



Ministry of
JUSTICE

A study of the impact of changes to court rules governing media attendance in family proceedings

Summary of responses to stakeholder feedback

January 2010

Introduction

On 27 April 2009, new rules of court were implemented which provided accredited members of the media with the right to attend most family court cases across all tiers of court, except for the time being, in placement and adoption proceedings and in judicially assisted conciliation or financial dispute resolution appointments. Previously, the media had only been able to attend family court cases in family proceedings courts – the new provisions now allow for media attendance in the county courts and High Court.

The aim of media attendance is that family justice is not only done, but seen to be done. This open and visible justice aims to ensure accountability through professional and public scrutiny of the decisions of the court and increase public confidence in the way the family courts work. This is balanced with the right of parties to apply, or the court of its own motion, to exclude the media where it is in the interests of the child or for the protection of a vulnerable witness.

To enable MoJ Family Law and Justice Division better understand how the new rules have been operating in practice a two pronged approach was adopted to gather information on the impact of the new rules in the six months following implementation. This consisted of:

- An online questionnaire for family court managers
- A ministerial letter to key family stakeholders inviting views

Both approaches were limited to collecting general views and anecdotal evidence on how the rules have been operating.

The primary source of evidence came from the family court managers who took part in the e-survey which gathered anecdotal evidence on what effect the new rules had on the operation of the courts from the frontline perspective. It also sought views on whether the new rules had worked well or whether there had been difficulties. The survey included both closed answers and free text options and was open for completion between 11th November 2009 and 16th December 2009. In total 124 responses were received.

There are 174 county courts which deal with a range of family matters and around 170 Family Proceedings Courts (FPCs) which are specialist magistrates' courts dealing with family matters. When looking at the number of courts in isolation this represents approximately a 36 percent response rate. However this is almost certainly an underestimate due to the fact that around 50-55% of FPCs are co-located with and managed by a county court, and would therefore have provided a joint response to the survey. Responses to the survey are detailed at part one.

To gather systemwide feedback on the operation of the media attendance rules Family Justice Minister Bridget Prentice wrote to a range of professional groups on the 12 November 2009 seeking views on how the rules had been operating.

102 stakeholder letters were sent in total. 13 responses were received to the Minister's letter, which equated to an overall response rate of 13%. Respondees included members of the judiciary, legal advisers, lawyers and children's organisations and are summarised at part two.

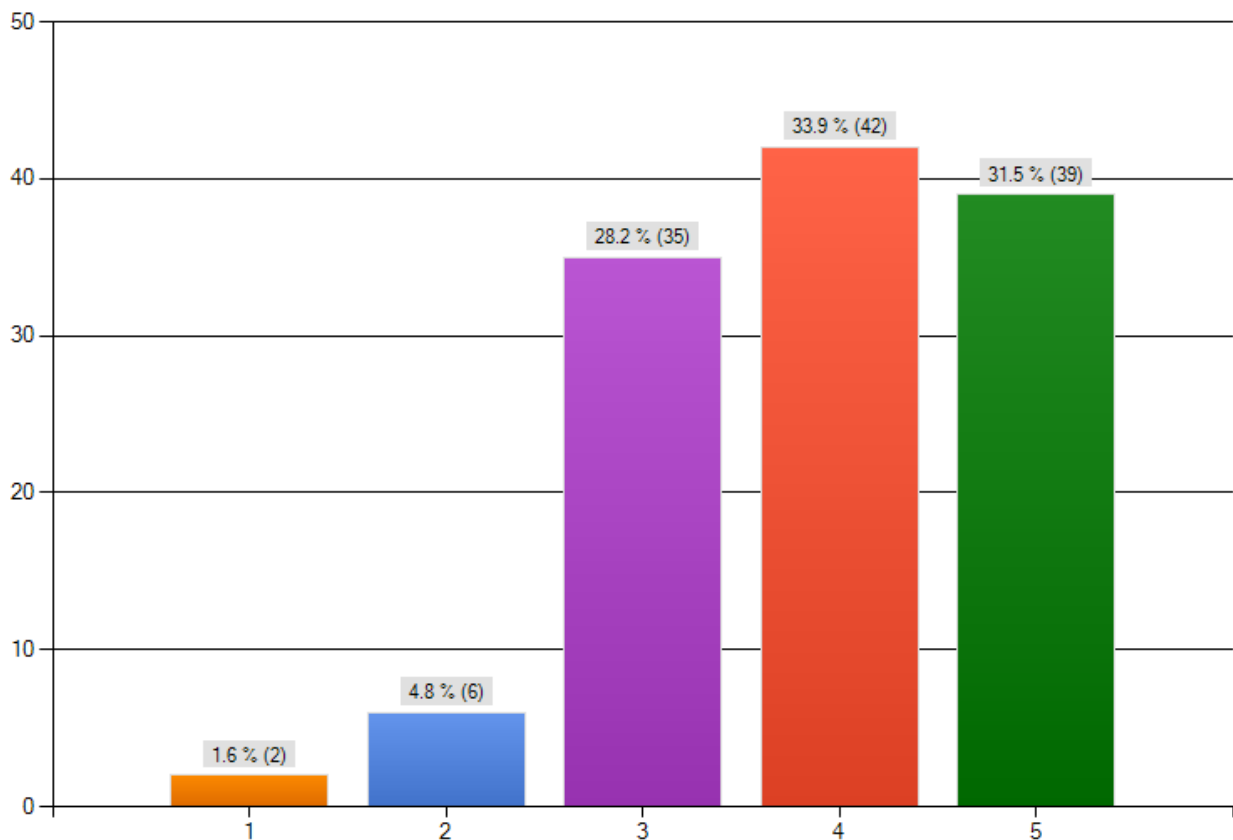
We acknowledge that there are limitations to this study, such as the poor response rate from some HMCS regions, limited number of responses to the stakeholder questions and the fact that the views of parties or children involved in family proceedings have not been sought as part of this assessment. However, given the consistency of the overall findings, a wider survey is unlikely to have provided much in the way of additional information.

Part One – Responses to Court Manager Survey

Question 1: On a scale of 1 to 5, how informed do you currently feel about the new media attendance rules in family proceedings? (1 = Not informed; 5 = Well informed).

Encouragingly 65% of respondents to question one said that they were currently well informed or fairly well informed about the rules governing media attendance in the family courts. Only about 2% of respondents said that they were not informed.

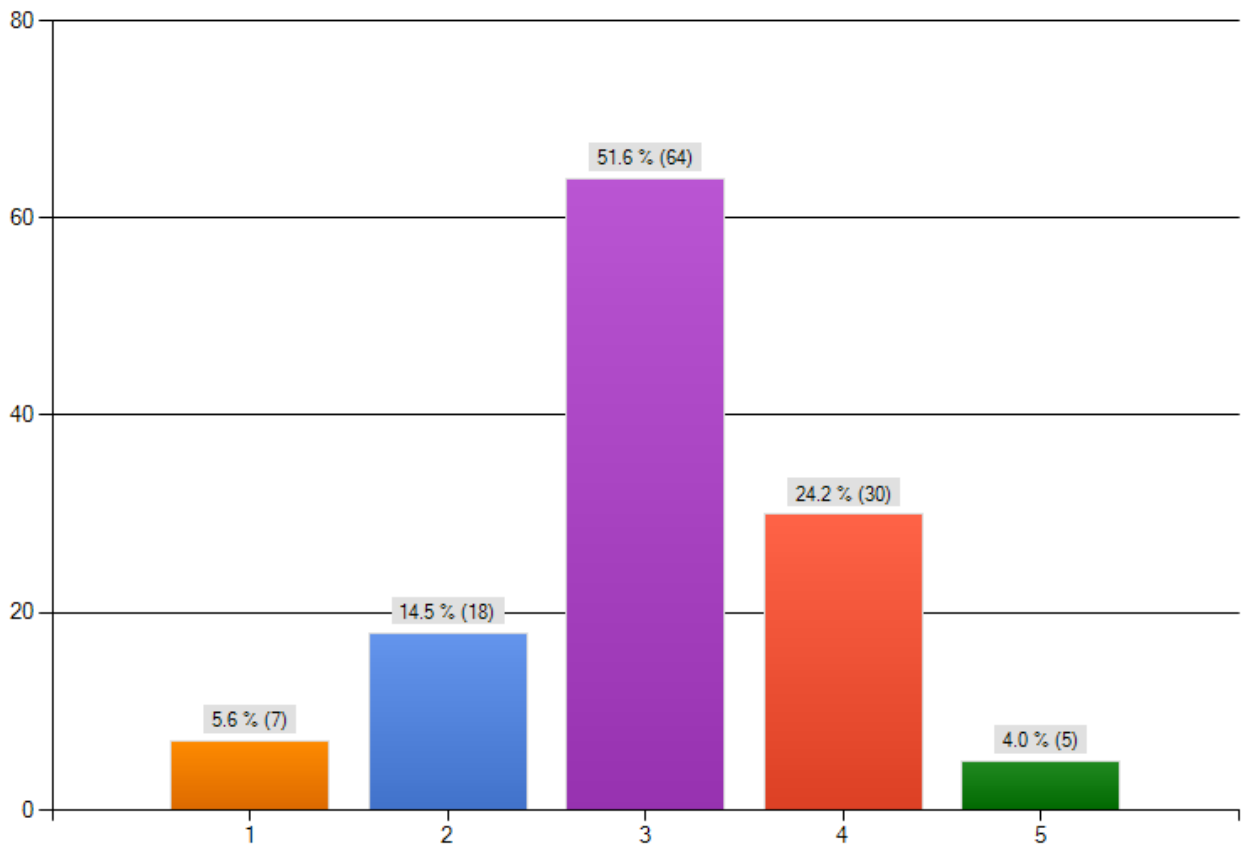
On a scale of 1 to 5, how informed do you currently feel about the new media attendance rules in family proceedings? (1 = Not informed; 5 = Well informed)



Question 2: On a scale of 1 to 5, how informed do you feel parties and their legal representatives are about the new media attendance rules in family proceedings? (1 = Not informed; 5 = Well informed)

Just over half the respondents to the survey (52%) replied that they felt that parties and their legal representatives were in the mid range between informed and not informed about the media attendance rules. This contrasts less favourably with the awareness of court staff but over ¾ of respondents still indicated a view that awareness was in the mid to upper ranges. MoJ may wish to consider doing more to raise public awareness of the new provisions based on these results.

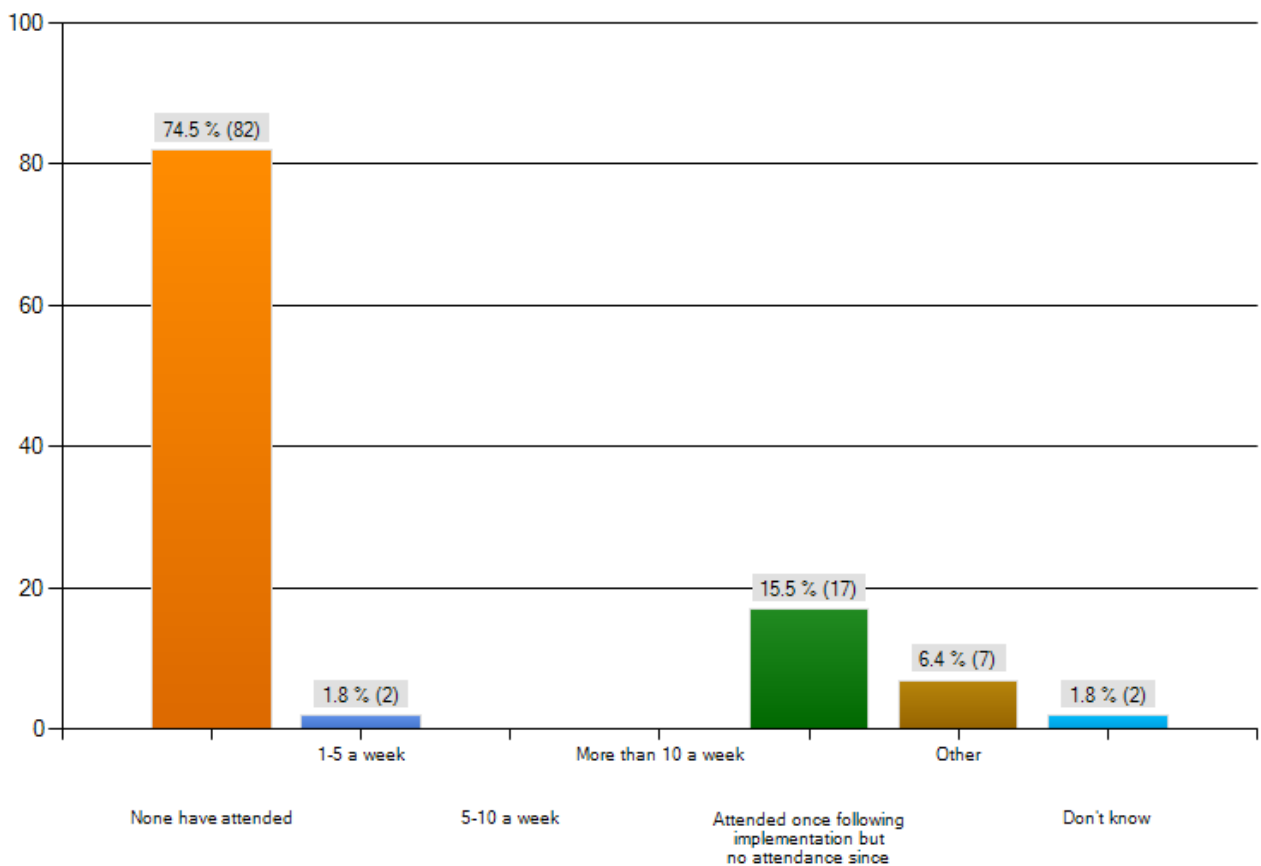
On a scale of 1 to 5, how informed do you feel parties and their legal representatives are about the new media attendance rules in family proceedings? (1 = Not informed; 5 = Well informed)



Question 3: Please estimate the average weekly number of family cases media representatives have attended at your court since the new rules were implemented:

Almost 75% of respondents were not aware of any instances of the media attending family proceedings in their court since the introduction of the media attendance rules on 27 April 2009. Of those who did indicate that the media had attended the majority indicated that it was only one instance.

Please estimate the average weekly number of family cases media representatives have attended at your court since the new rules were implemented:



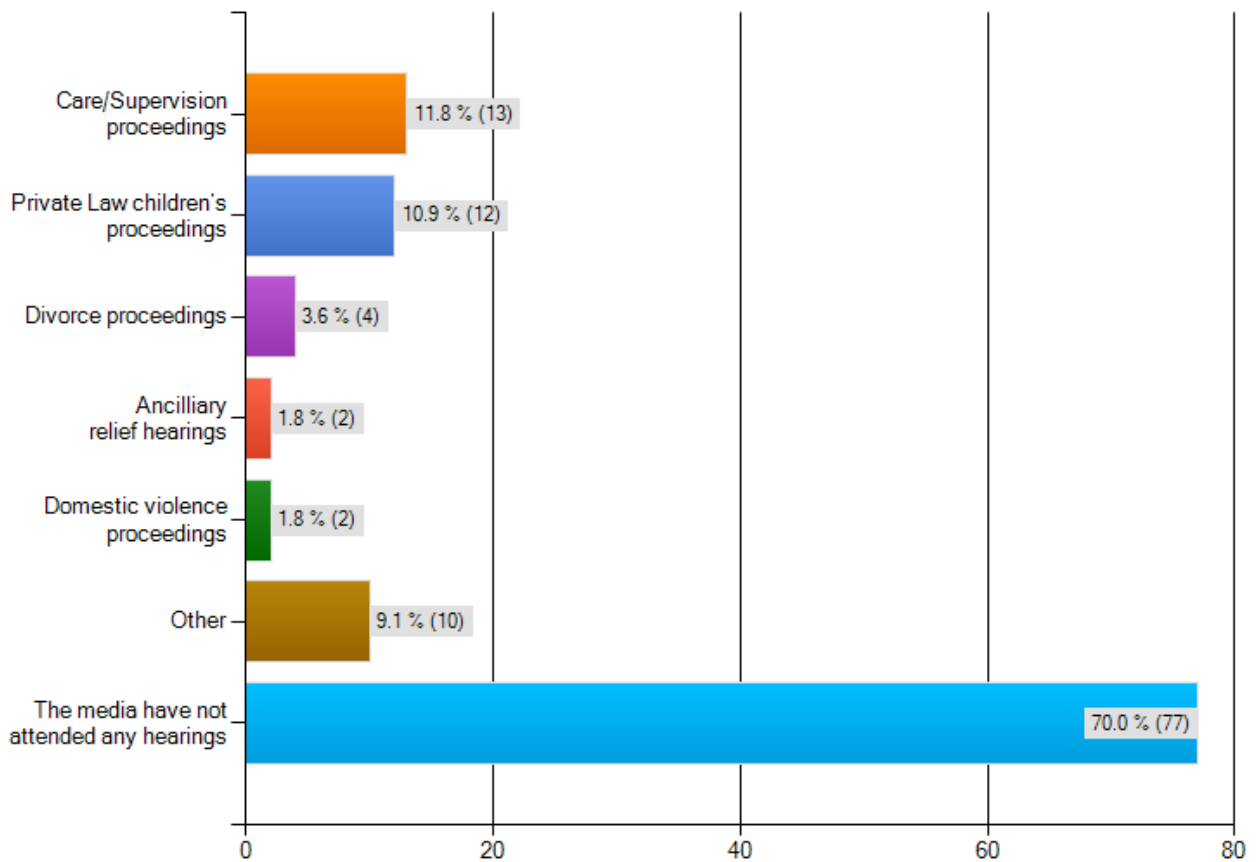
What court staff said:

“We worked with the editor of the local newspaper and we arranged for their senior reporter to spend a day with our DFJ in court. Since then they have attended on an ad hoc basis but very rarely.”

Question 4: In your opinion, which types of family proceedings have the media exercised their right to attend the most.

The vast majority of respondents (70%) replied that the media had not attended any hearings. Where it was indicated that the media had exercised their right to attend, the majority of respondents (25) were of the view that Children’s (public and private) proceedings were attended the most.

In your opinion, which types of family proceedings have the media exercised their right to attend the most. (Select all the types of cases that apply)



What Court Managers told us:

“Media representative attended on the day of implementation only and viewed care proceedings.”

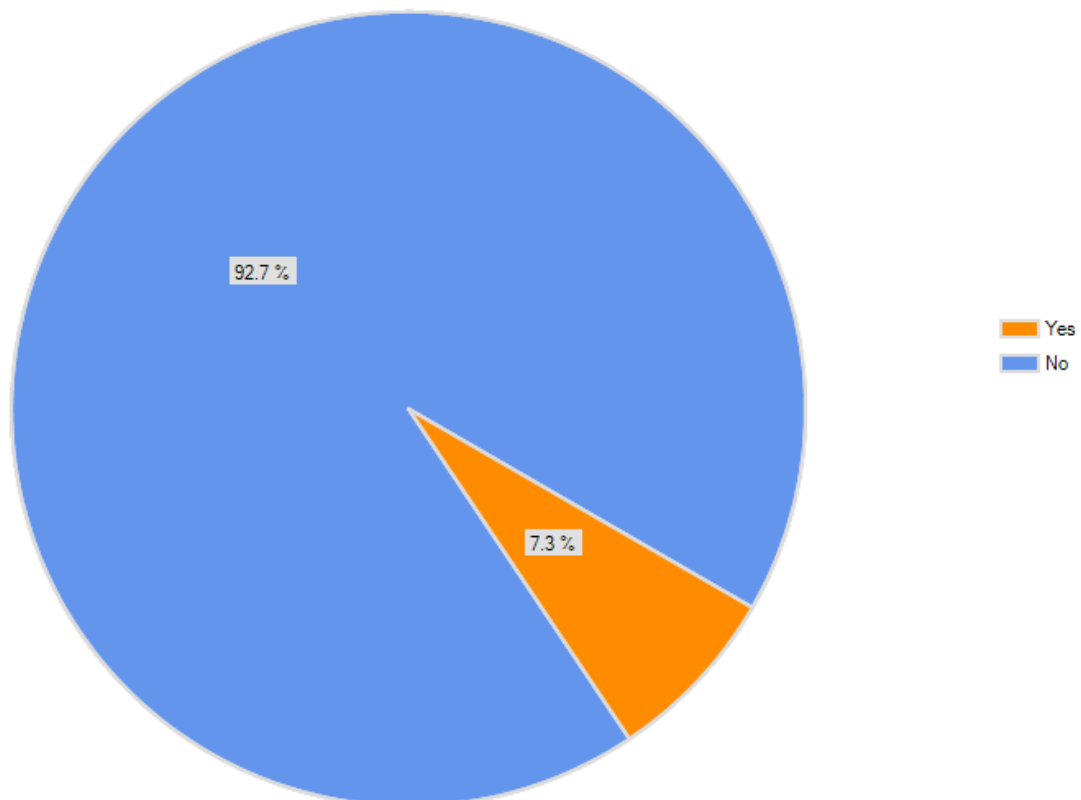
“The media have attended and took pot luck”

Question 5: Are you aware of any instances where the court has either granted an application, an objection, or the court of its own motion made or refused an order to exclude/allow the media to attend proceedings?

Question 5 sought information on whether court staff were aware of judges or magistrates at their court using powers to exclude or allow the media to attend court proceedings.

Taking into account that $\frac{3}{4}$ of respondents had no experience of the media attending proceedings at their court it is unsurprising that 93% of respondents were not aware of the court granting or excluding the media from attending proceedings. Of those who replied to say that they were aware of such instances, responses were balanced and as would be expected presented a range of individual scenarios which were determined on a case by case basis.

Are you aware of any instances where the court has either granted an application, an objection, or the court of it's own motion made or refused an order to exclude/allow the media to attend proceedings?



What court staff told us:

“There are two cases I am aware of where the press asked to be present and after talking to the Judge concerned, it was granted”

“On the first day of implementation the parties objected to the journalist attending a contact dispute and the Judge upheld the objection”

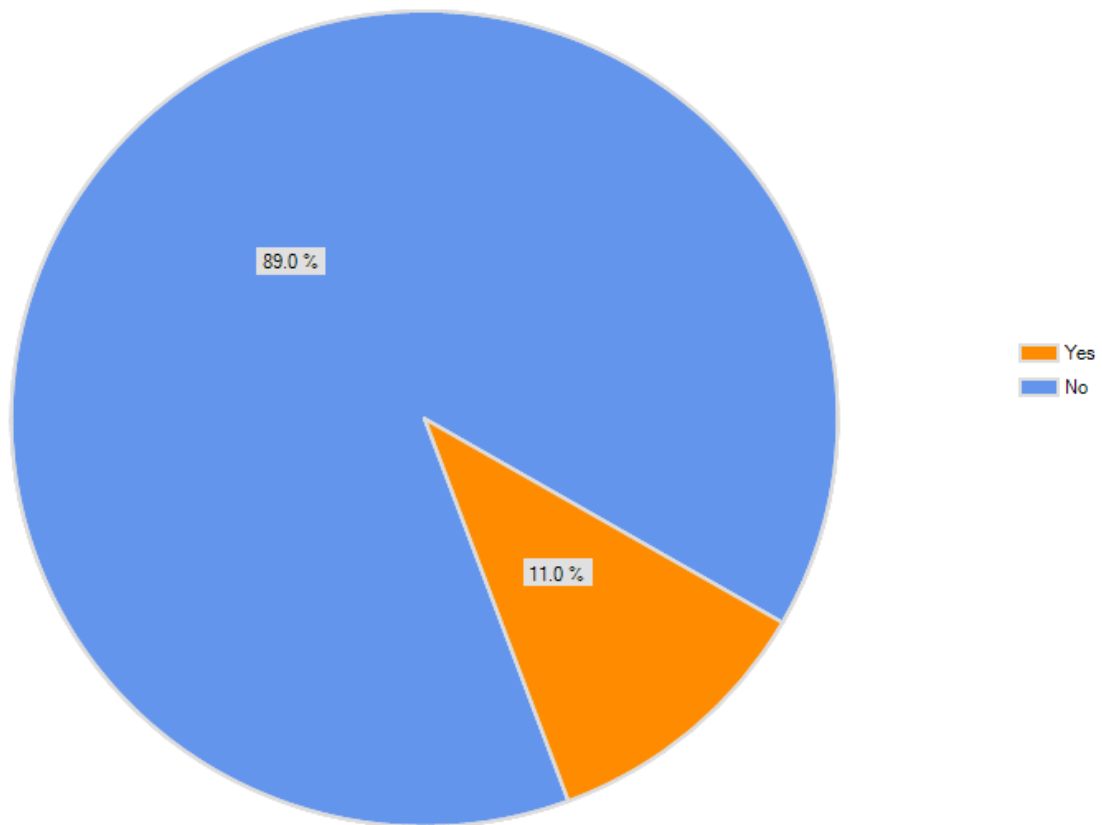
“A local authority made an application for the media to be excluded over concerns that the children in the case would be identified. The judge made an order excluding the media from the IRH and FH.”

Question 6: Are you aware of any media attendance at your court which resulted in the publication of an article relating to family proceedings?

Reflecting that fact that most survey respondents had indicated that the media had not exercised its right to attend hearings there was also a high negative response rate to the question of whether court staff were aware of any media coverage relating to proceedings (89%).

Of those who responded to say that they were aware of a press article, 5 responses reported that this was via a local publication/broadcast with 4 reporting that the press coverage was via the national media. 3 of the responses did not specify whether coverage was local or national.

Are you aware of any media attendance at your court which resulted in the publication of an article relating to family proceedings?



What court staff told us:

"A local newspaper wrote an article after their first visit about the work done by the DFJ and reported on the cases that were in court that day. No other articles have been reported on since."

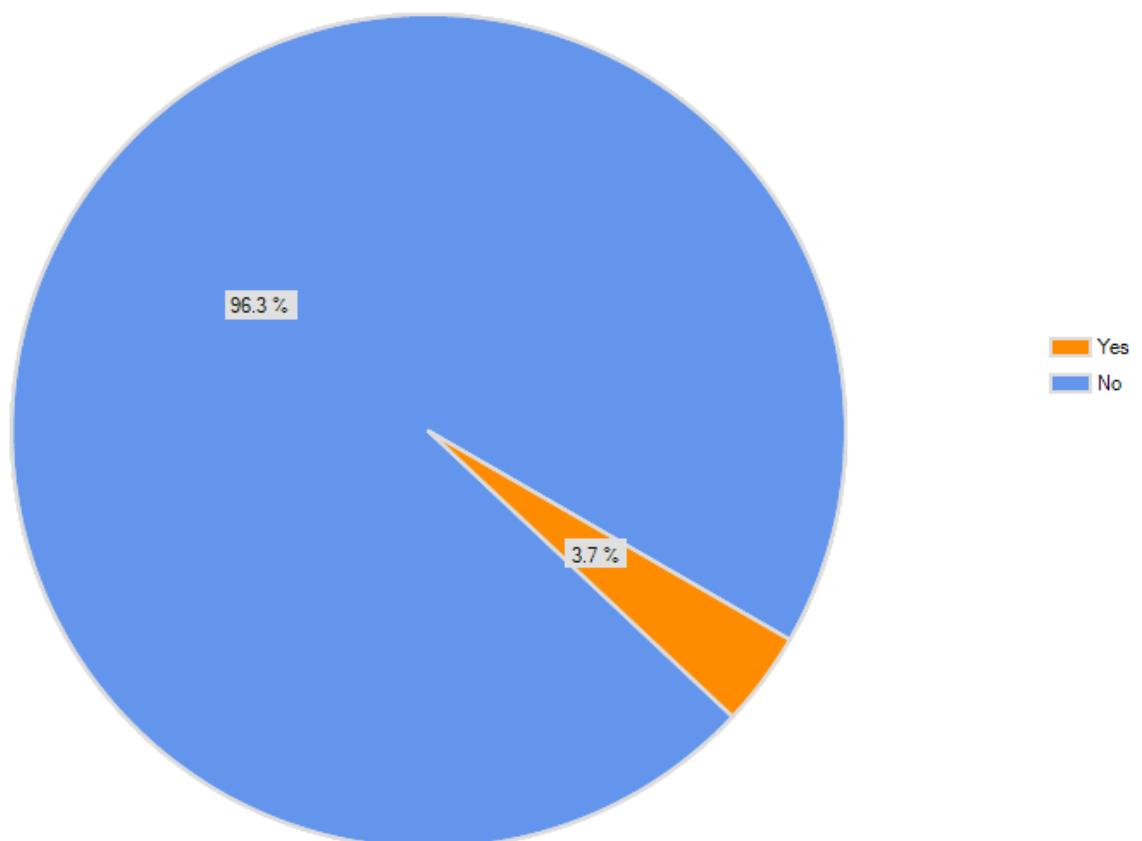
"I am aware that the National press printed an article. They had previously attended at the court of appeal then attended a subsequent directions hearing which had been remitted back to our court."

Question 7: Only media representatives who are accredited to the UK Press Card scheme can attend court. Have you encountered any problems with verifying the identity of any media representatives?

The vast majority of respondents responded to say that they had not experienced any problems verifying the identity of media representatives under the UK press card scheme.

As with previous questions this likely reflects the fact that the majority of respondents had yet to experience media attendance at their courts.

Only media representatives who are accredited to the UK Press Card scheme can attend court. Have you encountered any problems with verifying the identity of any media representatives?



What court staff told us:

“The journalist attending on the first day did not have an up to date card. The staff followed the correct procedure and called the verification hotline”

”One press rep turned up with an e-mail from his editor but this was day 1!”

“They failed to wear a badge or identify themselves and sat anonymously in the waiting area.

Question 8: What in your view were the 3 major challenges you have encountered to date in operating the new media attendance rules and how have you overcome them? (Short bullet points only)

71 respondents replied to this question with over half reporting that they had not experienced any challenges or they were unable to comment because they had not yet had any instances of the media attending their court.

Of the 71 who did respond 6 broad themes emerged to the challenges that had or were being experienced by courts. These are summarised below:

Training

What court staff told us:

“The biggest challenge was making staff aware of restrictions on media attendance - addressed through team brief/training”

“Ensuring all Magistrates were aware – We arranged for training & written notes for them”

“Because of the lack of interest from the media - keeping staff up to date to deal with a situation if it does arise is a challenge!”

“Trying to get all the training done in a short period of time. Other than that the impact as been minimal.”

“Having family hearings in three separate venues and ensuring staff have the same information. Resolved by way of team brief in various locations plus the production of a media attendance folder for each site.”

“Ensuring staff understood procedure and put it into practice – we produced a short guide for staff

“Ensuring all court staff aware - training & written notes provided to all staff.”

Accommodation

What court staff told us:

“A lack of court room space for the media. There are no public galleries in family courts.”

“Appropriate seating for press in smaller courts - suggest swap court rooms if significant press attendance to ensure that they are not privy to confidential conversations between counsel and their client.”

“Creating appropriate space in one of our courtrooms for the press to sit. Some re-arrangement of furniture was required”

“Challenge how to accommodate and related security issues relating”

Cause lists (which display the day's hearings, highlighting which cases are open to the media)

What court staff told us:

"Having cause lists displayed that only contain case numbers caused initial problems as parties invariably attend court without papers. We have overcome this by producing two lists - internal and external - and having a "meet and greet" usher in the foyer."

"Ensuring lists are printed in the appropriate format every day - in addition to verbal guidance an email was sent to staff to ensure they all received the same instructions."

"Identifying on court lists those cases that media could attend and those that they couldn't and satisfying Judiciary with wording. We added a standard paragraph to all our lists specifying those cases that the media are excluded from."

Press verification

What court staff told us:

"Probably checking identification of the press."

"Initially it was difficult to recognise press authorisation, checking evidence of ID - making sure everyone aware."

"Time to advise staff, ushers, etc of new processes needed and checking processes for validating approved Press."

"Relying on the media to identify themselves as such. Overcome by raising the matter with them."

"Identifying who is from the media and not directly involved in proceedings - brought to court attention from legal representatives"

Applications by the media to attend

What court staff told us:

"Notice of an application - can cause difficulties on the day"

"Lateness of applications by the media to attend causes problems."

"Protocol for dealing with applications guidance on line assisted"

Media Understanding

What court staff told us:

"The press were not knowledgeable of the rules and expected Court staff to explain them in detail"

"Dealing with media enquiries on the telephone has increased burdens on courts. Have placed a "media enquiries" log onto the shared drive with spoc's for all media enquiries"

"The failure of the media to understand that the courts are not fully "open". They had a lack of knowledge that cases are not reportable and a lack of understanding as to which cases they can attend and which they couldn't."

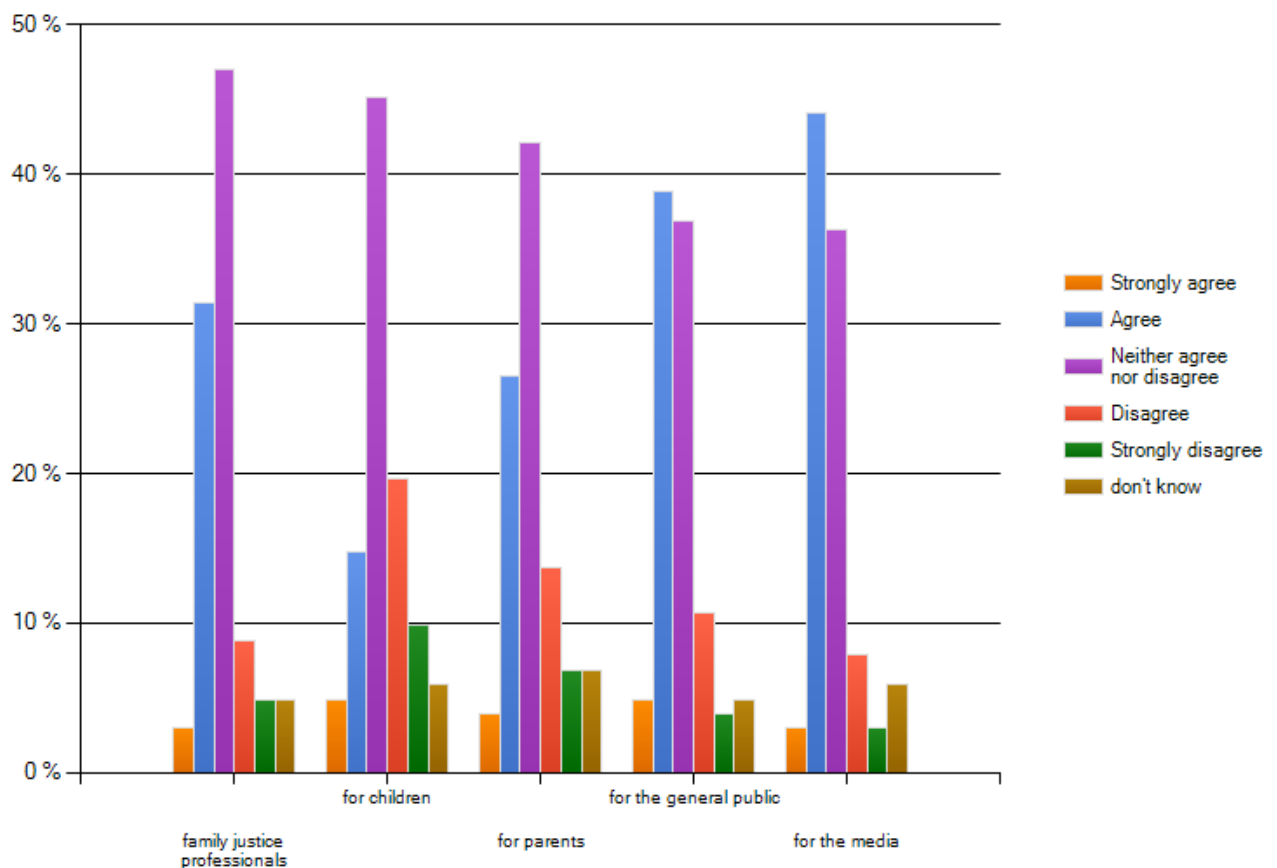
Question 9: "Overall, the new media attendance rules have the potential to make a positive contribution to improving the transparency and accountability of the family courts for:" (Please indicate which statement most accurately represents your view):

Question nine asked respondents to indicate how strongly they agreed or disagreed with a statement suggesting that the media attendance rules could make a positive contribution for individual interest groups.

Out of the interest groups listed, respondents agreed that the media was the group for which the rule changes had the most potential to make a positive contribution, with over 48% saying that they agreed or strongly agreed with this view.

The most significant area of disagreement or strong disagreement was in relation to whether the changes were potentially positive for children, with 30% of respondents disagreeing with this view. Despite this, the majority of respondents (46%) neither agreed nor disagreed.

"Overall, the new media attendance rules have the potential to make a positive contribution to improving the transparency and accountability of the family courts for:" (Please indicate which statement most accurately represents your view):

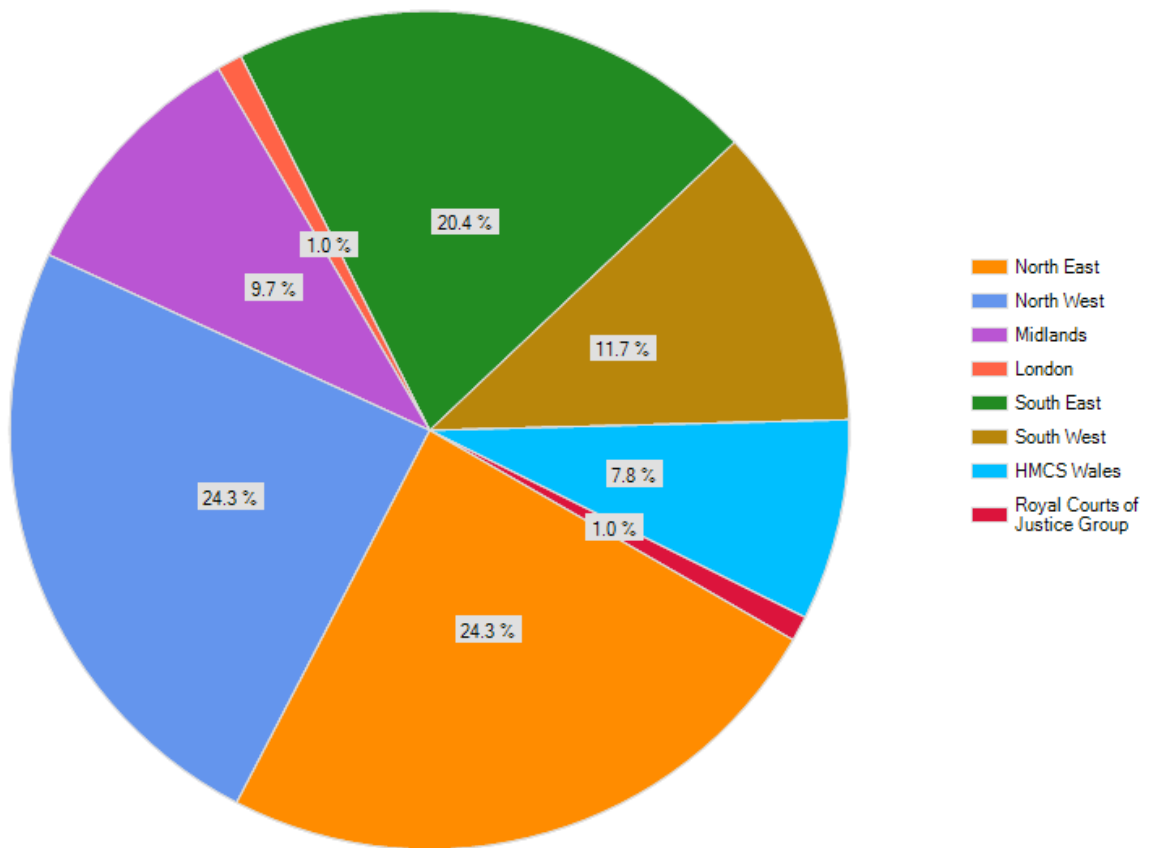


What court staff told us:

"I think media access could have a beneficial effect for children and families if analysis was done of the causes of delay and regional differences."

Question 10: Please specify which HMCS region your court is located in and what general comments do you have?

Please specify which HMCS region your court is located in:



What court staff told us:

“The addition of security guards at smaller courts has been a benefit to this rule change”

“Apart from the accreditation point and further guidance provided, little has changed in the FPC as they were already open to the media to attend.”

“In general with regard to family court transparency and the media - it will depend on the accuracy of the reporting”

“Very difficult to form an opinion due to the apathy shown by the press since the changes to the reporting rules”

Part Two – Wider Stakeholder Feedback

Family Justice Minister Bridget Prentice wrote to Family Justice stakeholders on 12th November 2009 to both announce the commencement of the family court information pilot and to request views from stakeholders on how the media attendance rules introduced on 27th April 2009 had been operating.

Stakeholders were asked to consider a list of suggested questions and to provide comments on any relevant issues by 16th December 2009. Twelve responses to the request for information on how the new media attendance rules were operating in practice were received. Respondee included members of the judiciary, legal advisers, lawyers and children's organisations.

Of the twelve responses received all twelve responded to say that either they were unaware of the media exercising their right to attend family proceedings or instances of media attendance were rare. A summary of the responses received are listed below:

Question 1: Do you think the media are making use of the new rules to attend proceedings and, if so, how often?

What stakeholders told us:

"I happen to have worked throughout the whole of the period since the changes were brought in April. In not one of my case (and in what has been an exceptionally busy period) have the press attended any hearing save that there was the usual reporters present in a case which went to the Court of Appeal but even then, there was no press report."

"There have been a number of lengthy and quite high profile family cases heard in recent weeks but the interest from the Press has been nil"

"When the Press were first given permission to sit in on Family cases there was some initial interest. A local reporter sat in on cases for a couple of days. He then held an interview with the Designated Family Judge and subsequently wrote an article about the work of the Family Courts which was published in the local evening paper. The reporter privately said to the judge that he was surprised how mundane and frankly boring family cases were and since then we have had no problems whatsoever as the press are simply not attending hearings."

"Thank you for the opportunity to offer our experiences of the media attendance provisions introduced in April. Our practitioners have not had any direct experience of the media attending family proceedings."

"On the first day that the media were entitled to be present, a journalist from The Times sat in on a care case here. She was invited to return the following day, but did not reappear. Since then we have had, I believe, not a single journalist sit in on any family case."

"The media do not appear to be making use of the new provisions - there was a slight flurry at first but they were quickly disillusioned as they could not report the details."

"I have heard of only one case where they attended. This was on the very first day but the reporter left before the case was called on. All my colleagues reported the same picture. Either they had never seen the press in their courtroom or, after the enthusiasm of the first few days, the press are now noticeable for their absence."

"Changes to the reporting restrictions might lead to an increase in media attendance, but of course that is speculation."

"Only the courts can comment properly on media attendance. The court service structure should be used to monitor attendance. Some courts have systems in place for doing this whereas others do not. It is essential that proper monitoring takes place and every court should have formal procedures to do this so that evidence can be properly gathered."

Question2: In cases where the media have sought to attend, has the court decided they should not be admitted; if so, on what grounds?

What stakeholders told us:

“Members reported that the press had not sought to attend any cases that they had been adjudicating on apart from at Wells Street.”

“No media attendance, so this scenario has not arisen”

“I have no personal knowledge of courts deciding to exclude the press. Data needs to be properly gathered as identified above. It is imperative that evidence is sound and not impressionistic or anecdotal. It is also essential that judges should be consulting children on whether or not the press should be permitted to attend, in compliance with Article 12 UNCRC. This again should be monitored through a systematic formal process used nationwide.”

Question 3: What issues have arisen for adult parties to proceedings – from actual media attendance, or the possibility of media attendance?

What stakeholders told us:

“None, perhaps anxiety as to the possible attendance”

“I have heard anecdotal evidence of a mother running screaming from a court when told the press would be in attendance but again, proper monitoring systems need to be set up.”

Question 4: What issues have arisen for children involved in proceedings – from actual media attendance, or the possibility of media attendance?

What stakeholders told us:

“None, perhaps anxiety as to the possible presence”

We have heard anecdotally that a young person has been absolutely devastated by detailed press reporting in a local paper. They did not identify her as such but the details reported enabled locals to know who it was. This is a concern especially by local reporters in small areas. It is accepted that children do not want their family and intimate details displayed in public.”

“The evidence for this needs to be gathered from clinicians, social workers and those representing children. The question therefore needs to be put to the right people. I have been informed by a High Court Judge of a child who had disclosed sexual abuse then refusing to make the disclosure at his ABE interview once he had been informed of the possibility that the evidence would be heard and reported on by the press. The child then made further disclosures in the car when he was being returned to his foster carer. The implications are serious: a real risk that the child will not be safeguarded and also that justice will not be done if a criminal offence has been committed. It should also be noted that children who have been abused have already been badly let down by adult society and the breach of trust arising from media access, or possible media access, may significantly compound this resulting in children growing up further alienated and mistrustful of others. There are serious ethical questions to ask about when in the process a child is informed about press attendance, who tells the child and how they are helped to deal with the information. In my view, failure to tell a child at a very early stage is a breach of Article 12 UNCRC.”

Question 5: If you feel there have been positive impacts for anybody involved in proceedings, what are those impacts and why do you think they have arisen? Similarly if there have been negative benefits what are they and how have they arisen?

What stakeholders told us:

“Positive: Local authority perception of possible exposure of their deficiencies. Central government perception of exposure of resource issues e.g. Cafcass. Negative: fundamental problems lie ahead if current [legislative] proposals implemented”

“There has been no impact at all, positive or negative, as the media has not been in attendance”

“It is unlikely that the press have attended or sought to attend many cases so great care, must in our opinion, be taken to ensure that all the ramifications of the transparency issue are fully considered before irrevocable decisions are made that could harm vulnerable children that are the subject of family cases.”

Conclusion and next steps

This study has focused on gathering views and experiences of how the media attendance rules have been operating in practice. Information has been sought from a number of sources however the limitations of this study such as low response rate to the family court survey from particular areas and the limited number and range of responses to the request for information from wider stakeholder groups is recognised. It is also acknowledged that it was not possible to obtain the views of parties involved in such proceedings. Additionally no quantitative information is included on the number of instances of media attendance, court orders made in relation to media attendance or actual media reporting because no such data is collected by HMCS.

The study does provide evidence to suggest that the impact of the media attendance rules in the family courts in England and Wales has been minimal. The vast majority of contributors to this study have had little or no experience of the media attending proceedings since the attendance rules were changed in April 2009.

As the media already had the right to attend hearings in the Family Proceedings Court the main change introduced in April 2009 was to allow the media to attend County and High Court hearings. An assumption could have been made that impact would have mostly fell to these courts but responses to this study do not reveal any evidence to support this.

This study has identified a range of challenges experienced by courts associated with the practicalities of implementing the media attendance rules. These included (but were not limited to) the need for more comprehensive training for staff and the media and consideration of advice on how best to accommodate the media. These comments will be factored into any future implementation plans associated with the proposed legislative changes contained in the Children, Schools and Families Bill currently being considered by Parliament.

