

BBC Radio 4: Woman's Hour: Openness in Family Courts

Written by [Louise Spitz](#)

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JENNI MURRAY: Presenter

Now as you may have heard in the news, there are to be changes in the way the family courts conduct their proceedings. At the moment, hearings are held entirely in private except in very exceptional circumstances, and a number of recent cases have raised the question: to ensure justice is done, must it not be seen to be done?

These have been cases where controversial decisions have been made about children being taken away from their birth parents and adopted, or as some fathers' organisations have argued, where there's allegedly been bias in favour of mothers when residence is being decided.

Well the minister of state responsible for family justice is Harriet Harman and she's announced that she will be allowing the press into family courts, although the public won't be admitted. Families shall be guaranteed anonymity and children will be given details of how decisions were made when they're 18.

Well I spoke to her earlier and she explained why she wants the press to see what happens, but not the public.

HARRIET HARMAN MP: Constitutional Affairs Minister

I think that we need the family courts to be more open, more accountable, but we want to make sure that we try at the same time to protect the personal privacy of families and particularly of children.

JENNI MURRAY:

How much, though, do you suppose, the press will actually bother if they can't report personal and possibly sensational details, except where a case is known to be very controversial?

HARRIET HARMAN MP:

Well they'll be able to report the facts of the case; they'll be able to report the evidence and the judgement. They just won't be able to give the names, and I think that's... that's right. But I think that it's... letting the press in and allowing them to report subject to anonymity, is one of four proposals that we're discussing today and that we want to consult people on.

The first is about the press, the second is about how the courts account to the children later on when they become adults, for the decision the court has made that affects them.

Thirdly it's about a beefed up inspection regime, and finally it's about local authority councillors who oversee the social workers who play such an important role in the courts - and also MPs and ministers - actually being more involved in, and understanding the court process that we have to legislate and take responsibility for.

JENNI MURRAY:

But how are these proposals going to satisfy those fathers' organisations who claim there's bias if the individual father isn't allowed to identify himself?

HARRIET HARMAN MP:

Well of course under our proposals, the parents, or anybody, could apply for the anonymity rules to be lifted, and the court would consider that on a case-by-case basis.

But I think that my proposals are not to satisfy any particular interest group, although, you know, there's very strongly-held feeling; a lot of mothers complain that contact is ordered, that they've got to allow the child to see the father even though they allege that the father has been violent to them or the child. There's a lot of complaint there. There's complaints from fathers' organisations saying they're not allowed to see their children. There's also a lot of complaints about people saying that social services have taken away their children without proper evidence.

So I think that because the court is making very tough, very difficult decisions that are... are lifelong in their implications for people who are involved, it's very important that we should be satisfied that they are operating properly, and that they have public confidence, and that requires a measure of accountability and openness that frankly we don't have in the family courts at the moment.

JENNI MURRAY:

There was a taste of what real openness might look like during the... the Clayton [phonetic spelling] case recently, where the judge did grant the parents permission to discuss how they'd managed to work out a settlement. How will you guarantee that children do continue to be protected?

HARRIET HARMAN MP:

Well I think in that case, that was a court hearing an application, and agreeing that the father and the child's name should be put in the public domain, and that's about an individual decision made by that court and is only applying to that individual case.

Obviously a balance has got to be struck between having public confidence and public accountability, but also having personal and family privacy, and we hope that we'll hear from people during the course of our consultation whether or not we've got the balance right there.

JENNI MURRAY:

How much do you envisage it might be difficult if let's say local papers are allowed to sit in on intimate family details? Because even if names aren't used it's often not difficult for gossips to know who's involved.

HARRIET HARMAN MP:

Well I think that they'd have to not report information which would either directly identify the child or the parents by giving the name, or by giving such detail or such information that would make it possible for them to be identified by virtue of that information.

I was talking to a Cafcass officer, who's a sort of court welfare social worker who looks after the interests of the child, who works in the Isle of Wight, and she was saying 80 per cent of the people in the Isle of Wight read one local newspaper, and, you know, people could very easily identify if there was quite a lot of detail put in, which individual child that was.

So I think that with greater inspection, with local councillors being able to have a clearer idea of what social workers are doing in court, MPs more involved and understanding the justice system, plus accountability to children, plus press allowed in, I hope that we've got a measure of accountability, but without, you know, adding to the problems of children and families by having their privacy invaded.

JENNI MURRAY:

Why do you think it's important for children to receive information about how decisions were made about their future when they're 18?

HARRIET HARMAN MP:

Well, I think that what... what happens is the court will make a decision perhaps when a child's a baby or, you know, when they're nine, that affects that child for the rest of their life. 'Your father is not allowed to see you' or 'You can no longer live with your mother, you've got to live with your father',

or ‘Despite the fact that your mother wants to keep you with her, you’re going to be placed for adoption.’ These are huge decisions which are lifelong in their implications, and it just seems to me that it’s right that the court should account to the child for the decision that they’ve made that is so important to the child’s life.

JENNI MURRAY:

How much have you been influenced in all this by your sister Sarah, who was explaining in *On the Ropes* this morning how she nearly lost her job as a solicitor because she’d passed all these anonymous details of a controversial case, to you and to some journalists?

HARRIET HARMAN MP:

Well, my sister Sarah has been a solicitor acting in childcare proceedings for several decades, has... as has one of my other sisters actually, and also my mother acted in childcare proceedings too. So it’s been very much something we’ve been steeped in as a family, but I’ve also listened very carefully to Cafcass, you know, the court welfare officers’ organisation, and listening to family court judges and just, you know, taking wider... having wider discussions with people, and I think there is a general view now that although it was laudable for the courts to want to sit in private to protect privacy, when very hard decisions are being made which are very important for people’s lives, there’s got to be more openness and accountability.

JENNI MURRAY:

Harriet Harman.

So how will her proposals go down with the organisations representing parents, the lawyers, and the press?

Well, John Sweeney is a BBC journalist who’s campaigned for more openness, Duncan Fisher is chief executive of Fathers Direct, and Louise Spitz, who’s a solicitor who specialises in family law.

Louise, what’s your reaction to the minister’s proposals?

LOUISE SPITZ: Solicitor, Family Partner, Manches

My reaction is largely favourable. There are some concerns about the degree of openness to the public, which appears, from what I’ve heard - and I haven’t yet had the opportunity to read the consultation paper - but it appears to be extremely limited.

Harriet Harman mentioned local councillors, she mentioned MPs, and they are people to whom there is often recourse when constituents do not have access to any other help or advice, and it may be very important for them to be able to give full information to their representatives in order to lobby for a particular outcome.

JENNI MURRAY:

To what degree, Duncan, does it satisfy you?

DUNCAN FISHER: Chief Executive, Fathers Direct

Well I’m also cautiously optimistic. There’s a... I want to make a couple of points about the third thing that Harriet mentioned, which isn’t being widely discussed, which is about the monitoring and the inspection.

I think what we have in the family courts is that there isn’t yet within the whole of our society a consensus about what the best interests... how the best interests of children are met in the separated families.

We... we do know a lot. But there’s still a lot of disagreement, and a lot of the research is not yet widely known. And so we have different opinions about what is good for children, and also very

different opinions about men and their capacities and attitudes when it comes to children. And that diversity of opinion exists within the family courts, within the individuals who run the courts — the officers, the judges — and we need to know how that difference of opinion impacts on what the courts actually do, and we need to know, to learn from what courts are doing.

And if we find — and we don't know — but if we find that there are different patterns operating between different courts or between different judges, we do need to know that, and then we need to say: well are there some patterns which are better than others? And are... and if so, what are we going to do about it?

JENNI MURRAY:

John, what difference would it make to the way you're able to do your job?

JOHN SWEENEY: BBC Journalist

Not much. The... as I understand it, the default position is anonymity to protect the children, and you're instantly in this jeopardy that people have got. If they say they've been a victim of a miscarriage of justice, they're going to lose their children forever. Social Services have the power, through the family courts, to take their kids away. And if the... you protect the child's anonymity, you can't... parents can't say, as themselves, I'm innocent. And as a result of that, nothing changes.

And you see you've got this problem of... because you're protecting the child's anonymity, you don't allow the parents natural justice, it seems to me.

JENNI MURRAY:

But how much public interest, John, is there in the family court cases, as opposed to those in the criminal courts which are open to scrutiny?

JOHN SWEENEY:

Well Jenni, to answer your question - I mean I've got to bear in mind that I'm... sitting next to me is an injunction which tells me: if you disobey this order, you may be found guilty of contempt of court and may be sent to prison or be fined or have your assets seized.

Now that injunction — I've taken legal advice on this — is in relation to Nicky and Mark Hardingham, who lost three children because of a... an action by Norfolk Social Services — I'm allowed to tell you this — and they had a fourth child, and now I've got to stop, and I can't tell you any more.

I can tell you that 3.7 million people watched our programme, and their story was on the front page of the Mail on Sunday. But I can't tell you any more.

So the answer to your question is, there is a huge amount of public interest, but the problem is you can't tell the stories. Let's compare these people who I can't go into the details with, with the NatWest Three. Now both sets of people claim they're innocent. One set of people happen to be multimillionaire people in the City who've been accused of something criminal in the States and we know all about their case.

This other couple have lost their first three children and are fighting to keep their fourth child, and we can't discuss the details.

JENNI MURRAY:

So...

JOHN SWEENEY:

And for me to tell you the details, I go to prison. How can that be fair?

JENNI MURRAY:

Louise, how can that be fair? I mean there clearly is public interest in the family courts, and yet the

journalists still won't be able to report fully on it.

LOUISE SPITZ:

The interest is in the points of principle, rather than in the individuals concerned. One of the great issues that the funding courts have to deal with, is that each case turns on its own facts, and Duncan I think it was, referred to the monitoring of different court decisions and establishing whether there were trends in one which weren't reproduced in another.

It is very much a system where each family is considered as individuals, and there can't always be general principles drawn out of an individual case. They are hard cases, they turn on their own facts, and the fact remains that exposure of the children concerned to identification, to publicity, may have lasting and very damaging effects.

I wanted to pick up here on the point made by Harriet Harman about later life judgements. The availability of records to children at the age of 18 to establish exactly what went on and why decisions were made; why were those children taken away from their parents into care? Why was the fourth child, as soon as it was born, taken into care?

JENNI MURRAY:

Duncan, how much sympathy do you have with John's worries?

DUNCAN FISHER:

On individual cases?

JENNI MURRAY:

Yeah.

DUNCAN FISHER:

Yeah. Well I think, I mean one of the problems with... I mean this whole thing, especially when it comes to separation and divorce, is that every case is, you know, the cases that come to court are generally a big mess, and... and it's actually very difficult to report on them and get, you know, and get a balanced argument which is comprehensible to the outside.

But I want to come back on... on Louise's point about, you know, we can't have principles. That's true; I mean every case is different. But every case is not judged differently, and patterns emerge purely through statistics, purely through that, and the question is: what happens if you have different courts where different patterns are emerging, and where parents can see that, so they could say, well this court has this kind of... you know, is judging in this kind of way and using, you know, seeming to use these as principles, and this court here down the road has a different set of principles, and I think that could be very controversial. But I think it's... it's necessary, that kind of accountability is necessary, because that then forces us to have a debate about what... you know, what... is one pattern better than the other? And if so, then one pattern is doing less well for children than another...

JENNI MURRAY:

Well Duncan...

DUNCAN FISHER:

[Continues] ...and then we have a debate.

JENNI MURRAY:

Duncan Fisher, John Sweeney, Louise Spitz, this discussion will go on I'm sure, but thank you all very much for taking part.

And if you'd like more information, do call the Action Line; it's 0800 044 044, or you can visit the website, that's www.bbc.co.uk/radio4/womanshour, where you can also share your views on the

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