Inserting his penis into her vagina • Asking her to masturbate him • Covering her mouth with his hand to prevent her from shouting for help • Threatening her with violence if she told anyone • Offering her money if she co-operated | <p>Para [30] sexual abuse: fact finding</p> <p>Abridged for publication</p> <p>G was interviewed by police officers under the Achieving Best Evidence procedures on two occasions in the summer and autumn of 2013. During these interviews she described in detail regular and persistent sexual abuse by Mr C of the most serious kind including rape, over several years, together with physical restraint, and, alternately, threats of violence on disclosure or promises of reward for compliance</p> |
| | <p>Para [47] sexual abuse: fact finding</p> <p>On 27 February, B was interviewed by the police under the ABE procedure...he described sexual abuse by Mr C over many years, including:</p> <ul style="list-style-type: none"> • Performing oral sex on him and G • Masturbating himself and encouraging B and G to do the same • Touching G’s breasts and vagina | <p>Para [47] sexual abuse: fact finding</p> <p>Abridged for publication</p> <p>In early 2014, B was interviewed by the police under the ABE procedure. In his interview he described in detail incidents of sexual abuse by Mr C over many years</p> |

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| | <ul style="list-style-type: none"> • Touching B’s penis • Forcing B and G to perform oral sex on each other while he masturbated • Forcing B to lie on top of G and simulate sexual intercourse while pinning her down so she was unable to move | |
| | <p>Para [80] Findings of Fact In this case I am satisfied to a very high degree of probability of the following four findings of fact.</p> <p>[80] (1) Mr C sexually abused G and B for a period of years up to July 2013 in the case of G and February 2014 in the case of B. The abuse occurred in the home and at Mr C’s workplaces. It escalated from touching the children’s private parts, to making them touch his private parts, to fellating B and forcing B to fellate him, to attempted rape and rape of G and attempted buggery of B, and finally to making the children perform sex acts on each other. The children were forced to take part in these activities and were reduced to silence by Mr C’s threats about the consequences of speaking out.</p> | <p>Para [80] Findings of Fact</p> <p>Abridged version In this case I am satisfied to a very high degree of probability of the following findings of fact.</p> <p>[80] (1) Mr C sexually abused G and B for a period of years up to <i>mid 2013</i> in the case of G, and <i>early 2014</i> in the case of B. It escalated to <i>the most serious abuse</i> including rape. The children were forced to take part in these activities and were reduced to silence by Mr C’s threats about the consequences of speaking out.</p> |
| <p>Example 2</p> | <p>Findings of fact sought: PORNOGRAPHY</p> <p>The children were exposed to pornographic materials in their own home and elsewhere</p> <p>10. The three boys, J, L and B (and their sister C) were exposed to a range of pornographic materials by PH, CB and other adults</p> <p>11. The mother was aware that PH had pornographic material including DVDs and that he downloaded them from the internet, sold them and possibly made films.</p> <p>12. PH kept pornographic DVDs and films in the home. He sold them to others from the home and he supplied copies to CB. In particular the local authority asserts that;</p> <ol style="list-style-type: none"> a. All of the children were exposed to pornographic images and films in the home of PH b. PH regularly brought pornographic films to the family home and these were shown to some or all of the children. The mother was present in the home on at least one occasion when this occurred c. That B and L mimicked what they had seen on pornographic films and behaved | <p>PORNOGRAPHY</p> <p>Paragraphs 10 – 12 (a) – (j) abridged:</p> <p>The children were exposed to pornographic materials in their own home and elsewhere</p> <p>The three boys, J, L and B (and their sister C) were exposed to a range of pornographic materials by PH, CB and other adults. The mother was aware that PH had pornographic material including DVDs and that he downloaded them from the internet, sold them and possibly made films. He kept pornographic DVDs and films in the home, sold them to others from the home and he supplied copies to CB. All the children were exposed to pornographic images and films by PH (at his home, in his car, on computer and television. The mother was, on occasion, present during viewings. [see bundle – document and paragraph references]</p> |

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| | <p>in a sexualized way with each other and with C</p> <p>d. L was shown pornographic films by PH on DVD players in his car</p> <p>e. The mother was present on an occasion when PH showed images and films on his computer and on television to the children</p> <p>f. PH was selling pornographic DVDs and his clients attended the home when the children were present</p> <p>g. That CH was aware that PH kept pornographic materials in his home and told C about it</p> <p>h. J was shown pornographic DVDs by CB on a DVD player in his home at the kitchen table in the grandfather's home</p> <p>i. J was shown a film by PH of a woman engaging in sexual activity with a horse and C also saw the same film</p> <p>j. (sic) J was made to copy pornographic DVDs by PH and that he was made to watch them.</p> | |
| | <p>13. The children were exposed to pornographic materials at the home of CB the maternal grandfather.</p> <p>i. On one occasion all three boys and C watched a pornographic DVD at this home</p> <p>ii. J was shown pornographic films on a DVD player in the kitchen by CB</p> <p>iii. CB frequently bought DVDs and videos from PH, which the latter kept in his own home.</p> | <p>Exposure to pornography in the home of the maternal grandfather</p> <p>Para 13 (i) – (iii) abridged:</p> <p>The children were exposed to pornographic materials at the home of CB the maternal grandfather who frequently purchased such materials from PH.</p> |
| | <p>Sexualised behaviour by the Children</p> <p>14. As a result of the lack of sexual boundaries and supervision in the home the children were sexualized and on occasion the children engaged in sexual activity with each other. Much of this activity was instigated by PH or it followed on from sexual abuse of the children by PH.</p> <p>i. That B and C engaged in sexual activity with each other and that L was present. J witnessed this on one occasion</p> <p>ii. J and L engaged in sexual activity with C on an occasion in the family home</p> <p>iii. L repeatedly kissed C in a sexual way and the mother was aware that this happened and saw it on an occasion</p> <p>iv. PH sexually assaulted C and raped her</p> | <p>Sexualised behaviour by the Children</p> <p>Para 14 (i) – (xvi) abridged:</p> <p>As a result of the lack of sexual boundaries and supervision in the home, the children were sexualized and on occasion engaged in sexually explicit activities with each other. Much of this activity was instigated by PH or followed on from sexual abuse of the children by PH. PH sexually assaulted C and raped her when some of her siblings were in the home. The mother returned home during this event. C told her mother after the event and her mother did not believe</p> |

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| | <p>when some of her siblings were in the home. On an occasion he used a knife to cut her clothes off. Tied her to the bed. The mother returned home during this event. C told her mother after the event and her mother did not believe her or take any steps in response.</p> <p>v. That J and B behaved in a sexualized way towards C when PH was present on at least one occasion.</p> <p>vi. PH touched C in a sexual way when she was not wearing any clothes and CH was aware that this had happened</p> <p>vii. PH tied C and another child J to a bed naked on at least one occasion. All three boys, L, B and J were in the home and were aware of this happening</p> <p>viii. On another occasion all three boys B, L and J were in a bedroom with C and they removed her clothes so that she was naked. CH came into the bedroom after this had happened</p> <p>ix. That on about 3 or 4 occasions J 'had sex' with L (his sibling). This sexual activity occurred while they were watching a pornographic film</p> <p>x. That B may have walked into a room on an occasion when L and J were engaged in sexual activity with each other</p> <p>xi. That C walked into a room on an occasion when L and J were engaged in sexual activity with each other</p> <p>xii. 'That L was present on an occasion when J engaged in sexual activity with C.</p> <p>xiii. J was encouraged to behave in a sexual way towards his siblings by PH</p> <p>xiv. J walked into a room when L and B and C were engaged in sexual activity with each other</p> <p>xv. PH touched LH and sexually assaulted her on an occasion when L was present</p> <p>xvi. PH tied C to a bed and played a game called 'Nervous' which involved him touching her all over naked body.</p> | <p>her or take steps in response.</p> |
| | <p>The children's mother CH failed to protect the children from pornography, sexual abuse and failed to impose boundaries on the children.</p> <p>15. CH failed to protect her children from exposure to pornography or from sexual abuse by PH and that she was aware that L and B were sexualized and behaved in a sexually inappropriate way but failed to take any steps to protect the children. In particular</p> <p>i. C told her mother that PH had raped her</p> | <p>The children's mother CH failed to protect the children from pornography, sexual abuse and failed to impose boundaries on the children.</p> <p>Para 15 (i) – (v) abridged:</p> <p>The Children's mother CH failed to protect the children from exposure to pornographic materials within and outside the home and from sexual abuse by PH; she failed to impose</p> |

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| | <p>and the mother did not believe her.</p> <p>ii. That the mother was aware that there was sexual activity between the children because C told her about this and she witnessed sexual activity between C and J</p> <p>iii. That the mother was aware that J, L and B had behaved in a sexualized way toward each other and toward C.</p> <p>iv. C stated to Dr B that her mother would split J and L up to 'stop them from doing it with each other or with C'.</p> <p>v. CH was aware that PH copied and sold pornographic videos and DVDs.</p> | <p>boundaries on the children and to take appropriate action when C reported to her that she had been raped by PH.</p> |
| | <p>CH sexually abused J and was present when he was sexually abused by others. She failed to impose boundaries and exposed him to adult sexual activities from a young age.</p> <p>20. CH has exposed J to inappropriate sexual behaviour and he has seen her having sex with [several] men including oral sex. Occasions CH had sex in the living room or with her bedroom door open.</p> <p>21. CH forced J to participate in sexual activity with several adult males. In particular that;</p> <p>i. She showed him how to engage in certain sexual acts including masturbating a man and performing oral sex</p> <p>ii. That she was present on an occasion when he was forced to anal sex with an unknown male acquaintance of hers</p> <p>iii. On more than one occasion CH had sex with J</p> <p>iv. That when he was about 8 or 9 years old his mother required him to participate in sexual activity with a male friend of hers about once a week</p> <p>v. On at least one occasion friends of the mother engaged in sexual abuse of J when his mother was present.</p> | <p>CH sexually abused J and was present when he was sexually abused by others. She failed to impose boundaries and exposed him to adult sexual activities from a young age.</p> <p>Paragraphs 20 – 21 (i) – (v) abridged</p> <p>CH sexually abused J on more than one occasion; she was also present when he was sexually abused by others exposing him to sexually inappropriate behaviour. She failed to protect J or impose boundaries and exposed him to adult sexual activities from a young age.</p> |

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| FINAL CHECK | <p>(1) Judgments intended for the public arena</p> <p>(2) Does judgment meet the purposes of a judgment?</p> <p>(3) Explaining the judgment to parents/others in court</p> <p>(4) Explaining the terms of a published judgment to the public</p> | <p>(a) Are graphic descriptions of sexual abuse abridged?</p> <p>(b) Cross check with checklist 1: do any geographical/personal identifiers for a child remain (Appendix 1, point 6)?</p> <p>(c) Is it written in plain English (explaining/removing legal terms, and without slippage into Latin legal terms)?</p> <p>(d) Is it now suitable for publication? Not all judgments can be drafted to meet the criteria (see para (5) below – terms of a judgment).</p> <p>(a) Does it meet the fundamental purpose of enabling those who have not been granted what they sought to understand how and why the court has decided as it has?</p> <p>(b) Does it meet subsidiary purposes providing a record of the decision and reason for future use by establishing the factual background against which future decisions by parents, professional and/or judges may be taken, and for use by:</p> <ul style="list-style-type: none"> ➤ Professionals (including judges) involved in making further assessments/decisions about a family; ➤ Parents and family members identifying baseline deficits in parenting that require addressing through therapy or other intervention; ➤ The child (in due course) in understanding why events in her early life occurred as they did, and where relevant, how the judge dealt with her wishes and feelings; ➤ Appellate courts in auditing the judicial exercise; ➤ Lay readers (the public and legal/journalistic commentators) to understand the case and how and why the decision was made? <p>(a) If it is considered suitable for publication, it will be necessary to tell parents and others that the judgment is intended for publication on a public website (Bailii), that it has been anonymised according to guidance to protect the child(ren)/young person from identification, and that graphic descriptions of the sexual abuse of the child(ren)/young person has been abridged to safeguard their welfare in the light of potential for the misuse of that detail.</p> <p>(b) Parties should be given the opportunity to make representations as to both the fact of publication in general, and also as to particular features. Where judgment is reserved and subsequently handed down at a later date, it is already good practice for the judge to send a draft in advance to the representatives (not to be disclosed to lay parties) giving them an opportunity to make representations as to errors or omissions. Additionally, where publication is proposed, there should be an opportunity at the end of a judgment for parties to make representations as to errors or omissions, and as to publication.</p> <p>Suggested general heading</p> <p>“(i) This judgment has been redacted and some details abridged for publication. Any application for further publication may be made orally or in writing, with notice to the parties.”</p> <p>“(ii) This version of the judgment may be published only on condition that the anonymity of the children and their family is preserved and that there is omitted any detail or information that may lead to their identification, whether on its own or in conjunction with other material in the judgment. This includes, but not exclusively, information of location, details of family</p> |
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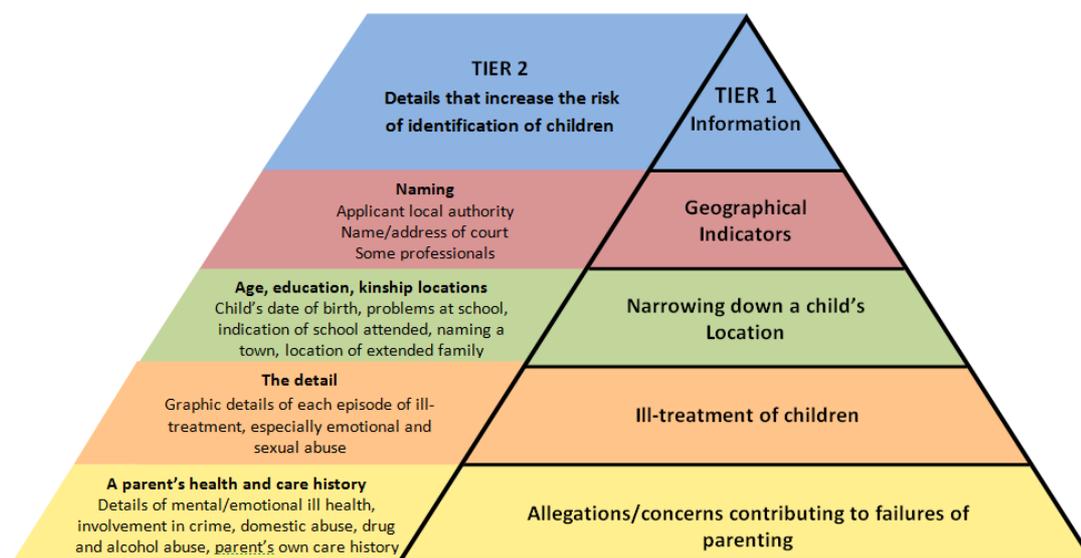
APPENDIX II

EXTRACT – EXECUTIVE SUMMARY OF 2015 REPORT

Review of anonymisation of children judgments on BAILII (2015)⁹⁴

Key findings - Geographical and personal identifiers in Judgments

- For several years policy and practice in family courts have struggled to improve public information about the work of courts while also protecting children's rights to privacy. One method of increasing information has been to encourage judges to place judgments on a public website (BAILII).
- Eight young people aged between 17 and 25 years analysed a total of 21 judgments posted on BAILII between 2010 and 2015 (12 from county courts (post 2014, the (single) Family Court), four from the High Court and five from the Court of Appeal).
- In analysing information in judgments young people indicate it might be helpful to consider the ease with which children and families can be identified in terms of tiers of information, each with 'layers' of risk contributing to 'jigsaw' identification:
- They utilised the concept of a pyramid to demonstrate how geographical and personal details embedded in a judgment enabled some children to be identified.



⁹⁴ Brophy J with Perry K and Harrison E (2015) A Review of Anonymised Judgments on Bailii: Children privacy and 'jigsaw identification' ALC-NYAS (<http://www.alc.org.uk/publications/publications>)..

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- Almost all judgments identified a local authority applicant by name thus giving the geographical boundaries to the location of a child and family. The name and address of the trial court largely confirms that boundary.
- Young people identified five initial categories of information in judgments with potential to narrow down considerably the area where child/family resides. These include information about an area (e.g. naming a town), information about a school or school issues, gender and age of children, information about extended family members and information about religious/cultural customs within households.
- Some 29% (6/21 judgments) had at least four out of five ('4/5') 'within county' markers for the location of the child/family. Young people said these markers placed children at high risk of being identified by peers at school and in communities.
- Information about school problems coupled with a date of birth made some children easily identifiable; investigators were strongly opposed to stating a child's date of birth in a public document.
- Most judgments (81% -17/21) contained information about other family members (not necessarily a party to proceedings). This information can assist jigsaw identification of children and when coupled with certain details from the profile of parents, makes some young people easily identifiable in communities and at school.
- In addition to potential for jigsaw identification, young people said 13/21 judgments contained specific information which would permit children to be identified. While some details identified are arguably errors in the anonymisation process, the 'direction of travel' for such errors in a larger sample is worrying.
- Information from judgments (details of abuse, towns, dates, ages, some details of problems of parenting such as mental health problems, involvement in crime including domestic abuse) enabled young people to find coverage in online local and mainstream newspaper sites, and social networking sites. They identified:
 - coverage in local and national newspaper/media sites for 24% of judgments (5/21);
 - coverage on social networking sites for 33% of judgments (7/21). Materials on social networking sites (e.g. Facebook pages etc.) identified children and other family members; some also contained photographs of children.

Details about ill-treatment of children and concerns/failures of parenting

- Most young people had little/no idea of the content of judgments on Bailii, and for most, what they found was a shock. Judgments contained difficult, deeply embarrassing, shaming and damaging information about children's lives; that

such information was effectively *already* in the public arena was distressing – many felt let down.

- Young people were well aware of a need to demonstrate why a court may remove children from parents, and that it has held local authority applicants to account for their actions with families. What they questioned was the degree of detail on child ill-treatments and failures of parenting and how much of ‘the story’ was necessary and appropriate.
- They said judges need to be more aware of information technology. Details of a parent’s mental health problems, drug/alcohol problems, involvement in crime and domestic violence and intimate details of child abuse can go viral ‘at the click of a button’. When drafting judgments that possibility should be part of a balancing exercise in determining the detail necessary. For the Bailii website at least, they felt a summary of aspects of ill-treatment and parental problems should be considered.
- In particular they questioned the necessity of descriptions of the sexual abuse of children and an apparent lack of thought about how details may be used. They questioned whether judges were aware of the amount of material on the internet about abuse of children, and targeting and grooming of children in the care system.
- Relevance, context and *necessity* of details were central to responses to information in judgments that are now accessible on the internet – and always with a view to potential for jigsaw identification and impact on the child. Overall, they felt judges had lost sight of the child and their immediate and longer-term needs.

Professionals and issues of accountability for services to children and families

- Naming the local authority and court provides geographical boundaries to the location of children and families. Naming social workers, guardians, doctors and other professionals/agencies can narrow the field, For example, social workers may be known in local areas where they work in teams/area offices; naming family assessment centres and clinics could also indicate a catchment area.
- Judicial comments about the quality of the professional’s work did not determine whether young people thought they should be named. Rather concerns focused on potential for jigsaw identification of children – and other ways for reviewing professional practices where this was deemed necessary.

APPENDIX III

DRAFT PRACTICE GUIDANCE (2016)



GUIDANCE: ANONYMISATION AND AVOIDANCE OF THE IDENTIFICATION OF CHILDREN AND THE TREATMENT OF DESCRIPTIONS OF SEXUAL ABUSE IN JUDGMENTS INTENDED FOR THE PUBLIC ARENA⁹⁵

A SUMMARY

Dr Julia Brophy

Background

- Guidance builds on a stream of work regarding the privacy, welfare and safeguarding needs of children in the context of the ‘transparency’ agenda for family courts. It follows finding from a review of children judgments on BAILII (2015) regarding geographical/personal identifiers and potential for jigsaw identification of children therein, and concerns about explicit descriptions of the sexual abuse of children in a document placed in the public domain. It was funded by the Nuffield Foundation; the views expressed however are those of the author and not necessarily those of the Foundation.
- In the light of potential for jigsaw identification of children (see Appendix 1) guidance is not confined to the issue of concealing names but extends to the avoidance of any materials liable to lead to the identification of the child. It aims to help judges improve anonymisation practices and draft details of the sexual abuse of children, thus striking a better balance between the objective of publishing more judgments but also taking positive steps to protect the privacy and safeguarding needs of children.
- Guidance offers practical ways to support judges in securing the child’s anonymity, by way of checklists. In this exercise work has also explored available policy and practice regarding children judgments in some similar common law jurisdictions (see Appendix 4).
- The guidance was informed by a desk-based analysis and review of publically available judgments and information from other jurisdictions; it was guided by an advisory group made up of senior judges, lawyers, clinicians, relevant professional organisations and NYAS.

⁹⁵ See above: The Nuffield Foundation is an endowed charitable trust that aims to improve social well-being in the widest sense. It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research. The Nuffield Foundation has funded this project, but the views expressed are those of the author and not necessarily those of the Foundation. More information is available at www.nuffieldfoundation.org

Purposes and audiences for judgments

- Guidance is set within a primary framework which guarantees parties a right to a fair trial; this includes a right to have the outcome of proceedings explained in a reasoned judgment expressed in clear accessible language explaining how and why the court has reached its decision.
- Judgments also provide a secondary purpose: recording the decision for future use by a range of professional and lay audiences, the child/young person, parents and others, an appellate court, the public, and legal and journalistic commentators.

Anonymisation of personal and geographical indicators in judgments: aims of checklist 1

Key aims include:

- Promoting consistency in anonymisation practices and assisting judges to avoid any risk of jigsaw identification of children from information and the details included in judgments
- Support reflective thinking about the inclusion of certain details, indicating where the judge might consider an abridged or skeleton statement, redaction, or exclusion of some details, and setting out a final checklist to assist decisions as to whether to publish a particular judgment
- Acceptable in its application to an appellate court.

CHECKLIST 1 – PERSONAL/GEOGRAPHICAL INDICATORS AND JIGSAW IDENTIFICATION: “DO’S AND DON’TS”

Naming protocols

- Initials are safer than pseudonyms, they must be fictitious but selected with care (and not to indicate an ethnic group); for children, keep it simple: child A, B C etc; for parents ‘the mother’ the father’ etc. See the main text (checklist 1) for examples.

Dates of birth

- These are high risk details facilitating identification of a child; they are rarely essential. Where the text demands specificity, considering using a season and year (e.g. autumn 2009), or if necessary, month and year. For some children (e.g. from rural, and minority ethnic communities) wherever possible, use only the year.

Other dates

- Take care when including full dates for some events (e.g. a parent’s criminal conviction) consider redaction: father was [previously] convicted’ ‘The mother has previous convictions...

Ethnic Group

- Identifying a child/parent by ethnic group can be a key identifier with ‘beyond border’ implications for extended families elsewhere. Consider why it is necessary to refer to a person’s ethnicity (see main text). Where it is not relevant to the issues before the court, do not refer to it in the judgment.

- Where it is deemed necessary (e.g. where a cultural/religious or language context is identified as a substantive issue to be addressed), consider using a **generic term**. See the main text for examples, for example, in the paragraph headed 'Background' do not say "...the mother was born in the Sylhet region of Bangladesh." Rather, 'the mother is of South Asian origin'.
- Consider any essential details alongside geographical/personal indicators: does it contribute to jigsaw identification of a child/family? If so, consider whether the judgment should be published.

Religion

- Religious affiliation can be key personal information and an indicator of geographical location and/or a specific community. Some religious groups are small well-connected communities although spread geographically; this makes it much easier to identify individuals within the group
- Do not refer to religion unless substantive issues indicate it is relevant and should be addressed.
- If relevant, consider essential details alongside other geographical/personal indicators in the judgment; does it compromise attempts at increased anonymisation, and assist jigsaw identification of a child/family? If so, consider whether the judgment should be published.

School and education: issues and problems

- Do not automatically reproduce all descriptions of problems a young person experienced at school. These will be familiar to peers, teachers and possibly other parents. When combined with other details they are high risk details facilitating the location and identification of a young person.
- When considering incidents remember the details you include in a public document may be shared on media/social media and available on the internet for the remainder of a young person's life. Consider whether details can be abridged and if a timeline rather than dates will suffice (see examples, checklist 1).
- Do not routinely identify a faith, specialist/residential school; they are easily identified by a Google search. Wit
- In a local authority area there may be only one school of a particular faith (but a number of faith schools). Where a child attends a special school (e.g. for a physical impairment or mental health problem) these are limited resources, for some facilities perhaps three schools exist in the UK.

Naming the local authority applicant (LA)

- Local authorities are public bodies with statutory responsibility for the welfare and protection of children and support of families. Where that work results in proceedings the LA is held accountable for its actions with children and families by the court.

- The need for a public body to be identified when acting in respect of citizens is important. Nevertheless, we now know that naming the local authority in a public document may set clear geographical boundaries to the location of some children; their location may be further narrowed down by other details in a judgment (see Brophy et al 2015).
- The main body of the text explores the degree of likely risk: naming the local authority without reference to risk factors and balancing the risks in each case may serve only to undermine other work undertaken to redact/abridge parts of the judgment. In the first instance therefore the default position is that an applicant should be named but the judge should undertake a balancing act and naming a local authority should be confined to certain cases. These are outlined in the main text.
- Where the local authority applicant is identified the name of the Director of Children's Social Care (or equivalent) should also appear. For example: '*Applicant: Cumbria County Council. The Corporate Director for Children's Social Care is John Macilwraith*'.

Naming the social workers/family support workers

- Do not routinely name social workers without considering whether this may contribute to jigsaw identification of a child/young person. In some areas naming a social worker narrows down the location of a child/family to an area team; consider naming alongside geographical/personal indicators in the judgment: does it add to a risk of identification of a child/family?
- If the reason for naming is to make public, responsibility for failings, determine whether it is a corporate/managerial failure or that of an individual social worker in the context of her powers to have done things differently. A social worker's authority to make decisions is not equivalent to that of an expert witness; some areas of decision making are determined by managerial/corporate policy.
- If individual criticism is necessary, consider this alongside other potential geographical/personal in the judgment: can it be drafted so as not undermine attempts to improve anonymisation practices?
- Consider whether it may be appropriate to (a) warn the applicant/social worker and to give them the opportunity to address the criticism, and (b) consider other options which may improve practices: these are suggested in the main body of the guidance below (and Appendix 3).

Naming a local family resource/assessment centre

- These are scarce resources: some are placed in the communities/wards they serve; confidence and engagement in the service is thus important. When considering naming a resource, reflect on other geographical/personal indicators and whether naming may assist jigsaw identification of a child/family and impede future engagement by families.
- Consider using a generic term (see main guidance for examples); if naming is deemed essential, explain the decision in the context of an assessment of the risks to a child/family.

Naming a treating physician

- Do not do this routinely without considering the impact on a child/family and local communities. Consider the type of clinical expertise and whether naming a local health care provider narrows the geographical field of location for a child/family; some clinicians in specialist fields see a relatively small number of children; this can narrow the geographical pool further.
- Local people (informants, teachers/Heads interviewed, foster carers etc.) and young people are likely to know the name of a local doctor/community paediatrician. Be aware that names are key information added to search engines when seeking judgments for specific categories of child abuse/coverage in the media.
- When considering details from a clinical report for inclusion in the judgment, remember the details you include may be shared on social media sites and available on the internet for the remainder of a child's life. Consider redaction/abridgement for parts of the evidence; include only essential dates.
- Where the aim is to identify work, which fails to meet the standards required, it may be appropriate to (a) warn the clinician and give them the opportunity to address the criticism, and (b) consider intended text alongside other information in the judgment: can it be drafted so that it does not undermine other improvements in anonymisation.

Naming an expert witness

- These are a limited resource and for some specialist areas in short supply; some work regionally, others nationally, both may also serve a 'local' community as a treating physician in an NHS trust. Nevertheless, experts offer their services to assist the court in return for a fee and in some respects are in a different position to a treating physician.
- That does not preclude considering the impact on a child of naming an expert or reflecting on the degree of detail from the expert's evidence to be included in a public judgment, bearing in mind the details you include may be available on the internet for the remainder of a child's life.
- If the aim of naming an expert is to identify clinical work which failed to meet the required standard, it may be appropriate to (a) warn the clinician and to give them the opportunity to address the criticism, and (b) draft the text so that it does not undermine improvements in anonymisation.

Naming the trial court and judge

- In certain circumstances naming the trial court and judge confirms geographical boundaries to the location of a child/family; when combined with other information this may contribute to jigsaw identification. Appendix 3 and the main checklist 1 text set this out in detail.
- However, the court is unique among actors in the family justice system because of the extent of powers conferred upon it by Parliament; powers are not unfettered, checks and balances apply.

- The court must nevertheless negotiate the landscape between ‘transparency’ of justice on behalf of the state where life changing decisions are made for children while ensuring their privacy, welfare and safeguarding needs are protected.
- Naming the trial court and judge should remain but in the context of improved anonymisation practices where risks of jigsaw identification have been eliminated so far as practicable by redacting geographical/personal identifiers and abridging certain descriptions of abuse (see checklist 2).

Final Check: personal/geographical identifiers

- Do any of the ‘big five’ geographical/personal identifiers for a child remain (Appendix 1, bullet point 6) - can these be further anonymised without loss to the aims of judgments as outlined?
- Consider any remaining identifies alongside any **CHECKLIST 2** issues (see below). In the light of evidence about jigsaw identification, the power of search engines, and risks to already highly vulnerable children, do features remain which are essential to the judgment but which make this child/family identifiable? If so, consider whether it is suitable for the public arena?

CHECKLIST 2: TREATMENT OF DESCRIPTIONS OF THE SEXUAL ABUSE OF CHILDREN

Aims include:

- To provide assistance to judges in addressing ‘new’ frontiers presented by the internet and propensity for descriptions of sexual abuse of children to be downloaded and shared worldwide, for purposes unrelated to public education about family courts including paedophile networks.
- To indicate where and how explicit descriptions of the sexual abuse of children could be abridged while retaining the capacity of the document to meet primary and secondary purposes
- To suggest where some adjustment to style/structure might assist that exercise
- To provide a final checklist of actions to assist in decisions about publication and some standard headings to assist lay audiences to better understand the parameters of privacy and publication.

Guidance: implications for the style/structure of judgments

- The aim is not to reduce the capacity of judgments to meet forensic requirements or to suggest ‘one size fits all’, or to reduce the capacity to give judgments as soon as practicable. Rather, to suggest where descriptions of the sexual abuse of a child be annexed, and abridged for a public document.
- There are variations in the style/structure of judgments of the same ‘type’ (e.g. fact finding); some could not be abridged without attention to the structure, others lend themselves more easily to a move to abridgement of certain paragraphs of explicit descriptions of sexual abuse of a child.
- Guidance offers suggestions which might assist the change. For example, judgments with broadly consistent headings lend themselves more readily to abridgment (see checklist 2); they also make for easier and quicker checking, and are likely to speed up the process of abridgment over time.

- In some judgments, descriptions of sexual abuse are repeated under several paragraphs: this makes abridgement and cross checking, difficult and timing consuming. For example, some details are contained in paragraphs variously headed 'Introduction', 'Background', or 'Family History'; these can be lengthy, with details not returned to in the judgment. They can contain the history of sexual abuse in a household and previous proceedings concerning sexual abuse of a sibling.
- While the reasons for this style/approach vary (see checklist 2), consider whether historical details are necessary, if so whether they can be moved to a relevant heading in judgment and redacted/abridged therein (if necessary, cross referenced to a document(s)/another court bundle).

Judgment intended for the public arena

- Annexe descriptions of sexual abuse to an appendix, this to be available in the case of any appeal.
- The judgment with abridged paragraph(s) to be the version released for publication.

***Ex Tempore* judgments**

- This approach to abridgment of descriptions of sexual abuse of children may also be adopted when giving an *ex-tempore* judgment. It will need to be structured with broadly consistent headings to facilitate the process, it may take an initial degree of mental agility and discipline but guidance should help structure the delivery of the judgment in such a way that abridgment and better anonymisation (checklist 1) can be more readily achieved and demands on time decreased over time.

ABRIDGMENT OF DESCRIPTIONS OF SEXUAL ABUSE OF A CHILD/YOUNG PERSON

- Guidance takes several examples of graphic descriptions of sexual abuse of children and provides examples of abridgement which retain essential information about abuse, relevant time frames, and attendant threats of violence to children for disclosure or rewards for compliance.
- Abridged/skeleton paragraphs also address key issues such as the lack of sexual boundaries in households and sexualised behaviour by children at home and elsewhere and details of the responses of a parent who fails to intervene or protect a child but without graphic descriptions of sexualised behaviour or assaults. That detail is annexed to the judgment for any appeal.
- Abridge paragraphs do not downplay sexual abuse: they contain sufficient information to reflect the seriousness of abuse and misuse of adult power, including rape and exposure of children to pornography but without graphic descriptions of everything that was done, seen and said.

Final check: fact finding judgment: child sexual abuse

- Does it comply with **checklists 1** – treatment of personal/geographical indicators?
- Is it written in **plain English**?

- Is it **suitable for publication**? Not all judgments can be drafted to meet the criteria
- Does it meet the **fundamental purpose** of a judgment (see aims)?
- Does it meet **secondary purposes** (see aims)?

Explaining the terms of a judgment

- It will be necessary to explain to parents/young people and others - in plain English, the conditions under which a judgment is issued (i.e. the implications of a judgment 'handed down in private' and that 'delivered in public'), that should also be made clear in standard headings on judgments (see Final Check: Checklist 2).

APPENDIX IV

METHODOLOGY AND SAMPLES

Young People – the 2015 model

- A.1 The plan for this (2020) evaluation was to repeat the model utilised in the 2015 evaluation of judgments on BAILII with young people (Brophy et al. 2015). This model of consultation and research to ascertain young people's views involved a one-day workshop, undertaken at the NYAS offices in the Midlands with the research team, NYAS Participation Officers and young people's advocates.⁹⁶
- A.2 The aim of the 2015 workshop model (developed with NYAS Participation Officers and in consultation with young people) was two-fold: first, to provide a safe, supportive environment where young people could meet for a whole day and second, to complete detailed work on the content of judgments. That exercise demanded that young people worked in pairs (with a researcher/advocate), but – for the internet search, they worked alone (albeit with support on hand if they so wished – see below).
- A.3 The morning session started with breakfast and ice breaking sessions. In a 'Welcome and Introduction', the aims and objectives and the format of the day were set out, information in their packs explained in detail i.e. how consent issues and their rights work in practice, for example, their right to stop at any point in the day/take a break, their role and responsibilities regarding the exercise itself, and to each other regarding respect for other's views, and undertakings to preserve the privacy of any views expressed by other young people once outside of the workshop (Appendix V).
- A.4 The responsibilities and undertakings of the researcher team were reiterated and explained in straightforward language. This covered:
- (a) how researchers would protect their privacy and confidentiality in the way in which we would hold and manage data (their schedules, consent forms, contact details) and adhere to the demands of data protection during and on completion of the work⁹⁷ (so that their views would be stored separately from any identifying details)

⁹⁶ Advocates were not technically essential to the 2020 exercise as our cohort of young people were no longer minors; however, in view of the issues to be addressed, and continued contact and support some received from NYAS, we kept that option open for the whole cohort (i.e. those involved in the 2015 exercise, and those new to the project).

⁹⁷ As this is set out in the project DPA and Privacy Impact Statement forming part of the application for ethical clearance for the project; it covers recruitment of participants, consent, data processing, data storage, data transfer and data retention.

(b) the protection of their privacy by the use of codes to anonymise personal and geographical data, use of pseudonyms/other 'label' options agreed with them for use in the report where we quote from their views
(c) their rights to see and agree the quotes as drafted and,
(d) plans for them to see and comment on a draft, and the timetable for that exercise and a protocol (agreed in our ethics clearance procedure) as to how we would address any differences of view in how we present their views in the report.

- A.5 In addition, we also set out a two-stage procedure for checking on their wellbeing following completion of the fieldwork, first by a call the next day from their advocate to ascertain if they remained comfortable with the exercise and whether they had any queries or concerns following participation, followed by a second call one week later. We explained how we proposed to address any concerns they might have⁹⁸ and reiterated the availability of direct and completely private access to clinical support if they so wished. Thus, details enabling them to have direct contact to clinical support were sent to each young person under separate (encrypted) email.
- A.6 The morning session then moved to the first stage of the evaluation. Each young person was paired with a researcher/their advocate and given their allocated judgments. The role of the researcher/advocate was simply to assist if asked, for example, with regard to any technical detail/passages in the judgment, to check the participants remained comfortable throughout the exercise, that all questions had been answered, and that the young person had been able to say all they wished about a judgment. Participants thus read and marked-up the judgment, highlighting what they liked/disliked etc., and completed a semi-structured questionnaire about the content (see Brophy et al. (2015) – Appendix III). This exercise was done in pairs (one young person to one researcher/advocate) in a workshop setting (i.e. whole group stayed together), in a conference style seating format.
- A.7 The review of judgments was followed by lunch and an afternoon session in which, on laptops provided by NYAS and with support from the NYAS IT Officer, young people searched the internet for coverage of their allocated judgments in the media and on social networking sites. Each young person selected their own words, terms, statements etc. from the judgments they had read and analysed (See Appendix II of the full report (2015) – Data Collection Schedule, questions 19 and 20). For this exercise they worked alone (but with IT and advocacy support if requested). As detailed in 2015, they were allocated just two hours to search for coverage of two judgments.

⁹⁸ Discussing first, with the young person's advocate and the young person as to how they might wish to proceed, and with the option of seeking direction from the child and family clinical lead on the project's Advisory Group (these procedures having been outlined and agreed during ethical clearance for the work).

Young people – the 2020 model

- A.8 The exercise for the 2020 post-Guidance evaluation proposed to follow the same format as 2015. From an initial aim of eight young people (mixed between those who had participated in the 2015 exercise, and those new to the work), seven young people were recruited from NYAS.⁹⁹ Full ethical approval for the methodology was received from the CoramBAAF ethics committee – this encompassing the privacy, safeguarding and welfare needs and provisions for participating young people, issues of consent (initial and ongoing), and arrangements for feedback on the report. These issues were all set out in written materials provided for young people (see Appendix V).
- A.9 However, although the materials and arrangements for the one-day workshop were well advanced, as a result of the coronavirus outbreak and a nationwide lockdown, travel and a workshop format became impossible. Following discussions with the funders, and our host organisation, and with the young people (two of which are on the project Advisory Group) the methodology was adapted to use remote methods via a video link to obtain their views.¹⁰⁰ We also discussed with young people the best video package/their preferred choice.
- A.10 We discussed the pros and cons of this change of method (from a whole day workshop environment in which young people stay together all-day, to a 1-2-1 session with a researcher and via a video link), with young people and with NYAS Officers. Overall, the young people were keen to try it; the change of method however, resulted in the withdrawal of two young people from the exercise. It also had consequences for time estimates – and the internet search (see below – cohorts for analysis A.22, and internet para A.15). The move to a remote method of interviewing young people involved five young people (three females and two males) participating via a video session on a 1-2-1 basis, each paired with a member of the research team.
- A.11 The format for completing the schedules also had to change. Young people were sent an updated pack (Appendix V). This included details and instructions about how the video link would work (and repeating and expanding consent issues as these

⁹⁹ NYAS is a national children's charity, based in Birkenhead, Merseyside providing advocacy and legal representation to children and vulnerable adults when important decisions are being made about them. The children and young people NYAS work with might be in care, have a disability or special needs, be subject to child protection plans, have mental health difficulties or their parents might be separating. Young people's groups within NYAS are completely independent of organisational, management, or governmental control over their views and decisions about policy directed work. Historically, that freedom of expression has been a key ethic, facilitated by the Lead Officers in the Young People's Participation Group. Young people from NYAS and the Family Justice Young People's Board (FJYPB) became involved in this field of policy work in 2014. With regard to ongoing research however, NYAS has been instrumental in taking this work forward under children's Article 12 rights of the UNCRC.

¹⁰⁰ This also involved new ethical considerations and further ethical clearance.

pertain to a video session), hard copies of their allocated judgments, and a semi-structured interview schedule (Appendix VI) on which to record their views about judgments: each young investigator was allocated a different set of judgments.

- A.12 As our group were older than the 2015 cohort – and those who remained involved from the latter group had experience of an evaluation exercise, we sent them three judgments each – with a request that they read and evaluate two, and if possible/they so wished, attempt a third. Judgments with a geographical link to a young person were prioritised for selection with the rest randomly chosen from the non-matched sample list (see A.18 below). As per the 2015 exercise, the session (now by video) involved reading, discussing with their paired researcher, analysing and marking up the judgments. However, in this exercise they had the option of reading judgments in advance, and completing a schedule if they so wished, or completing the exercise with the researcher during the remote session. Some schedules were completed by young people in advance of the video session; they then went over the questions with the researcher and reiterated/discussed their views. Others completed the questionnaire during the remote session, according to their preference/time. This had implications for time allocations for the work which we discuss below.
- A.13 As per the 2015 exercise, the proposal was that the video session would also be organised into two parts, the first session devoted to an evaluation of the judgments, the second dedicated to an internet search. In practice, the latter sessions were much more diverse – in part due to the increased time the former session took, but also due to changes in the format. In 2015 while young people did their own internet search (using allocated laptops and their selected search words), they did this in a conference seating format with on hand support and technical expertise of their peers, and those of NYAS Officers (leads in Participation, a social work placement student, and an IT officer).
- A.14 For this 2020 cohort, there was none of that peer support and technical expertise with social media sites. Some completed their internet search during the second session of the video session, others wished to have a break and come back to it, others had started the session prior to the video session, others completed theirs in the following day(s).
- A.15 This exercise was supplemented by an internet search by researchers for those judgments where searches by young people could not be undertaken or were incomplete. The same approach was used for searches on the 18 judgments evaluated exclusively by members of the research team (cohorts II and III below). The search followed a protocol with several steps as follows:
- Identify words and phrases from judgments likely to appear in headlines (examples include sexual abuse, paedophile, father/mother described as dangerous, appalling living conditions, jailed for [xx] years)
 - Where applicable, search using names of parties to proceedings and professionals and agencies named in judgments

- Where judgments include mention of criminal proceedings, use date of criminal justice contact and phrases such as 'police called', 'arrested for', 'charged with', 'trial', 'conviction for', 'jailed for' and 'sentenced to' in relation to any criminal behaviour
- Search using any locational details such as name of criminal court, judge, local authority area, and names of towns found in judgments
- Search public sites, including those for national and local press (using print titles common to local newspapers (e.g. Recorder, Echo, Gazette, Times, Herald, Chronicle), court listings, Family Law publications, and Offender Database sites
- Using any identified names and photographs from press and other coverage, search social media platforms, including Facebook, Twitter and Instagram.

There was no searching of the 'dark web', that part of the internet accessible only by use of specialist software, Tor, for example. The 'dark web' encompasses sites that are not locatable using ordinary web browsers making it ideal for internet activity which users wish to remain private and anonymous. While the 'dark web' can be used for legitimate activity, it is well suited for sites which host illicit material.

Judgment Selection Procedures

- A.16 As indicated in the Introduction, The British and Irish Legal Information Institute (BAILII) hosts an online, public access database of case law, organised by jurisdiction and date. Sample judgments were selected from the total population of public law children law judgments available via BAILII for the period January 2017 – May 2020¹⁰¹. Master lists of judgments were extracted from four databases, namely, the Court of Appeal (Civil Division), the High Court (Family Division), Family Court (Decisions by High Court Judges) and Family Court (Decisions by other Judges). These judgments were extracted and read by researchers and lists were annotated to include detail about the ages of the child(ren) in the case, the name of the local authority applicant, and the length of the judgment, measured in number of pages. In the context of Checklist 2 of Guidance, the search function on BAILII was used to identify those judgments in the lists in which child sexual abuse featured as an allegation or a concern arising during proceedings; this variable was added to the relevant judgment annotation.
- A.17 As identified in 2015, young people are concerned that people with knowledge of a local area can identify children and families from the information contained in judgments. They were also concerned that some details would assist someone outside of the local area wishing to identify/locate a child/family. Therefore, when sampling from the population of judgments, the selection procedure firstly prioritised

¹⁰¹ The time frame was extended from that originally proposed, due to the impact of the virus pandemic on the timing of the fieldwork – the delay encountered in reorganising the fieldwork enabled us to extend the end date and thus, include the most recent judgments.

judgments with a potential geographical link to the young investigators. This geographical matching was achieved using named local authority applicants from the population lists, supplemented with database searches using the relevant tiered authority in which children's social services are administered.

- A.18 Repeating the sampling experience of 2015, there were insufficient judgments for the relevant local authority areas linked to the young people; the final sample of judgments for the young investigators was therefore drawn from two lists (tranches), one geographically matched, the other an England and Wales non-matched list. Selection criteria for the judgments on the matched list (tranche 1) were as follows:
- a) Most recent judgments concerning children in public law proceedings
 - b) Cases concerning at least one young person aged 8 or above, but where no such cases in a designated, linked local authority, those involving children below the age of eight were included
 - c) Judgment issued between 2017¹⁰² and 2020
 - d) Judgment limited to less than 40 pages.¹⁰³
- A.19 A second tranche of judgments was selected from the non-matched list using the same criteria (a) – (d) above. A total of 21 judgments were selected for the seven young investigators, of which 11 were geographically matched. As detailed above, two young people withdrew from the exercise, thus a total of 15 judgments were allocated to young people, 12 of which were completed in the available research time.
- A.20 Those judgments which were not completed by the young people were re-allocated to the research team for evaluation (see evaluation cohort II below).
- A.21 This was supplemented by a third tranche of judgments evaluated by the researchers only, to achieve an overall sample of 30 judgments. The third tranche was selected from the master England and Wales list; this list included five reserve judgments which had not been allocated to young people, plus four judgments published

¹⁰² As per the Introduction, PG (2018) endorses Checklists 1 and 2 of the 2016 document funded and published by Nuffield. There was substantial support for the 2016 document when it was presented by the (then) President of the Family Division to senior judiciary at the May 2016 President's Conference; feedback to the project reported it had almost unanimous support from attending judges as a helpful way forward. It was the President's intention to get his PG out as a matter of urgency. We therefore allowed time for the draft (2016) document to 'bed down' starting sampling of judgments from 2017. Formal Practice Guidance endorsing Checklists 1 and 2 of the 2016 document was finally introduced in December 2018 by the new President of the Family Division.

¹⁰³ In practice, this was not straightforward because of wide variation in the structure of judgments – e.g. some used single, some double line spacing, some headings, some not; we therefore tried to keep the overall number of pages to be assessed by a young person to below 120 (i.e. three judgments, at 40 pages per judgment). That was mostly achieved – because some judgments were shorter and because not everyone achieved the three-judgment target.

between February and May 2020¹⁰⁴ which met the selection criteria (a minimum of one per court tier and which involved child sexual abuse issues).

A.22 The *evaluation* exercise reflects mid-fieldwork changes for some judgments. To make the evaluation re-groupings clear, these are referred to herein as cohorts: cohort one (judgments assessed by young people, and by researchers), cohort two (judgments allocated to young people but not completed by them and transferred to researchers), and cohort three (those judgments intended for evaluation by researchers only). The disaggregated data by cohort is as follows:

Cohort I – 12 judgments

- Evaluation exercise: completed by young people, and independently also evaluated by researchers (the comparator)
- Matched by geographical location: 6/12¹⁰⁵
- Court tiers covered: three judgments from the Family Court, eight from the High Court and one from the Court of Appeal
- Time frame of judgments: 2017 – 2019¹⁰⁶
- Total number of subject children: 37
- Total number of pages read and analysed by young people: 252.

Cohort II – 9 judgments

- Evaluation exercise: these were originally part of cohort I above, allocated to young people; due to further fieldwork limitations imposed by the pandemic, these judgments were re-allocated to researchers for evaluation
- Court tiers covered: three from the Family Court, four from the High Court and two from the Court of Appeal
- Time frame of judgments: 2017 – 2019
- Total number of children: 25.

Cohort III - 9 judgments

- Evaluation of this cohort was always intended only for evaluation by researchers
- Court tiers covered: three from the Family Court, three from the High Court, and three from the Court of Appeal
- Time frame of judgments: 2017 – 2020¹⁰⁷

¹⁰⁴ To enable data to be as up to date as possible with judgments posted on BAILII.

¹⁰⁵ Of the 12 judgments *completed* by YP, only 6 were geographically matched. A further 5 judgments which had been matched and allocated to YP could not be completed and were therefore reallocated to researchers.

¹⁰⁶ A care proceedings judgment was published on BAILII in 2017 which was read alongside the related 2016 judgment, which focussed on fact finding. The latter contained more detail on which the young person could provide comment and was therefore selected for the sample.

- Total number of subject children: 18
- Number of pages read and analysed by researchers – 680 (cohort I = 252). cohorts I and II = 428).

The use of the term 'cohort' in a qualitative study is to assist readers in understanding the data set and groupings, and how we have used them in the overall evaluation of Guidance. We have also indicated a 'direction of travel' for some findings - by noting some suggested percentages. Again, this is to assist readers in thinking about dominant patterns emerging in the relatively early days of Guidance; it in no way indicates statistical modelling or solely, closed questions/survey techniques. Rather it aims to help readers identify developing themes and (para A27 below) assess confidence in aspects of the methodology and decisions taken by the research team.

In Summary

A.23 The sample consisted of 30 judgments:

- Judgments were selected from family courts in England and Wales from the period January 2017 to May 2020: six came from the Court of Appeal, 15 from the High Court of the Family Division, and nine from the Family Court
- As per the (purposive) sampling technique, just over two-thirds of the judgments (21/30) contained concerns regarding the sexual abuse/rape of a child/young person: six in the Court of Appeal, nine in the High Court and six in the Family Court
- 12/30 judgments were evaluated by young people
- 11 judgments were initially matched with young people by geographical location, six were actually evaluated by young people, the remainder transferred to cohort II
- Judgments concerned the care, welfare and placement of some 80 children/young people
- Most children in the sample judgments were 6 years and older (70%): the age bands were, 0–5 years, 29%; 6–10 years, 40%; 11 +years, 30%.
- Some 680 pages of text were read, coded and analysed.

Data Analysis

A.24 As indicated above the young people's schedule contained questions regarding what was in the judgment concerning subject children/young people and parents/others who were party to proceedings, and what they thought about the information as drafted therein (Appendix VI questions 1 – 18, replicating the 2015 exercise (see Brophy et al (2015) Appendix II 2015). Young people were not asked to comment on

¹⁰⁷ Delayed start permitted an extension of the end date, to include the latest judgments meeting selection criteria.

Checklists 1 and 2 of Guidance; rather, they were searching for evidence of its impact on judgments and thus whether they might have different findings/views to the same questions asked of judgments in 2015.

- A.25 In the first instance, the judgments were evaluated against two semi-structured schedules which included both open and closed questions (Appendix VI – Schedule 1 - Young People; Appendix VII - Schedule 2 - Researchers). The researcher’s schedule was a mirror image of that for young people but with additional questions requiring a comparison to be made between the findings/views of the researcher, and those (subsequently provided) by the young people.
- A.26 As indicated above, researchers read and evaluated the judgments allocated to young people *prior* to the 1-2-1 video session with them. Researchers then compared the subsequent questionnaire completed by the young person with their own assessment (e.g. Appendix VII, question 1 and 1b; and 5.1a, 5.1b and 5.1c - which required a comparative exercise). The focus on comparisons was to identify any differences – substantive but also nuanced, between young people and researchers.
- A.27 Comparative analysis of the details identified by young people and researchers indicated a high degree of consensus across the questionnaires. For the 12 judgments evaluated by young people, the extent of concurrence with researchers across the questionnaires was mostly over 90%:
- 57/60 for questions 1 to 5 (95% concurrence)
 - 59/60 on questions 6.1 (a) to (e) (98.3% concurrence)
 - 95/96 for questions 6.2 (a) to (h) (98.9% concurrence)
 - 88/96 on questions 7 to 14 (91.7% concurrence)
 - 33/36 for questions 15, 16.1 and 16.2 (91.7% concurrence)
 - 20/24 for questions 17.2 and 18 (83% concurrence)
- A.28 Analysis of differences showed no systematic discrepancies as each pairing of a young person with a researcher recorded a minimum of one difference. In respect of questions, there were only four questions on which there was more than one discrepancy. These were in relation to questions 13, 14, 17.2 and 18:
- In regard to questions 13 and 14, researchers noted more examples of criticism or praise by judges of the work of professionals in judgments than the young people. Of the six occasions on which this occurred, three related to positive comments made by judges regarding the work and assistance to the court provided by lawyers.
 - Question 17.2 asked whether there was enough information for a lay reader to understand the reasons for the application and the decisions made by the judge. There were two judgments where there was a difference between the young person and the researcher, one because the researcher assessed that the judgment did not set out some key issues for parents. In the second, the researcher stated that there was insufficient material to explain ‘harm’ to a lay

reader and the judgment did not cover adequately the full considerations in the welfare checklist.

- In respect of question 18, there were differences for two judgments; in both instances the difference arose because the researcher argued that there were unique, current or historical, features of the families which would make them easily identifiable in their communities.

- A.29 The high degree of concurrence between young people and researchers in the completion of the questionnaires provided confidence that researchers identified information in judgments using the same framework and approach as young people.
- A.30 For the cohort of judgments evaluated only by members of the research team, the schedule mirrored that of the young people – but without the comparative questions.
- A.31 All completed schedules were read and analysed and the data entered into a series of tables, structured according to the main themes and questions in the schedules.
- A.32 To address the engagement of CL2 of Guidance in more depth – in part to better understand emerging findings, and to thus ensure we better captured issues not addressed in 2015 - we introduced a third coding schedule to which all judgments concerning the sexual abuse/rape of children were then subject (Appendix VIII – Schedule 3). This involved a re-reading and further coding of 21 such judgments.
- A.33 Tables were analysed and findings presented – as far as possible, according to the sections and headings of the 2015 report to enable a ‘compare and contrast’ model – pre- and post, the introduction of Guidance.

Data Protection

- A.34 Obligations imposed by the GDPR (General Data Protection Regulations) are a legal requirement and all data from the research was processed in line with data protection legislation. Demonstration of proposals for compliance was also part of the exercise of gaining ethical clearance for the project. The research would not have been possible without the participation of a group of young people with links to NYAS, many of whom have direct experience of the care system, making participation in the research potentially disclosive of sensitive information. As outlined above, young people were assured (both orally and in writing) of the research team’s commitment to responsible processing of data and steps to protect their identities were included in all stages of the research programme, from recruitment to data collection, processing, storage, transfer and retention.
- A. 35 The geographical matching of some of the sample judgments posed a particular risk of disclosure for the young people involved. To mitigate this risk and assure their rights to privacy, the research findings are presented without any identifiers linking judgments to individual young people. Moreover, there is no reporting of citations, case names, or extracts from the sampled judgments in the report or its annexes and

all residual data has been removed, or aggregated across the sample, where it was deemed to create a risk of disclosure.

Evaluation of methods and sampling

- A.36 The change of research methodology as a result of the pandemic affected multiple elements of the research design and its conduct, including the sample and sampling frame, methods of communication and the time available for different tasks. Moreover, the pandemic had impacts on both the young people and members of the research team and their families.
- A. 37 The delay to the commencement of work by the young people allowed an extension to the sampling frame of eligible judgments posted on BAILII, with the period extended to include months up until May 2020. This enhanced the purposive sampling, permitting selection across all court tiers, years, and across child sexual abuse (CSA) and non-CSA judgments. Overall, more judgments than originally intended were included in the evaluation, allowing a thorough comparison between researcher and young people findings across a greater range of judgments and issues. This increased confidence in the aggregation of the sample for assessing the impact of Checklist 1 and Checklist 2. In addition, detailed multi-level analyses on a subsample of CSA cases were made possible given the total number of CSA cases included in the sample.
- A. 38 The change of method for young people from a workshop setting to one-to-one video sessions with a researcher was the biggest change from the work carried out in 2015. This had both advantages and disadvantages. Ways of communicating securely with young people had to be put in place, using a secure electronic mail platform, Egress. Both young people and researchers felt this was not a user-friendly platform, and it was particularly problematic for young people accessing mail services through a mobile phone. Conventional mail services also faced barriers, with a hard copy of materials arriving late or not at all because of the impact of the pandemic on domestic postal services. For the young people, especially those who lived alone, the cancellation of the workshop resulted in a loss of support and comradery of peers and inter-peer discussion of their findings and views; it also reduced the amount of 'fun' from planned warm-up sessions, and talking with other young people. Furthermore, it meant an absence of technical support for the work, both in terms of practical support with the provision of computers and Wi-Fi, and skills support for internet searching. There were however some gains from substituting a workshop setting with one-to-one sessions as they allowed young people to read and mark-up judgments at their own pace and without distraction. And while sessions could be complicated to organise, scheduling could be more responsive to the routines and rhythms of young people's lives. A subsequent exercise would benefit from a combination of group, and one-to-one sessions but any whole group/workshop approach necessarily restricts the time for the work - bearing in mind the travel time for young people drawn from a national group.

- A. 39 Some of the tasks of the research benefitted from not having the timetable imposed by a workshop setting and thus a tight time frame for each exercise (examination of judgments and internet search) within the evaluation. This was particularly the case for the internet search, with the increased time allowing for a more thorough consideration of search terms and greater opportunities to chase down avenues of enquiry online. This was undoubtedly a key gain from the change in methodology as the internet search revealed the range of platforms on which judgments, and the information they contain, are posted and shared online. This provided evidence of the myriad ways in which children and families can be tracked and traced on the internet.

APPENDIX V

INFORMATION PACK FOR PARTICIPATING YOUNG PEOPLE



GUIDANCE TO JUDGES IN THE ANONYMISATION OF CHILDREN JUDGMENTS: AN EVALUATION

CONSULTATION WITH YOUNG PEOPLE BY VIDEO

THE RESEARCHERS



Dr Julia Brophy



Dr Jay Jhutti-Johal



Dr Marisol Smith

ADMINISTRATOR AND CO-ORDINATOR



Julia Higgins

Thank you for agreeing to join us by video link following a change of plans during the coronavirus outbreak. We look forward to hearing your views on anonymisation practices in children judgments: remember you are the experts! Your participation will now take place via a video session. This will now be 1-2-1 with you and a researcher (and if you wish a NYAS support person).

SETTING A TIME AND DATE FOR YOUR ZOOM SESSION

- We will contact you by phone/encrypted email (EGRESS) to agree a date and time for the session and to check your preferred phone number or email.
- You will need to set aside a two-hour slot for the first session (evaluating the judgments) – followed by about 90 minutes for your internet search - but you can have a break in between, and more time if you need it.
- We will double check if you need any support to join the session.
- We will send you an invitation to join a Zoom video call in the email confirming the time and date. Zoom is free but you will need to register and download the app to your device. Register for Zoom at this link: <https://zoom.us/join>.
- At the end of the first session on judgments we will agree a time to start the second (internet search) session which will need a maximum of 90 minutes.

THE JUDGMENTS AND A QUESTIONNAIRE

We will send the judgments to read and a questionnaire for each one so you can tell us your views. The researcher will help you complete the questionnaires and if you prefer, you can tell her your views and she can write them down.

HOW WILL I GET THEM?

- With your permission, we will post you a hard copy of the judgments and a questionnaire for each.
- We will also send these as an email attachment.

INTERNET SEARCH FOR MEDIA/SOCIAL MEDIA COVERAGE OF THE CHILD/FAMILY IN THE JUDGMENTS

- The researcher will explain this exercise during the session, but your search will be based on the words/information you select from the judgments; the questionnaire allows you to tell us the results of your search.
- You will need a maximum of 90 minutes to do an internet search.
- We will talk about your experience of the search in the end of this session.

PREPARING FOR YOUR VIDEO SESSION

- Be in a quiet, private space and tell everyone in your location you must not be interrupted. If you need to move away from your screen during the session, ask the researcher so the breaks can be documented.
- If you do not understand anything in the judgment, ask the researcher/your support person to explain. This is not a 'test'.
- Your views are important, but the language/terms used by judges can be complex/technical. However, you and the general public should be able to understand judgments so don't hesitate to ask us to explain/clarify issues.

Before your video session you must:

- Be ready at least 15 minutes before the call.
- Ensure your device is fully charged, so you don't cut off during the session.

Before we link up with you:

- If you use call barring services, please turn them off so we can reach you.
- Have a quick run through with the video conferencing App beforehand so you don't struggle with technology once we start.
- Set your screen so your face is clearly visible.
- Sit with light in front of you so your face is not in the shadow.
- If possible, try to make sure the view behind you is blank or neutral.

Video conferencing rules:

To ensure we complete the session, only drink water or soft drinks - no eating or smoking.

The sessions will be chaired by the researcher; she will introduce herself and explain how the session will work, your privacy rights, breaks, and consent issues.

ON THE DAY

You will receive an email notice from a member of the team on the morning of your session. It will confirm the time of your session and joining details.

How to join:

We will call you from one of the numbers above (remember to turn off any call barring services, so we can reach you).

If on the day you cannot join your session:

- Please tell us using the contact details above.
- Only cancel on the day if you really have to; we will aim to set up an alternative for you.

AT THE END OF THE VIDEO SESSION

The researcher will:

- Check the questions are completed including those on your internet search.
- Ask for your views about the exercise (what you liked/disliked, whether there are things we have left out/could improve on, any messages for judges etc).
- Ask you to return judgments, questionnaires and comments to us. We will include a stamped addressed envelope with the materials we send to you.
- Agree how we will be in touch if we need to check anything.
- Confirm when the draft report will be ready, and the timetable for comments.
- Confirm arrangements to check in with you 24 hours and 7 days later to ensure you are OK following this work.

PRIVACY AND CONFIDENTIALITY

We have amended the consent form as attached. Please note, in signing it you agree to protect the privacy rights of everyone involved in this exercise and to abide by the copyright rules which apply to the documents sent. This means you agree not to copy or share the project materials with anyone outside of the project.

LETTER/EMAIL TO YOUNG PEOPLE



20 May 2020

GUIDANCE TO JUDGES IN THE ANONIMISATION OF CHILDREN JUDGMENTS: AN EVALUATION

Dear

Enclosed, the materials for our video session on the 28th May at 1.30pm, as:

- judgments for you to read and evaluate with questionnaire for each; we hope you can do three judgments – they are marked in the order you should do them
- highlighting pens for marking the judgment text: **GREEN** for information/details where you have concerns about privacy/safeguarding issues, **PINK** for text that you liked
- hard copies of the project materials you had by email
- a stamped, addressed envelope to return the judgments, questionnaires, your signed consent form and any additional comments.

The judgments may look lengthy - because they have been formatted to give you space to easily highlight areas of text and add comments and make notes if you wish. Feel free to read them before our session but please don't be put off by any content; we will work through the judgments on the day.

If you come across any unfamiliar terms, these can be checked at <https://www.cafcass.gov.uk/family-justice-young-peoples-board/glossary/>

Or, I can explain them on the day.

At the start of the session I will explain how it will work and you can tell me how you would like to complete the questionnaires. You are the expert and it is your responses to the content of the judgments that are important.

When we have completed the session, **please return the Judgments, Questionnaires, Signed Consent and Additional Comments** in the stamped, addressed envelope provided.

This is a unique opportunity to include the views of young people in this area of family justice policy, achieved, as you know, after a long wait and several delays. I am grateful for your patience as there is no substitute for your views as to how best to protect the privacy and safety of children and young people.

As a small token of appreciation for your time, we will be sending you a gift voucher.

Kind regards

CONSENT AND ROLES AND RESPONSIBILITIES

CONSENT FORM
EVALUATION OF THE PRESIDENT’S GUIDANCE – ANON. OF CHILDREN JUDGMENTS
PARTICIPATING YOUNG PEOPLE - CONSULTATION VIA VIDEO

I am.....

- a) I have read the role and responsibilities of a participating young person (as per the details overleaf – consultation via video); I agree to these and to participation in 1-2-1 video with a researcher to evaluate the impact of Guidance on children judgments.
- b) I understand that my participation is entirely voluntary, that I am free to withdraw at any point during the exercise – and without explanation.
- c) I agree that I will protect the privacy of other participating young people in this evaluation and will not reveal their identity to others outside the project.
- d) After completion of the evaluation of judgments via video link, I understand it may be necessary for the researcher to check/clarify some of my views; I am happy to be contacted again and will try to answer any queries as quickly as possible.
- e) I understand the researchers will explain arrangements for protecting my identify in the final report and these will be explained to me (in a covering email).
- f) I understand I will have an opportunity to read the draft report to ensure I agree with the representation of my views. If I do not agree with the representation as drafted, and in the unlikely event that any disagreement can't be resolved between myself and the researcher, I will have access to representatives on the project's Advisory Group; their view would determine how we proceed.
- g) I agree to return any comments to the research team as quickly as possible.
- h) The two-stage follow up procedure has been explained to me and I agree to be contacted to check that I am not upset/distressed by the evaluation exercise.
- i) I understand arrangements have been made to enable me talk in confidence to an experienced child friendly clinician – should I wish to discuss my feelings/reactions after the day. Contact details will be included in an email confirming my video link.
- j) I understand the researchers will explain arrangements for anonymisation practices to protect my identify in the final report and that these will be explained to me (in a covering email).
- k) I understand that there will be an opportunity to ensure I agree with the representation of my views so that I cannot be identified from the report.

Signed.....

Date.....

ROLES AND RESPONSIBILITIES
EVALUATION OF JUDGMENTS VIA A VIDEO LINK WITH A RESEARCHER

Role and responsibilities:

- a) My evaluation session is in two parts: I understand I can have a break between the two parts, and that I can have a break at any point during the session. I will let the researcher know on the day how I would like to do it.
- b) **Part one:** I will read the judgments sent to me by post. I agree to read two with the option of reading a third. I will discuss and mark-up the judgments with a highlighter pen, according to the procedure outlined by the researcher (marking what I like and dislike/have views about) and record my views on the Questionnaire.
- c) I understand the researcher will complete the questionnaire on my behalf if I wish, in which case, I will tell her my views and responses to the questions, and she will complete the questionnaire on my behalf. She will check my views to ensure I am satisfied these are recorded correctly.
- d) **Part two:** I will identify and record (at Question 19 on the Questionnaire) my choice of key words/phrases/information from judgments which I will use as search terms for exploring social networking and media sites for coverage of the judgments.
- e) Using key words/terms/information, I will spend about 90 minutes searching the internet for coverage of the cases/judgments I have read and assessed, and record anything I find and my views about it on the Questionnaire (Questions 20 and 21).
- f) I will also tell the researcher what I thought about the work (e.g. what I liked/disliked about the exercise, the questions, and the internet search).
- g) I understand that I can add any thoughts I have on how the researchers could improve the exercise, and how I felt about the work following completion.
- h) I understand I can also add any thoughts/messages for judges, lawyers and guardians/other professionals, the project Advisory Group, and funders of research with young people.

APPENDIX VI

SCHEDULE 1 - YOUNG PEOPLE (YP)

| EVALUATION OF JUDGMENTS ON BAILII (2020) | | | | | |
|--|--|---------------|---|-------------------------------|--|
| 'WHAT I THINK ABOUT INFORMATION IN JUDGMENTS' | | | | | |
| Does the Judgment contain: | | Yes/No | Should this detail be published on BAILII? | Why do you think that? | |
| Q1 | The area in which a child/young person lives/lived? | | | | |
| Q2 | (a) The school the child attends (b) Any clubs/activities they attend? | | | | |
| Q3 | Information about other family members (e.g. a sister, brother, stepsister etc)? | | | | |
| Q4 | Any issues/problems children experienced at school? | | | | |
| Q5 | Information about parent/children's religion? | | | | |
| Reasons for application for a court order: | | Yes/No | Should this detail be published on BAILII? | Why do you think that? | |
| Q 6.1 | Does the judgment detail the harm or likely harm a child has suffered? Such as: | | | | |
| | (i) Physical neglect | | | | |
| | (ii) Emotional neglect | | | | |
| | (iii) Physical injury | | | | |
| | (iv) Sexual abuse | | | | |
| | (v) Any other harms | | | | |
| Does the Judgment contain: | | Yes/No | Should this detail be published on BAILII? | Why do you think that? | |
| Q6.2 | Information about a parent's problems and failures of parenting? For example: | | | | |
| | a) Mental/emotional health problems | | | | |
| | b) Drug/alcohol misuse | | | | |
| | c) Involvement in crime | | | | |

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

| | | | | |
|-------|---|--|--|--|
| | | | | |
| | d) Inability to protect a child | | | |
| | e) Housing problems? (e.g. parents could not provide stable home/constant moves/chaotic lifestyle) | | | |
| | f) Information about conditions in the child's home? (e.g. it was clean/well kept, not clean/ warm, little/no proper bedding, lack of furniture, no food in cupboards, pets not cared for) | | | |
| | g) Male or other violence/abuse in family? | | | |
| | (h) Frequent changes of carer for a child or children? | | | |
| Q7 | The name of the court hearing the case? | | | |
| Q8 | The name of the local authority? | | | |
| Q9 | The name of social workers? | | | |
| Q10 | The name of the child's guardian? | | | |
| Q11 | The name of any doctors in the case? | | | |
| Q12 | The name of any other professionals (e.g. a health visitor, teacher etc.)? | | | |
| Q13 | Does the judge criticise any professional or agency by name - if so, who? | | | |
| Q14 | Does the judge name any professional/agency that had acted well - if so, who? | | | |
| Q15 | Does it contain information that you think should be published on BAILII – if so, what information - and why? | | | |
| Q16.1 | Is there any <i>other</i> information in this judgment that you think should not be published – if so, what information - and why? | | | |
| Q16.2 | Is there any other information in the judgment that you think could be used to identify/trace a child or family – if so, what, and how might it be used? | | | |

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

| | | | |
|-------|---|---------------------|--|
| Q17.1 | Is there anything you liked about the judgment – if so, what, and why did you like it | | |
| Q17.2 | Does the judgment provide enough information for anyone reading it to understand the reasons for the application and the decisions the judge made? | | |
| Q18 | Do you think the child/young person in this case could be identified by friends, people at school/college or within their community when reading the judgment or newspaper reports from it? | Yes/No/ Possibly | |
| Q19 | What details from this judgment will you use as your ' <i>search words</i> ' to see if any details appear on the internet? | | |
| Q20 | Can you find any reporting about this case in local, national or online newspapers? | Yes /No | If yes (i) where was it reported? (ii) What do you think about the coverage? (was it fair, accurate, helpful/informative): (iii) If it was reported on a newspaper online site (e.g. Mail on-line) what did you think of any reader comments that were added? |
| Q21 | (b) Can you find any evidence that information in this case has been shared on social networking sites? | Yes /No | If yes, (i) What did you find? (ii) What do you think about what you found? |
| Q22 | Are there any other details in the judgment, or any reporting of it, that might identify the locality where the family live or spends time? | Yes/No/ Possibly | If yes, what details |
| Q23 | Is there anything further you would like to say about media access and reporting of children cases? | | |

APPENDIX VII

SCHEDULE 2 - RESEARCH OFFICER (RO) (2020)

| INFORMATION IN JUDGMENTS – RESEARCHER’S EVALUATION (UNDERTAKEN BEFORE EVALUATION BY YOUNG PEOPLE (RO), COMPARED WITH POST EVALUATION BY YP) | | | | | | | | |
|---|---|-------------------------------|--|----|-------------------------------|---|----|--|
| | | COMPLETE PRE-YP EVALUATION | | | COMPLETE POST YP EVALUATION | | | |
| Does the Judgment contain: | | Yes/No | Any Location(s) in judgment (state page/para) | | | Q1b Does your view differ to that of the YP? | | |
| | | | | | | Yes | No | If yes/partially – explain: |
| Q1 | The area in which a child/young person lives/lived? | | | | | | | |
| Q2 | (a) The school the child attends (b) Any clubs/activities they attend? (c) Date of birth/age of child | | | | | | | |
| Q3 | Information about other family members (e.g. a sister/brother/stepsister etc)? | | | | | | | |
| Q4 | Any issues/problems children experienced at school? | | | | | | | |
| Q5 | Information about parent/children’s religion? | | | | | | | |
| Potential for jigsaw identification – (A) | | Yes/No/ Other | PRE-YP EVALUATION Q5.1b If yes, how many components are present? | | | POST YP EVALUATION 5.1c Did the YP identify this/any locational information? | | |
| | | | Yes | No | If yes, what and where? | | | |
| Q5.1a | Do any components of jigsaw identification arise from information provided at questions 1 – 5 above (see page 7 – JI, attached) | | 1 2-3 4-6 | | | | | |
| Reasons for application for court order: | | Yes/No/ Other | PRE-YP EVALUATION 6.1b Is any locational information indicated in details about this harm? | | | POST YP EVALUATION 6.1c Did the YP identify this/any locational information this point? (i.e. 6.1a (i) – (v) | | |
| | | | Yes | No | If yes, what and where? | Yes | No | IF YES, what and where does this differ and in what way from YP’s evaluation? |

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

| | | | | | | | | |
|--|---|--------------|---|----|-------------------------|--|----|--------------|
| Q 6.1a | Does the judgment detail the harm or likely harm a child has suffered? Such as: | | | | | | | |
| | i) Physical neglect | | | | | | | |
| | ii) Emotional neglect/harm | | | | | | | |
| | j) Physical injury/abuse | | | | | | | |
| | k) Sexual abuse | | | | | | | |
| | l) Any other harms (to include failure to protect) | | | | | | | |
| Does the Judgment contain: | | Yes/No/Other | PRE-YP EVALUATION Q6.2(b) Is any locational information indicated in details about this harm? | | | POST YP EVALUATION Q6.2(c) Does this differ in any way from YP's evaluation? | | |
| | | | Yes | No | If yes, what and where? | Yes | No | If yes, how? |
| Q6.2 | Information about a parent's problems and failures of parenting? For example: | | | | | | | |
| | a) Mental/emotional health problems | | | | | | | |
| | b) Drug/alcohol misuse | | | | | | | |
| | c) Involvement in crime | | | | | | | |
| | d) Inability to protect a child | | | | | | | |
| | e) Housing problems? (e.g. parents could not provide stable home/constant moves/chaotic lifestyle) | | | | | | | |
| f) Information about conditions in the child's home? (e.g. it was clean/well kept, not clean/ warm, little/no proper bedding, lack of furniture, no food in cupboards, pets not cared for) | | | | | | | | |

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

| | | | | | | | | |
|--|---|--------------------------------|--|----|--------------|--|--|--|
| | g) Male or other violence/abuse in family? | | | | | | | |
| | h) Frequent changes of carer for a child or children? | | | | | | | |
| Q7 | The name of the court hearing the case? | | | | | | | |
| Q8 | The name of the local authority? | | | | | | | |
| Q9 | The name of social workers? | | | | | | | |
| Q10 | The name of child's guardian? | | | | | | | |
| Q11 | The name of any doctors in the case? | | | | | | | |
| Q12 | The name of any other professionals (e.g. a health visitor, teacher etc.)? | | | | | | | |
| Q13 | Does the judge criticise any professional or agency by name - if so, who? | | | | | | | |
| Q14 | Does the judge name any professional/agency that had acted well - if so, who? | | | | | | | |
| Potential for jigsaw identification – (B) | | Yes/no/ Other/ Possibly | PRE YP-EVALUATION | | | POST YP EVALUATION | | |
| | | | Q14.1b If yes, how many components? | | | Q14.1c Does this differ to the YP's view? | | |
| | | | Yes | No | IF yes, how? | | | |
| Q14.1a | In your view, do any components of jigsaw identification arise from information provided at Questions 6.2 – 14 above (see page attached - JI) | | 1 | | | | | |
| | | | 2-3 | | | | | |
| | | | 4-6 | | | | | |
| Q15 | Does it contain information that you think should be published on BAILII – if so, what information, and why? | | | | | | | |
| Q16.1 | Is there any <i>other</i> information in this judgment that you think should not be published – if so, what information, and why? | | | | | | | |
| Q16.2 | Is there any other information in the judgment that you think could be used to identify/trace a child or family – if so, what, and how might it be used? | | | | | | | |

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

| | | | | | | |
|--------|---|-----------------------------|--|--|-----------|--|
| Q17.1 | <i>Is there anything you liked about the judgment – if so, what, and why?</i> ¹⁰⁸ⁱ | | | | | |
| | Information sufficient to provide an understanding of the case: | PRE-YP EVALUATION | | POST YP EVALUATION | | |
| | | | | Q17.2c Does this differ from YP's view? | | |
| | | Yes/No | Q17.2b If No, what are issues /gaps? | Yes | No | If yes, how? |
| Q17.2a | Does the judgment provide enough information for anyone reading it to understand the reasons for the application and the decisions the judge made? | | | | | |
| Q18a | | Yes/No | Q18.b If yes /possibly, why? | | | Q18 Does this view differ to that of the YP? |
| | Do you think the child/young person in this case could be identified by friends, people at school/college or within their community when reading the judgment or newspaper reports from it? | | | | | |
| Q19a | What details from this judgment might you have used as 'search words' to see if any details appear on the internet? | | | | | Q19b How do these compare with those selected by the YP |
| Q20 | <i>Can you find any reporting about this case in local, national or online newspapers?</i> | Yes /No | <i>If yes (i) where was it reported? (ii) What do you think about the coverage? (was it fair, accurate, helpful/informative): (iii) If it was reported on a newspaper online site (e. Mail on-line) what did you think of any reader comments that were added?</i> | | | |
| Q21 | <i>(b) Can you find any evidence that information in this case has been shared on social networking sites?</i> | Yes /No | <i>If yes, (i) What did you find? (ii) What do you think about what you found?</i> | | | |
| Q22 | <i>Are there any other details in the judgment, or any reporting of it, that might identify the locality where</i> | Yes/No/ Possibly | <i>If yes, what details</i> | | | |

¹⁰⁸ Schedule 2 is a comparative schedule; greyed out questions are those which apply only to young people (see schedule 1) (i.e. not addressed by the researchers)

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

| | | | | |
|------|---|--------|--------------------------------------|--|
| | <i>the family live or spends time?</i> | | | |
| Q23a | <i>Is there anything else you would like to say about media access and reporting of children cases?</i> | | | |
| Q23b | Is there any indication in the judgment that a member of the press attended this/a hearing the case? | Yes/No | If yes, identify (page/para) – text: | |
| Q23c | Other than the standard preamble (page 1 - judgment) are there any other references to issues of privacy? | | If yes, identify (page/para) – text: | |

APPENDIX VIII

SCHEDULE 3 – RESEARCH OFFICER (RO)

| INDEPTH EVALUATION OF CL2 - PR (2018) TREATMENT OF DESCRIPTIONS OF SEXUAL ABUSE/RAPE OF CHILDREN IN SAMPLE JUDGMENTS (2020) | | | | | |
|---|--|---------------------------------|---------------------------------------|-------------|--|
| J ID | VARIABLE | CODING Yes/Some/ No/Other | JUDGMENT Paragraph reference(s) | COURT ID | |
| Q1 | Type of hearing | | | | |
| | Trial court | | | | |
| | <ul style="list-style-type: none"> a) Fact finding/threshold b) Threshold and welfare c) Placement (foster care, adoption freeing) d) Other (specific) | | | | |
| | Appellant Court | | | | |
| | <ul style="list-style-type: none"> a) Fact finding/threshold b) Threshold and welfare c) Placement – foster care adoption freeing d) Other (specify) | | | | |
| Q2 | Does judgment contain sexually explicit descriptions ? ¹⁰⁹ | | | | |
| Q3 | Is sexually explicit detail in more than one place/heading in the judgment? | | | | |
| Q4 | Is any sexually explicit detail imported from documents in other proceedings/pre application ? ¹¹⁰ | | | | |
| Q5 | Is there any attempt at a summary/abridgment of explicit descriptions of sexual abuse/rape? ¹¹¹ | | | | |
| Q6 | Is there any indication of the use of an annex document for sexually explicit material? ¹¹² | | | | |

¹⁰⁹ That is, explicit, graphic and intimate descriptions of what was done to a child and any other vulnerable young people in household (who may not be a minor by the time of proceedings/left the household).

¹¹⁰ For example, from criminal and/or private law proceedings, or interviews (e.g. ABE by police/social workers), other statements/evidence (unabridged/abridged) from others (social workers, nursery nurses, treating clinicians/experts, other children, foster carers etc.)?

¹¹¹ That is, abridging details of who did exactly what to a child, how, where, when, how often etc.

¹¹² That is, for sexually explicit material indicating it was not deemed suitable/appropriate for the public/internet arena.

PRIVACY AND SAFEGUARDING
PRACTICE GUIDANCE (2018) ANONYMISATION, AND THE TREATMENT OF DESCRIPTIONS
OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS

| | | | | |
|------|---|--|--|--|
| Q7.1 | Is there any indication of grooming of children? ¹¹³ | | | |
| Q7.2 | Is there any indication of trafficking ? ¹¹⁴ | | | |
| Q7.3 | Is there any indication of Modern-Day Slavery ? ¹¹⁵ | | | |
| Q8 | Is there any evidence indicating mother has a history/current association with men known to be a sexual risk to children ? | | | |
| Q9.1 | Does judgment indicate alleged abuser(s)/others recorded images of sexual abuse/rape of a child? ¹¹⁶ | | | |
| Q9.2 | Does judgment indicate pictures/videos of sexual abuse were copied to a laptop/home computer ? | | | |
| Q9.3 | Does judgment indicate abuser was uploading images of child sexual abuse (i.e. sending images via internet)? | | | |
| Q9.4 | Does the judgment indicate abuser/other downloaded images of sexual abuse of children and/or adult pornography (i.e. received child pornography from paedophile sites and/or adult pornography sites)? | | | |
| Q9.5 | Does judgment indicate abuser involvement in trading and exchanging images of sexual abuse on a 1-2-1 basis/via paedophile sites/chat rooms? | | | |
| Q9.6 | Does judgment address what should happen to any images contained on abuser's/wider family devices (mobile phones and computers)? | | | |

¹¹³ Including young people in household who, by the time of proceedings, may no longer be minors/subject to current proceedings?

¹¹⁴ See note 113 above.

¹¹⁵ See note 113 above.

¹¹⁶ On a camera, mobile phone and/or voice recorder.

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ACRONYMS

| | |
|------------|--|
| ABE | Achieving Best Evidence |
| BAILII | British and Irish Legal Information Institute |
| C&F | Child and Family |
| CA | Court of Appeal |
| Cafcass | Child and Family Court Advisory Support Service |
| CEOPS | Child Exploitation and Online Protection Command |
| CJ | Circuit Judge |
| CL1 | Checklist 1 (Practice Guidance (2018)) |
| CL2 | Checklist 2 (Practice Guidance (2018)) |
| CPS | Crown Prosecution Service |
| CPTSD | Complex Post Traumatic stress disorder |
| CSA | Child Sexual Abuse |
| DPA | Data Protection Act |
| FC | The Family Court |
| FJS | Family Justice System |
| FJYPB | Family Justice Young People's Board |
| GDPR | General Data Protection Regulations |
| HC | Family Division of the High Court |
| HRA 1998 | Human Rights Act 1998 |
| IT officer | Information technology officer |
| IRC | Interdisciplinary Research Cluster |
| IRH | Interim Resolution Hearing |
| IWF | the Internet Watch Foundation |
| JI | Jigsaw identification |
| LA | Local Authority |
| NCA | National Crime Agency |
| NSPCC | National Society for the Protection of Children |
| NYAS | National Youth Advocacy Services |
| PFD | President of the Family Division |
| PG | Practice Guidance |
| RO | Research Officer |
| SCR | Serious Case Review |
| UNCRC | United Nations Convention on the Rights of the Child |
| YP | Young People |
