



Refuge's Response to 'Confidence and confidentiality:  
improving transparency and privacy in family courts'  
Department for Constitutional Affairs

October 2006

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## Refuge

Founded in 1971, Refuge has grown from a small charity, pioneering the world's first refuge, to become the country's largest single provider of specialist accommodation and support for women and children escaping domestic violence. On any given day, we support over 900 women and children in our refuges and through our community based outreach services.

Refuge runs award winning media and advertising campaigns to raise public awareness of domestic violence nationally and internationally whilst also campaigning and lobbying for better provision for women and children experiencing domestic violence. In partnership with Women's Aid, Refuge runs the national domestic violence helpline.

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## 1 Introduction

1.1 Refuge regards the government's intention to improve the transparency of the family court system as positive and agrees with much of the rationale set out in the DCA consultation paper: *Confidence and confidentiality – improving transparency and privacy in the family courts*.

1.2 Since the proportion of family proceeding cases where domestic violence is a factor has been estimated to be as high as 70 per cent or more,<sup>1</sup> Refuge believes that the proposals put forward in the consultation paper must pay particular consideration to the needs and well being of domestic violence victims and their children.

1.3 Refuge is, therefore, pleased that the consultation paper explicitly recognises that "*in cases involving domestic violence, any consideration of others attending court (apart from those directly concerned in a case) must consider keeping a victim safe and free from reprisals from perpetrators and/or other people*".<sup>2</sup>

1.4 Refuge is also pleased to note that the consultation document acknowledges the need for domestic violence victims to be able "*to give evidence in court without fear of intimidation – and importantly, not to be deterred from taking legal action in order to protect themselves from further harm*".<sup>3</sup>

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<sup>1</sup> HMICA (2005) Domestic Violence, Safety and Family Proceedings

<sup>2</sup> DCA (2006:39) Confidence and confidentiality: Improving Transparency and Privacy in Family Courts

<sup>3</sup> Ibid

1.5 Nevertheless, Refuge is concerned about how these issues will be addressed in practice. This is, in large part, due to the findings of the 2005 HMICA<sup>4</sup> thematic review into the handling of domestic violence by the Children and Family Court Advisory and Support Service (CAFCASS) and the administration of family courts in Her Majesty's Courts Service (HMCS). Not only did these findings reveal that many family court professionals do not sufficiently understand the nature of domestic violence but no systematic process of risk assessment was found to be in place.

1.6 Although CAFCASS has implemented an action plan in response to the HMICA inspection (including a training programme and a domestic violence policy and toolkit) and HMCS has developed a national strategy for dealing with family cases where domestic violence is a factor, such developments take time and Refuge is not confident that the assurances needed to prevent harm to domestic violence victims and their children are currently in place.

1.7 Other concerns that Refuge has about the proposals outlined in the consultation paper are set out in more detail within the body of the response.

## 2 Response to consultation paper questions

**Question 1: Make changes to attendance and reporting restrictions consistent across all family proceedings.**

**2.1.1 In principle do you agree that attendance arrangements and reporting restrictions should apply consistently across all family proceedings?**

2.1.11 Refuge agrees that it is logical to standardise attendance arrangements and reporting restrictions across the various different levels of the family court system. A move towards greater consistency in court administration is in line with the decision to bring together the High Courts, Crown Court, county courts and magistrate's courts to form the Courts Service in April 2005.

**2.1.2 Would you exclude any types of family proceedings from the attendance and reporting restrictions proposed?**

2.1.21 With the exception of adoption proceedings,<sup>5</sup> Refuge would not exclude any types of family proceedings from the attendance and reporting restrictions proposed. One of the objectives of opening up the family courts should be to help the general public and interested professionals understand the principles behind judge's decisions and practice and so gain an insight into the *overall* working of the family court system.

**Question 2: Allow the media, on behalf of and for the benefit of the public, to attend proceedings as of right, though allowing the court to exclude them where appropriate to do so and, where appropriate, to place restrictions on reporting evidence.**

**2.2.1 Do you agree that the media should be able to attend family courts as of right?**

<sup>4</sup> Her Majesty's Inspectorate of Court Administration

<sup>5</sup> See answer to 2.1.11 below

2.2.11 Since the media are already able to attend hearings in the family proceedings courts<sup>6</sup> and the Court of Appeal, Refuge believes that there is merit in the case for standardising this practice across the whole of the family court system. However, such a move should consider the impact that media presence will have on vulnerable children and adults.<sup>7</sup> Refuge also recommends that, in order to distinguish between the press and the public and ensure the safety of all parties to the proceedings, a system of media accreditation should be established.

2.2.12 The consultation paper argues that greater public scrutiny of the family justice system can be achieved by increasing access to the outcomes of family court decisions, either through press reporting or through published judgments. Yet the consultation paper itself acknowledges that the media 'rarely attend' family court proceedings in the UK. Furthermore, although anonymous judgements are increasingly published with permission for them to be reported, take-up by the media has been relatively low - probably because more 'newsworthy' hearings are usually held in the higher courts.

2.2.13 In order to realise the goal of increasing public access to the outcomes of family court decisions, Refuge is surprised that the DCA has not considered the role that objective and independent research into family court proceedings could play. Outcome studies of family court decisions are fewer than for any other part of the justice system<sup>8</sup> yet are vital in scrutinising family court practice and examining the impact of particular social policy decisions. The findings of such research could then be shared by the media to a wider professional and public audience.

2.2.14 Refuge believes that more needs to be done to improve general understanding of how the family justice system works. This might help address concerns that coverage of the family courts by some sections of the media reflects ignorance about what the work actually involves. In this regard, Refuge suggests that the government considers the HMICA (2005) recommendation for CAFCASS to 'devise and disseminate a comprehensive pack about family proceedings to other agencies, stakeholders and families' and extend this to include the media and general public.

## **2.2.2 Do you think that the court should be able to exclude the media from family courts if appropriate?**

2.2.21 Refuge is aware that attending court is a nerve wracking experience for most people. Although there can be clear differences between family and criminal courts, those attending family court hearings as parties can feel just as vulnerable as those attending a criminal trial. Refuge therefore believes that the family court should be able to exclude the media from certain parts or all of the proceedings. An example might be during the giving of evidence which can be traumatic for victims of domestic violence and children, particularly when it is of a sensitive or sexual nature. In circumstances where there is a strong public interest in the case, then the media (following consent of the victim) could be allowed access to the transcript instead.

## **2.2.3 Should exclusion depend on the type of family proceedings and/or certain parts of hearings and/or some other reason?**

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<sup>6</sup> Except adoption cases or unless they are specifically excluded for a particular reason

<sup>7</sup> See answer about media exclusion below

<sup>8</sup> Douglas, A (2006) Open or Shut Case, The Guardian, 19 April

2.2.31 Refuge believes that any decision taken by the court to exclude the media from family proceedings should be taken alongside the parties themselves. Furthermore, parties to the case and children subject to the proceedings should be able to initiate this process by asking the judge to include or exclude the media from all or part of the proceedings according to their own wishes. Indeed, the consultation paper acknowledges that, there will be *“some people who would like to tell their story, would like the public to witness their court experience and know what happened to them, and allow the falsely accused to have a public witness”*.<sup>9</sup> This recommendation is consistent with the HMICA (2005) inspection finding which concluded that it is important for the parties to be able to participate in the system and not to be ‘subjected’ to it.

**Question 3: Allow attendance by others on application to the court, or on the court’s own motion.**

**2.3.1 Do you think any others should be able to attend family courts?**

2.3.11 Victims of domestic violence are likely to experience a high level of fear and anxiety just from being in the same court building as the perpetrator. Since the attendance of other individuals might well exacerbate these feelings and give rise to inhibition and even intimidation, careful consideration should be given to other people interested in attending family court proceedings. Particular attention will need to be paid to associates and/or family members of the perpetrator.

**2.3.2 If so whom?**

2.3.21 In cases with a domestic violence element, independent domestic violence advocates (IDVAs) or other professional support persons should be able to attend. Family court proceedings are just one part of a process that domestic violence victims have to go through so it important that there is someone who can support them through the hearing, help them deal with the outcome and provide guidance in moving forwards.

2.3.22 Whilst the ‘accused’ party might argue that they would be at a disadvantage if a professional support person attended on behalf of a domestic violence victim, the reality is that it is the domestic violence victim who is at a disadvantage.<sup>10</sup> It is for this reason that Refuge is recommending that a professional support person attends family court proceedings to create a ‘level playing field’ and not a friend or relative.

**2.3.21 Attend as a right?**

2.3.211 Refuge does not believe that any individual should be able to attend the family courts as a right.

**2.3.22 Need to apply?**

2.3.221 Every individual expressing a wish to attend family court proceedings should have to apply to do so. This will help ensure that attendance is not being sought for personal gain i.e. to gain access to a parent or child who has been exposed to domestic violence.

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<sup>9</sup> DCA (2006:39) Confidence and confidentiality: Improving Transparency and Privacy in Family Courts

<sup>10</sup> HMICA (2005) ‘Domestic Violence, Safety and Family Proceedings’

2.3.222 Refuge recommends the establishment of clear policies and protocols to determine how applications should be screened, with each applicant having to demonstrate why it is in the public's interest for them to attend or why it is beneficial to the party/case. Advanced training in the dynamics of domestic violence and risk assessment will need to be provided to those practitioners responsible for making the decision and it will be vital to ensure the involvement of all parties to the proceedings in the decision making process.

**Question 4: Ensure reporting restrictions provide for the anonymity of those involved in family proceedings (adults and children) while allowing for restrictions to be increased or relaxed, as the case requires.**

**2.4.1 Do you agree that the current restrictions which prevent publication of information intended, or likely, to identify a child being involved in family proceedings should be extended to prevent the identification of adults involved in proceedings?**

2.4.11 Refuge supports extending reporting restrictions to prevent the identification of adults involved in family court proceedings. Restrictions should apply with respect to reporting the names, addresses and occupations of the parties and witnesses as well as details about their GP etc. In cases with a domestic violence element it is vital to recognise that sharing identifying information both in court and to the general public can endanger the lives of victims.

2.4.12 Refuge is concerned about the inconsistency between the reporting of family and criminal proceedings. As the consultation paper acknowledges, people in small communities may well be able to make the link between criminal proceedings (where adult names are printed) of neglect or abuse and a care case which often follows (but where anonymity is retained).

2.4.13 Refuge is also concerned about the public identification of professionals such as social workers and expert witnesses. Media reporting of the names of professionals could lead to individuals bearing the brunt of inadequacies within systems (such as poor policy decisions, lack of resources and poor supervision), having their reputations destroyed and being subject to reprisals that might include threats against themselves and their families, abusive behaviour, physical assault and damaged property. The identification of professionals may even deter social workers from entering into family justice work or expert witnesses from giving evidence in the first place. In light of these considerations, Refuge believes that judges must exercise careful discretion when it comes to allowing the names of professionals to be reported.

**2.4.2 Do you agree that the court should have the power to lift and review the ban and, if so, in what circumstances?**

2.4.21 Courts should have the power to lift and review the ban on reporting instructions if it is necessary to safeguard the welfare of the child or adult involved in the case. An example of such circumstances is, as the consultation paper suggests, when a court needs to lift the ban in a child abduction case (which is, of course, a criminal matter).

**2.4.3 Do you agree that, together, the blanket ban and power to impose additional reporting instructions would provide the courts with adequate power to ensure anonymity?**

2.4.31 As mentioned in the answer 2.4.12 above, it may be difficult to ensure anonymity for families involved in care proceedings when they have also appeared before the criminal courts. As such the imposition of additional reporting restrictions could help to protect the anonymity of children involved in such circumstances.

**2.4.4 Do you think that courts should consider the matters listed in deciding what additional reporting restrictions to impose?**

- The interests of any child or vulnerable adult?
- The safety of parties and witnesses?
- The interests of the administration of justice?
- Where evidence is of an intimate, sexual or violent nature?
- Where confidential information is involved and others attending would damage their confidentiality?

2.4.41 Refuge believes that the first, second and fourth points are all very important. However, the safety of parties and witnesses is particularly important for victims of domestic violence.

**Question 5: Introduce a new criminal offence for breaches of reporting restrictions**

**2.5.1 Do you agree that publication restrictions should apply only to the public at large? (i.e., individuals involved in proceedings concerning children can tell specified others in specified circumstances).**

2.5.11 Refuge agrees that publication restrictions should only apply to the public at large. Yet at the same time, Refuge recognises that the confidentiality rules have led to one sided public debates. Anyone can publicly criticise their former partner for not complying with a court contact order, but it would be contempt of court in any individual case to publicly say that the court made a contact order which is not safe for the child.<sup>11</sup> It is for this reason that Refuge believes that the dissemination of outcome studies regarding family court decisions are so important.

2.5.12 Refuge continues to be supportive of the changes to the Court Disclosure Rules in October 2005 which allowed parties of family court proceedings to share information written in reports with a restricted group of people including a spouse, close family member or lay advisor. This has enabled a greater range of people to give help and support to victims of domestic violence without the risk of committing contempt of court or a criminal offence. What is less clear is whether these individuals are actually able to see the papers of a case. Refuge believes that they should be.

**Question 6: Make adoption proceedings a special case, so that there is transparency in the process up until the placement order is made, but beyond that proceedings remain private.**

**2.6.1 Generally, do you agree that adoption proceedings should be treated differently from other family proceedings?**

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<sup>11</sup> Women's Aid (undated) Evidence submitted to the Select Committee on Constitutional Affairs

2.6.11 Yes, it is very important that prospective adoptive parents are not identified by the media.

2.6.12 Refuge has a strong interest in knowing a) the numbers of children placed for adoption where domestic violence was a significant factor in making that decision and b) the nature of specialist domestic violence assessments made and interventions tried with the birth parents, particularly the non-violent parent, prior to removing the child/ren.

**2.6.2 Specifically, do you agree that, once a placement order has been made, the remainder of the adoption proceedings should be in private?**

2.6.21 Yes

**Question 7: Whether we should make special provisions for HMICA and CSCI inspectors and specified other groups?**

**2.7.1 Currently, HMICA and CSCI Inspectors, MPs and Lead Members for local authority Children's Services must apply to attend family proceedings. Do you think the need to apply should be removed so that they are able to attend as of right?**

2.7.11 As Refuge states in answer 2.3.211, no individuals should be able to attend the family court as of right. Whilst Refuge believes that the argument set out in the consultation paper in this regard is strong, the fact remains that these individuals might have particular 'interests' in a case which should be declared.

2.7.12 Refuge believes that, whilst it is important that these individuals do apply to attend family court proceedings, more solid and accurate information relating to the operation of the family court system could be gained through learning about cases in aggregate – through an internal monitoring mechanism and/or high quality research findings.

**Question 8: Options on the further provision of information**

**2.8.1 What information do you think an adult who has been involved in family proceedings as a child would find helpful (as an adult) about those proceedings?**

2.8.11 Refuge believes that the provision of full information to adults who were involved in family proceedings as children is extremely important. Having an independent and neutral source of reliable information is necessary since some children (especially those children in private law proceedings who have had no contact with CAFCASS) may currently have to rely on no or only partial information from their parent(s).

**2.8.2 What type of information would be most helpful?**

- An accessible recording held on court file?
- Copy of orders
- Summary of judgement
- Full transcript of judgement

2.8.21 The information that would be most helpful includes, in Refuge's opinion, an accessible recording held on court file and a full transcript of the judgement. Since the content of these

sources of information might be distressing or complex, Refuge recommends that every adult is offered support in processing the information.

### **2.8.3 Please list any other types of information**

2.8.31 The HMICA (2005) report makes reference to the possibility of using the video links installed for vulnerable witnesses as a mechanism that would allow older children to watch some of the proceedings concerning their future. Copies of video tapes might, therefore, also be useful sources of information.

<b>Question 9: Practical considerations</b>
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**2.9.1 If proposals are implemented there will be implications for court resources, in terms of increasing security, changing listing procedures, the time taken for dealing with applications re attendance and reporting and any objections. Are there any other practical considerations that you think should be taken into account?**

2.9.11

- Time will be needed to discuss reporting restrictions or applications to attend court with parties to the proceedings and any children who are subject to the proceedings.
- Training will be required for all court personnel, social workers and expert witnesses.
- Accreditation programmes will be necessary for media representatives.
- Additional space will be required in court rooms.