
# ANONYMISATION AND AVOIDANCE OF THE IDENTIFICATION OF CHILDREN
# &
# THE TREATMENT OF EXPLICIT DESCRIPTIONS OF THE SEXUAL ABUSE OF CHILDREN IN JUDGMENTS INTENDED FOR THE PUBLIC ARENA

## JUDICIAL GUIDANCE

**Dr Julia Brophy**
**Principal Investigator - Family Justice**
**July 2016**

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**CONTENTS**

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Second, I am heavily indebted to my Advisory Group for England and Wales (see below) who came together at short notice and provided me with an extraordinary repository of knowledge and expertise spanning family court practices and children issues. Pressures on family justice professionals are considerable and mounting, and I am grateful for their considerable generosity and willingness to read drafts and in an impossibly tight timeframe. Third, my thanks to Charlie Owen, Senior Research Officer, Thomas Coram Research Unit, UCL Institute of Education for assistance in the analysis of official statistics, to Julia Higgins, an exceptional Project Administrator, and to the Executive Committee of the Association of Lawyers for Children.

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While the review of policy and practice in federal jurisdictions (Australia, and parts of Canada) is 'work in progress', some messages are emerging. In the time available however, I have only 'scratched the surface'; differences within and between jurisdictions make generalisations a risky territory. Practices in New Zealand have been 'in flux' for some time but are now entering a new era with the establishment of a publishing unit.

Despite the generosity of family justice colleagues in England and Wales and elsewhere, all errors herein remain entirely mine.

Julia Brophy
July 2016

**The Author**

Dr Julia Brophy is a Principal Investigator (PI) in family justice issues. She was, for many years, a senior research fellow at the Centre for Family Law and Policy at the University of Oxford and has directed a number of major studies with awards from the Department of Health, the Ministry of Justice, the Nuffield Foundation, the Office of the Children's Commissioner (England) and the Family Justice Council. She sits on several advisory committees in family justice issues and has researched and published on a wide range of topics in public law children proceedings. Over recent years she has headed a number of research projects and policy forums focusing on the voice and rights of young people and given oral and written evidence to a number of Bill and Justice Committees of the House of Commons. Until recently (2016) she was Co-Chair of the Interdisciplinary Alliance for Children and was an expert adviser on research with children in the justice context for the EU forum on Fundamental Rights (FRA). She is currently commissioned as Research and Policy Officer for the Association of Lawyers for Children and is a consultant to the Nuffield Observatory Scoping Study and undertaking work on issues of inspection and accountability in public services. She is (jointly) working on a paper on the implications of guidance for the work of welfare and legal representatives of children.

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## 1 BACKGROUND TO GUIDANCE

This guidance deals with two aspects of anonymisation and avoidance of the identification of children in judgments placed in the public arena: (a) Personal and Geographical indicators in judgments and (b) The treatment of sexually explicit descriptions of the sexual abuse of children. A brief review of guidance/practices in similar common law jurisdictions was also undertaken (see Appendix 4).

**(a) Personal and geographical indicators in judgments**

It builds on a stream of work regarding issues of 'transparency' in family proceedings and the privacy, welfare and safeguarding needs of children and young people subject to proceedings. It results from a review of children judgments on BAILII and findings regarding geographical/personal identifiers and jigsaw identification of children, and the treatment of sexually explicit details of the abuse of children (see Appendix 1). Anonymisation is not confined to concealing names but extends to the avoidance of any materials liable to lead to the identification of the child. It aims to help judges strike a better 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, in particular in relation to inadvertent and jigsaw identification.

**(b) The treatment of explicit descriptions of the sexual abuse of children**

Guidance also results from a review of judgments by young people: most had no idea of the content of judgments on Bailii; what they found was a shock to them. Judgments contained difficult, deeply embarrassing, shaming and damaging details of the abuse of young people; that such detailed information was *already* in the public arena was deeply distressing; many felt let down by a system aiming to protect them (see Appendix 1).

Young people were well aware of the need to demonstrate why a court may remove a child from a parent(s) and that it has held the local authority applicant to account for its actions. What they questioned was placing graphic details of the sexual abuse of a child/young person in a document intended for the public arena and whether that was necessary and appropriate. This question was posed alongside concerns about the ease with which combinations of information in judgments could enable children to be identified (see, Appendix 1).

They questioned whether judges were aware of how sexually explicit details may be used, the amount of material on the internet about the sexual abuse and the targeting and grooming of young people in care, and how graphic descriptions of sexual abuse can go 'viral' 'at the click of a button':

> "…*graphic details of the sexual abuse of this child [are] made available to 'the world' for downloading and sharing…forever.'*
>
> *"….do judges know how much information there is on the net about the grooming and sexual abuse of children…?'*
>
> *" ..the risk of identification of this child is increased because the judgment also says the mother's partner is a convicted paedophile for offences in [dates]'*
>
> *"Yes abuse is of course relevant …but there should not be so much intimate detail of all the episodes of sexual abuse [detailed in 12 separate paragraphs in this judgment] – could details not be summarised with the [total] number of occasions. This level of detail and for each occasion is now in the public arena and for the rest of this girl's life'*

## 2 Purposes and audiences for judgments

Right to a fair trial includes a right to have the outcome of proceedings explained in a reasoned judgment which explains in clear accessible language how and why the court has reached its decision and that is perhaps especially the case for the party who the decision goes against.

Judgments also provide a record of the decision and its reasons for future use by a range of professional and lay audiences, the child/young person (in due course), parents and others, an appellate court, and the public, legal and journalistic commentators.

## 3 Guidance on the anonymisation of personal and geographical indicators: aims of checklist 1

- In the light of research findings about risks to the privacy, welfare and safeguarding needs of children subject to proceedings, to ensure anonymisation of published judgments prevent the risk of identification or location of such children and better protect them
- Promote consistency in anonymisation practices and assist judges to avoid any risk of jigsaw identification of children from information and the details included in judgments
- Support reflective thinking regarding inclusion of certain details and suggest where the judge might consider an abridged or skeleton statement, redaction or exclusion of details, and to indicate circumstances where publication should be reconsidered
- Encourage judges to ask '*what would make this child/family distinctive/stand out?'* and to consider the distinctive but also the mundane and factual detail which, when read together, may enable a child/young person to be identified
- Offer practical ways to better secure the child's anonymity, **by way of checklists** and use of square brackets to indicate where information has been redacted to meet the demands of open redaction
- To be acceptable in its application to an appellate court
- To enable lay readers (the public, the media and others) to understand the case and how the court reached its decision.

## 4 Guidance on the treatment of explicit descriptions of the sexual abuse of children/young people: aims of checklist 2

- Accepting that all families are unique and thus to an extent all judgments unique, to provide assistance to judges to address 'new' frontiers facing family courts presented by the internet (and propensity for graphic descriptions of the sexual abuse of children to be downloaded and shared, worldwide, and for purposes unrelated to public education about family courts, including paedophile networks).
- To indicate where sexually explicit material could be abridged/presented in skeleton form stripping out graphic descriptions of how a child was sexually abused while retaining the capacity of the document to meet its primary and secondary purposes.
- To suggest where some adjustment of structures/styles of the layout of judgments might assist in this exercise
- To suggest how, when writing and giving oral judgment, changes could be achieved without excessive demands on judicial time
- To suggest a 'final check' of actions to assist in decisions to publish a judgment, and some headings to assist parties and others.

## 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 |
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| **Naming protocols for children, parents and other family members** | | | |
| **Use of Pseudonyms** | ⊗ | 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. | |
| | | 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'. | |
| | ⊗ | 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. | |
| **Initials** | ✓ | **Overall, initials are a safer practice** | In the text: If only one subject child, initial or 'the child'; If two children: 'A' and 'B' …" |
| | ⊗ | Do not use real initials (the child's or parents/others). | |
| | ✓ | **Initials must be fictitious,** but care should be exercised in choice some (e.g. 'Z' 'Q') may indicate an ethnic/religious group. | **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:<br>Child A /male/aged 10 years (father B)<br>Child B/female/8 years (father B)<br>Child C/female/5 years (father A)<br>Child D (male/3 years (father A)<br>Child E (female) under 24 months (father A)<br>And consider if: '… two pre-school children and three of primary school age' will suffice<br>In the text: "…the mother…"… "…the father…"<br>If more than one father: "father A" "father B…" |
| | ✓ | Most cases concern no more than two children: unless there are good reasons, keep it simple and 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.<br>**For parents**, use 'the mother', 'the father', maternal aunt, paternal/material grandmother etc; rather than initials, this assists the reader in following the judgment. | |

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| **Date of birth of child** | ✗<br><br>✗<br><br>✓ | 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.<br><br>It is rarely necessary.<br><br>If the text necessitates some specificity, consider using season and year or mm/yyyy; for rural communities use year only wherever possible. | "…child B was born in [2010]…"<br><br>"…the child with whom I am concerned was born in [2009]; she currently lives with [a foster carer]…"<br><br>"…by this time child D was [in her early teens]…"<br><br>"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…" |
| **Other specific dates in the judgment** | ✓ | 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. | "..the father was convicted in [year] for …"<br>"…the mother has [previous convictions] for…" |
| **Ethnic group** | ✗<br><br>✓<br><br>✓<br><br>✓<br><br>✓ | 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.<br><br>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.<br><br>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 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.<br><br>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.<br><br>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. | **See Appendix 2:** additional information - Equal Treatment Bench Book<br><br>In the paragraphs headed 'Background' or 'Introduction', do not say "…the mother was born in the Sylhet region of Bangladesh."<br><br>**Consider using a wider definition** such as :<br>"…of South Asian/Asian origin…"<br>"…of Eastern European origin…"<br>"…the mother is Chinese British…"<br>"The mother is of [African] origin…"<br>"The father is [of mixed heritage]…" |

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| **Religion** |  <br>  <br>  | Do not refer to religion unless substantive issues indicate it is likely to be relevant or it needs to be addressed.<br><br>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.<br><br>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. | 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. |
| **School, education issues/ problems** |  <br>  <br>  | Do not reproduce detailed descriptions of problems a child/young person has experienced at school or incidents in which he/she was involved. 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.<br><br>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.<br><br>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. | "…child D experienced [multiple difficulties] at school… [over an extended period]…"<br><br>"… child A was absent from school [intermittently] [over several months] …during this period he lived with his mother."<br><br>"…during this period child B was excluded from school for [disruptive/violent behaviour] [on one/more occasions] ..."<br><br>"Child A engaged in [bullying activities] at school …other pupils [were distressed] by her behaviour…"<br><br>**Do not say,** "*…child B attends TreeHouse School in Croydon on account of her diagnosis of Oppositional Defiant Disorder (ODD)".*<br>**Rather**: "…child B attends a specialist school because she has [emotional and behavioural] difficulties". "Child C attends [an educational facility] dedicated to meeting his [physical] needs"…<br>"…child A attends [a faith] school…." |

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| **Naming the local authority applicant** | | 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. | **See Appendix 3 for background discussion.**<br>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: |
| | ✓ | 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 other information in a judgment (checklist 1 factors). | (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 that naming the LA would carry with it no risk of identifying the children (or any of them); or |
| | ✓ | Naming the local authority without reference to these issues and balancing the risks in each case may serve only to undermine work undertaken to redact/abridge other parts of the judgment. | (b) Having balanced the remaining risks the judge concludes that the public interest in identifying the applicant is so important that it outweighs any risk of identification of the children (or any of them). |
| | ✓ | Where the local authority applicant is identified in the judgment the name of the Director of Children's Social Care (or equivalent) should also appear. For example:<br>'Applicant: Cumbria County Council<br>Corporate Director, Children's Social Care: John Macilwraith' | It should be open to any party, and representatives of the media, to apply to invite the court to determine whether the case comes within the exceptions in (a) or (b) above. |
| **Naming the social worker(s) and others such as family support workers** | ✗ | Do not routinely name without consideration of 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 this alongside other geographical/personal indicators in the judgment: does naming the social worker(s) add to a risk of identification of a child/family? | Consider:<br>"… the [key social worker] found….."<br>"….[family support worker] failed to…" |
| **Criticisms of an applicant/social worker** | ✓ | 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 his/her powers to have done things differently, noting that social worker's authority to make independent decisions is not equivalent to that of an expert witness; some areas of decision making are determined by managerial/corporate policy. | |

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| | ✓<br><br><br><br><br>✓<br><br><br><br><br>✓<br><br>✓ | If criticism is deemed necessary, consider this alongside other 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?<br><br>Consider whether it may be appropriate to,<br>(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,<br><br>(b) consider other options which may improve practices.<br><br>Explain the balancing act undertaken. | **See Appendix 3**<br>**Criticisms of LA/SW: Other options**<br><br>(a) Consider a direction that the judgment be released to the named Director of Children's Services and a named children's services manager.<br>(b) Consider a direction to also release the judgment to Ofsted as a notification to Ofsted to review the practices of the local authority.<br>(c) Where the judge considers that the LA has acted unlawfully consider a direction to provide the judgment to the Monitoring Officer.<br><br>Place a statement about failures at the start of the judgment. |
| **Naming a local family resource/assessment centre** | <br><br><br><br><br>✓<br><br><br><br><br>✓ | 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.<br><br>When considering whether to name a resource reflect on other geographical/personal indictors and whether naming may assist jigsaw identification of a child/family and impede future engagement with the service/agency.<br><br>Consider using a generic term but if naming is deemed necessary explain the decision in the context of risks to a child/family. | "…the mother and child B were assessed at [an assessment centre]<br><br>"Mother and child A were assessed at [a residential centre] over [a 12 week period]…" |
| **Naming a treating community based clinician** | ✗<br><br><br><br><br>✓<br><br><br><br><br>✓ | 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.<br><br>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 can be key information to add to search engines in searches for judgments of certain categories of child abuse/media coverage.<br><br>When considering specific incidents, remember the details you include may be shared on media/social media sites and be | Consider:<br>"S was admitted to [hospital] on ….and seen by doctor ['X']" |

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| | | 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. | |
| **Criticisms of clinical evidence** | ✓ | If the aim is to identify clinical work which failed to meet the standard required, consider whether it may be appropriate to,<br>(a) Warn the clinician and to give them the opportunity to address the criticism;<br>(b) Consider intended text alongside other information: can criticism be drafted so that it does not undermine other improvements in anonymisation practices for children. | |
| | ✓ | 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. | |
| **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 hospital/mental health trust.<br><br>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 clinician who finds herself in court as a treating physician. | |
| | ✓ | That does now however preclude consideration of the impact on a child/young person of naming an expert or careful reflection on the degree of detail from the expert's evidence to be included in a public judgment – bearing in mind these details may be shared on media/social media sites and available on the internet for the remainder of a young person's life (see checklist 2). | |
| **Criticisms of the work of expert witnesses** | ✓ | If one of the aims in naming an expert is to identify clinical work which fails to meet the standards required by family courts, consider whether it may be appropriate to,<br>(a) Warn the clinician and to give them the opportunity to address the criticism, and; | Include a statement about failures at the start of the judgment. |
| | ✓ | (b) Draft the intended text so that it does not undermine other improvements in anonymisation practices. | |

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| **Naming a trial court and Judge** | | In certain instances 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 of some children/young people.<br><br>However, the court is unique among actors in the family justice system because of the extent of powers conferred upon it by Parliament but these powers are not unfettered and are subject to checks and balances. | **See Appendix 3 – background issues** |
| | ✓ | The court must nevertheless negotiate the landscape between transparency of justice on behalf of the state where life changing decisions are made for children, and ensuring their privacy, welfare and safeguarding needs are taken seriously and 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 cutting out other geographical/personal identifiers, and redacting /abridging certain details of the abuse of children (see checklist 2). | Consider whether circumstances exist which may make it necessary to refer to the trial court as 'The Family Court' without identifying where it sat. |
| **FINAL CHECK**<br>**Anonymisation of geographical/personal indicators** | ? | (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:<br>(a) the allegations and parties' responses<br>(b) the court process and how decisions were made<br>(c) the legal issues and framework brought to bear | |
| **Does the judgment contain details of sexual abuse of a child** | ? | (ii) Consider any remaining geographical/personal identifies alongside **CHECKLIST 2** (details of the sexual abuse of children) | |
| **Is this judgment suitable for publication** | ? | (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. | |

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

<table>
<tr><th colspan="3">ABRIDGEMENT/SKELETON OF PARAGRAPHS WHICH CONTAIN EXPLICIT DESCRIPTIONS OF SEXUAL ABUSE<br>IMPLICATIONS FOR THE STRUCTURE/STYLE OF JUDGMENTS</th></tr>
<tr><td>Fact finding</td><td>
<ul>
<li>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’.</li>
<li>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.</li>
<li>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.</li>
<li>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).</li>
<li>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.)</li>
<li>Where possible some consistency in the order of headings should speed up the process of abridgment over time and aid checking.</li>
<li>In some judgments, descriptions of sexual abuse are repeated under several headings/paragraphs: this may make abridgement of details and cross checking, difficult and timing consuming. For example:
<ul>
<li>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.</li>
</ul></li>
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</td><td>
<ul>
<li>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).</li>
<li>If the detail 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).</li>
</ul>
<ul>
<li>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 detail 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).</li>
</ul>
Final document intended for the public arena
<ul>
<li>Annexe explicit details of sexual abuse to an appendix to the judgment, this to be available in the case of any appeal.</li>
<li>The judgment - with abridged paragraph(s) minus the appendix, to be the version agreed and released for the public arena (Bailii).</li>
</ul>
Ex Tempore judgments
<ul>
<li>This approach to abridgment of sexually explicit detail may also be adopted when giving an ex tempore judgment. These would need to be structured to facilitates 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.</li>
</ul>
</td></tr>
</table>

| TWO EXAMPLES OF DESCRIPTIONS OF THE SEXUAL ABUSE OF CHILDREN/YOUNG PEOPLE IN JUDGMENTS ABRIDGED FOR THE PUBLIC DOMAIN | | |
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| **FACT FINDING** | **SAMPLE JUDGMENTS - CURRENT TEXT** | **EXAMPLE OF SKELETON/ABRIDGED TEXT FOR THE PUBLIC ARENA** |
| **Example 1** | **Para [30] sexual abuse: fact finding**<br><br>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:<br><br>• Fondling her breasts with his hands and mouth<br>• Inserting his fingers into her vagina<br>• Inserting his penis into her vagina<br>• Asking her to masturbate him<br>• Covering her mouth with his hand to prevent her from shouting for help<br>• Threatening her with violence if she told anyone<br>• Offering her money if she co-operated | **Para [30] sexual abuse: fact finding**<br><br>**Abridged for publication**<br><br>**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** |
| | **Para [47] sexual abuse: fact finding**<br><br>On 27 February, B was interviewed by the police under the ABE procedure…he described sexual abuse by Mr C over many years, including:<br><br>• Performing oral sex on him and G<br>• Masturbating himself and encouraging B and G to do the same<br>• Touching G's breasts and vagina<br>• Touching B's penis<br>• Forcing B and G to perform oral sex on each other while he masturbated<br>• Forcing B to lie on top of G and simulate sexual intercourse while pinning her down so she was unable to move | **Para [47] sexual abuse: fact finding**<br><br>**Abridged for publication**<br><br>***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** |

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| | **Para [80] Findings of Fact**<br>In this case I am satisfied to a very high degree of probability of the following four findings of fact.<br><br>[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. | **Para [80] Findings of Fact**<br><br>**Abridged version**<br>**In this case I am satisfied to a very high degree of probability of the following findings of fact.**<br><br>**[80] (1) Mr C sexually abused G and B for a period of years up to *mid* 2013 in the case of G, and *early* 2014 in the case of B. It escalated *to the most serious abuse* 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.** |
| **Example 2** | **Findings of fact sought: PORNOGRAPHY**<br><br>**The children were exposed to pornographic materials in their own home and elsewhere**<br>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<br><br>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.<br><br>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;<br><br>a. All of the children were exposed to pornographic images and films in the home of PH<br>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<br>c. That B and L mimicked what they had seen on pornographic films and behaved in a sexualized way with each other and with C<br>d. L was shown pornographic films by PH on DVD players in his car<br>e. The mother was present on an occasion when PH showed images and films on his computer and on television to the children<br>f. PH was selling pornographic DVDs and his clients attended the home when the children were present | **PORNOGRAPHY**<br><br>**Paragraphs 10 – 12 (a) – (j) abridged:**<br><br>**The children were exposed to pornographic materials in their own home and elsewhere**<br><br>**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]** |

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| | g. That CH was aware that PH kept pornographic materials in his home and told C about it<br>h. J was shown pornographic DVDs by CB on a DVD player in his home at the kitchen table in the grandfather's home<br>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<br>j. (sic) J was made to copy pornographic DVDs by PH and that he was made to watch them. | |
| | **13. The children were exposed to pornographic materials at the home of CB the maternal grandfather.**<br><br>i. On one occasion all three boys and C watched a pornographic DVD at this home<br>ii. J was shown pornographic films on a DVD player in the kitchen by CB<br>iii. CB frequently bought DVDs and videos from PH, which the latter kept in his own home. | **Exposure to pornography in the home of the maternal grandfather**<br><br>**Para 13 (i) – (iii) abridged:**<br><br>**The children were exposed to pornographic materials at the home of CB the maternal grandfather who frequently purchased such materials from PH.** |
| | **Sexualised behaviour by the Children**<br>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.<br><br>i. That B and C engaged in sexual activity with each other and that L was present. J witnessed this on one occasion<br>ii. J and L engaged in sexual activity with C on an occasion in the family home<br>iii. L repeatedly kissed C in a sexual way and the mother was aware that this happened and saw it on an occasion<br>iv. PH sexually assaulted C and raped her 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.<br>v. That J and B behaved in a sexualized way towards C when PH was present on at least one occasion.<br>vi. PH touched C in a sexual way when she was not wearing any clothes and CH was aware that this had happened | **Sexualised behaviour by the Children**<br><br>**Para 14 (i) – (xvi) abridged:**<br><br>**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 her or take steps in response.** |

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| | 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<br>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<br>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<br>x. That B may have walked into a room on an occasion when L and J were engaged in sexual activity with each other<br>xi. That C walked into a room on an occasion when L and J were engaged in sexual activity with each other<br>xii. 'That L was present on an occasion when J engaged in sexual activity with C.<br>xiii. J was encouraged to behave in a sexual way towards his siblings by PH<br>xiv. J walked into a room when L and B and C were engaged in sexual activity with each other<br>xv. PH touched LH and sexually assaulted her on an occasion when L was present<br>xvi. PH tied C to a bed and played a game called 'Nervous' which involved him touching her all over naked body. | |
| | **The children's mother CH failed to protect the children from pornography, sexual abuse and failed to impose boundaries on the children.**<br>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<br>i. C told her mother that PH had raped her and the mother did not believe her.<br>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<br>iii. That the mother was aware that J, L and B had behaved in a sexualized way toward each other and toward C.<br>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'.<br>v. CH was aware that PH copied and sold pornographic videos and DVDs. | **The children's mother CH failed to protect the children from pornography, sexual abuse and failed to impose boundaries on the children.**<br><br>**Para 15 (i) – (v) abridged:**<br><br>**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 boundaries on the children and to take appropriate action when C reported to her that she had been raped by PH.** |

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| | **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.**<br><br>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.<br><br>21. CH forced J to participate in sexual activity with several adult males. In particular that;<br><br>i. She showed him how to engage in certain sexual acts including masturbating a man and performing oral sex<br>ii. That she was present on an occasion when he was forced to anal sex with an unknown male acquaintance of hers<br>iii. On more than one occasion CH had sex with J<br>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<br>v. On at least one occasion friends of the mother engaged in sexual abuse of J when his mother was present. | **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.**<br><br>**Paragraphs 20 – 21 (i) – (v) abridged**<br><br>**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.** |

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| **FINAL CHECK** | **(1) Judgments intended for the public arena** | (a) Are graphic descriptions of sexual abuse abridged?<br>(b) Cross check with **checklist 1:** do any geographical/personal identifiers for a child remain (Appendix 1, point 6)?<br>(c) Is it written in **plain English** (explaining/removing legal terms, and without slippage into Latin legal terms)?<br>(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). |
| | **(2) Does judgment meet the purposes of a judgment?** | (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?<br><br>(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:<br>➢ **Professionals** (including judges) involved in making further assessments/decisions about a family;<br>➢ **Parents and family members** identifying baseline deficits in parenting that require addressing through therapy or other intervention;<br>➢ **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;<br>➢ **Appellate courts** in auditing the judicial exercise;<br>➢ **Lay readers** (the public and legal/journalistic commentators) to understand the case and how and why the decision was made? |
| | **(3) Explaining the judgment to parents/others in court** | (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.<br><br>(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. |
| | **(4) Explaining the terms of a published judgment to the public** | **Suggested general heading**<br>"(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."<br><br>"(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 |

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| | | location, details of family members, organisations such as school or hospital, and unusual factual detail. All persons, including representatives of the media, must ensure that this condition is complied with. Failure to comply will be a contempt of court." |
| | **(5) Explaining to lay parties the terms which apply to a judgment 'handed down in private'** | **Suggested standard heading**<br>"This judgment is private to the parties and their lawyers. They may not show or otherwise communicate this judgment or its contents to any other person. Any party or their lawyers wishing to show or inform any other person about the judgment or any other person wishing to see the judgment must first of all come back to court and ask the permission of [insert name of judge]. The judge does not give leave for the judgment to be reported. It is contempt of court for any person to publish the contents of this judgment without first obtaining a direction." |
| | **(6) In summary: a transparent process** | (a) At the conclusion of the hearing or, if applicable, when judgment is handed down, the judge should raise with the parties the issue of publication.<br><br>(b) Where there is to be, or may be publication, the judge should, additionally, give the parties the opportunity to make representations on the final version, if not otherwise arranged, before finally sanctioning publication.<br><br>(c) In the event that the judge has included or intends to include specific criticism of the handling of the case by the local authority, a party, or an expert, that person should be given notice so that any representation can be considered before including such criticism in the judgment or before publication as appropriate.<br><br>(d) Where a judgment will include criticism of the local authority and be published, consider a direction that a copy of the judgment is sent to the named Director of Children's Social Care, and to Ofsted. If criticism relates to a breach of law consider directing that the judgment also be sent to the Monitoring Officer with a view to it being released to elected members. |

**APPENDIX 1**
**Review of anonymisation of children judgments on Bailii (2015)[1]: Extract from Executive Summary**

**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.

- 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.

[1] 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)..

- 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 on-line 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 2**
**Judge craft in diverse settings: language and terms[2]**

## 1 Key points

- It will sometimes be necessary to identify or describe a person's ethnicity. Where it is not relevant, it should not be referred to at all.

- Where it is relevant some care needs to be taken to ensure that appropriate terms are used.

- Where a judge is unsure about how to identify or describe a person's ethnicity or how to address a person, the evidence of the professionals should identify this accurately.

- It is good practice for the judge to check at the beginning of the case that details are accurate (not least because it may inform assessments and issues in the case). The judge should also ask the person concerned how they would wish to be identified, described or addressed.

## 2 Extracts from the Equal Treatment Bench Book

**Introduction**

At Para 7: 'It will sometimes be relevant to identify or describe a person's ethnicity. Where it is relevant then some care needs to be taken to ensure that appropriate terms are used. Where a person's ethnicity is irrelevant there will be no need to refer to it at all.'

'Where a judge is unsure about how to identify or describe a person's ethnicity or how to address a person, she should ask the person concerned how they would wish to be identified, described or addressed. Some guidance is provided below as to appropriate terms.'

**Terms**

At Para 1: 'The English language is constantly evolving, and acceptable terminology describing ethnic minorities has developed as a way of avoiding offence and developing sensitivity. It is important that unacceptable language is not used. This is not about so called "political correctness", rather it is part of society's response to the need to recognise and respect diversity and equality.'

'Language that was formerly used to describe a person's race is sometimes no longer acceptable. It should be noted that there can be differences in opinion over some terms, so whilst some words are clearly unacceptable, for others there may not be any one correct answer about whether the term is right or wrong.'

Some guidance is provided:
**'Black:** It is now considered acceptable to use the term "Black" to describe people of Caribbean or African descent.

**West Indian / African Caribbean / African:** The term "West Indian" was formerly used as a phrase to describe the first generation of settlers from the West Indies and, in particular, many older people from that community will so describe themselves. Whilst the term "West Indian"

[2] Judicial College (2014) Equal Treatment Bench Book - https://www.judiciary.gov.uk/wp-content/uploads/2013/11/9-ethnicity-inequality-and-justice.pdf at p17

would not always give offence, it is inappropriate to use it unless the individual concerned identifies himself or herself in this way.

> The term "African Caribbean" is now much more widely used, especially in official and academic documents. Where a person's ethnic origin is relevant, that term is both appropriate and acceptable. It does not, however, refer to all people of West Indian origin, some of whom are White or of Asian extraction.
>
> The term "African" is often acceptable and may be used in self-identification, although many of African origin will refer to their country of origin in national terms such as Nigerian or Ghanaian.
>
> Young people born in Britain today may choose not to use any of these designations.'

At Para 33: '**Asian:** "Asian" is a collective term which has been applied in Britain to people from the Indian sub-continent and other parts of Asia, such as Indonesia. In practice, people from the Indian sub-continent may not consider themselves to be "Asian". People tend to identify themselves in terms of one or more of the following:

> Their national origin ("Indian", "Pakistani", "Bangladeshi").
>
> Their region of origin ("Gujarati", "Punjabi", "Bengali").
>
> Their religion ("Muslim", "Hindu", "Sikh").

The term "Asian" can be appropriate when the exact ethnic origin of the person is unknown or as a collective reference to people from the Indian sub-continent. The more specific terms of South East Asian, Far East Asian or South Asian may be preferred.

> Young people of South Asian origin born in Britain often accept the same identities and designations as their parents. This is by no means always the case, and some now may prefer to describe themselves as "Black" or as "British Asian". '

At Para 34: '**Mixed race/Mixed heritage:** The term "mixed race" is used and is considered acceptable by some and not by others. Other terms are "mixed heritage". The term "multi-racial" is only used in relation to communities.'

Increasingly in public policy discourse the term "dual heritage" is used.

At Para 35: '**Ethnic minorities/Minority ethnic:** The terms "ethnic minority" and "minority ethnic" are widely used and are generally acceptable as the broadest terms to encompass all those groups who see themselves to be distinct from the majority in terms of ethnic or cultural identity. This term is clearly broader than "Black minority ethnic".'

Increasingly in public policy discourse the acronym 'BAME' (Black, Asian and Minority Ethnic) is used to refer to non white groups/communities: it is not however a term used for an individual.

**APPENDIX 3**
**Naming the local authority and the trial court: some issues and tensions**

1. In the MoJ pilot of certain Children Act judgments placed on Bailii (2011)[3] neither the court nor the local authority applicant was named in judgments. In many respects the agenda has moved on since then; equally there have been gaps in knowledge about the potential impact on children of naming the local authority in judgments placed in the public arena.

2. Naming a local authority applicant in a public judgment sets geographical boundaries to the location of a child/young person and family; their location may be narrowed down further by information and combinations of information in a judgment, as outlined in checklist 1 factors.

3. Naming the local authority without reference to these issues and balancing the risk in individual cases may serve only to undermine the work undertaken to redact/abridge other parts of the judgment to protect children as it can be such a major element in identification.

4. Local authorities are nevertheless public bodies; they issue care proceedings on behalf of the state. They have the statutory responsibility for the welfare and protection of children and support of families, and a wealth of guidance as to good practice. The vast majority of work undertaken where children are deemed in need/at risk does not result in proceedings; that work is inspected by Ofsted and inspection reports are published on-line and freely available to the public. Where that work results in and is resolved in legal proceedings, the local authority is held accountable for its obligations, statutory duties and adherence to guidance by the court. Ofsted has recently also began to inspect services for children subject to legal proceedings[4] (e.g. pre proceedings work and the quality and timing of papers filed for proceeding).

5. The need for a public body to be identified when acting in respect of citizens is recognised to be important, but in early debate and guidance about placing judgments in the public arena we lacked information about the risks of identification to some abused children/young people and the potential for misuse of information in judgments facilitated by the internet and social media. We are now aware that damaging and dangerous information about a child once placed on the internet, remains in the public arena for the reminder of a child's life with implications for their emotional health, welfare and safety.

6. This is however a difficult and complex arena; several factors must be balanced by the court and a question remains as to the status of the welfare of the child as paramount in decisions regarding the publication of judgments (see, Re W Children) [2016] EWCA Civ 113, McFarlane, LJ at 41). The resolution of that issue is of course beyond the boundaries of this guidance.

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[3] Ministry of Justice (2011) The Family Law Information Pilot. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217349/family-courts-information-pilot.pdf

[4] For Ofsted see https://www.gov.uk/government/publications/inspecting-local-authority-childrens-services-framework (and see ADCS: Court Orders and Pre-Proceedings- http://adcs.org.uk/care/subject-results/court-orders-and-pre-proceedings-guidance).

7. However the purpose of this guidance is to implement the findings of research based on a review of anonymisation practices in children judgments on Bailii (Brophy et el. 2015). The aim is to ensure, so far as possible, that children who have suffered significant harm are not caused further harm in the ensuing court process by the publication of material either that may lead to possible identification of them or that may cause them harm due to the nature of material that is published. Given the new information about the ease with which some children can be identified from published judgments, it may be time to revisit whether in conducting care proceedings designed to promote the paramountcy of the child, some directions of the court should avoid/be exempt from that test, and risk causing further harm to a child. The task of the court involves considering the actions of the parties in the light of the test of paramountcy. It may be perplexing to some families and others if the court, in exercising its own functions and decision making, were to be in some respects exempt from that test.

8. Leaving aside other issues, naming the trial court may be a factor to be considered when aiming to protect the location of a child. It may carry varying degrees of risk for a child depending on the number of local authorities served by a court. Where a court serves a single local authority (as in some 10/45 areas) this may place subject children at a higher degree of risk than, for example, where a court serves several local authorities (the former giving a single geographical boundary to the location of a child and/or where threshold events occurred). A further 10 family courts serve just two local authorities. Thus, for 20/45 areas (44%)[5] naming the court gives a distinct geographical boundary to the location of a child/young person for half subject children, and the location of the remaining children is limited to the geographical boundary of two local/unitary authorities[6].

9. Overall most family court hearing centres (some 56%) potentially serve three or more local authority applicants; a small number serve nine or more (e.g. Central, West and East London Family Courts, The Family Court - Manchester Civil Justice Centre, Liverpool Family Court). As the number of potential applicants per court increases, naming the trial court per se carries a 'lesser'/declining degree of risk.

10. In authorities where the number of young people 'in care' is relatively small (perhaps despite the geographical size of the authority) these children are usually well known to each other and to others in the community. This degree of local knowledge about such children may also apply to those from some rural communities, and some Black, Asian and minority ethnic communities; in each instance the risks of identification can be considerable – and may increase where the family court serves a single local/unitary authority.

11. Naming the local authority applicant without reference the above issues may serve only to undermine the work of editing other parts of the judgment to protect children.

12. Where it is considered there remains a risk of identification of a child despite the removal of geographical/personal identifiers from a judgment but where it is considered there remains an overriding public interest in publication - but without identifying the name of the local authority, the court could consider replacing the name of the applicant with

[5] Based on calculations undertaken with unpublished data (2016) kindly supplied by the Courts & Tribunals Development Directorate (Family Modernisation and Improvement).

[6] Note this is not necessarily a county boundary (i.e. in the case of an application on behalf of a unitary authority such as Brighton and Hove, Derby, Nottingham, Stoke on Trent, etc. the geographical boundaries may be much smaller).

wording to indicate the application arises from an applicant 'in the region/circuit' of a (named) DFJ. In practice, however this is a limited option and only likely to offer protection for a young person where the trial court serves several potential applicants.

13. The overall aim therefore is to suggest a way forward in which risks of identification of children/young people are addressed, and a process of decision making which aims to better protect them. Where a judgment is to be published but where the judge decides it is necessary to redact the name of the local authority applicant therein, a secondary means of access to redacted detail should be available through a discreet application for the publication of the name of the local authority, and indeed any other redacted or abbreviated material.

**Judicial balancing act**

15. In the first instance, the default position is that an applicant should normally be named however the judge should undertake a balancing act in each case and naming the local authority should be confined to cases where:

    (a) After redaction and abridgment of the content of a judgment intended for publication and following consultation with advocates – this to include a consideration of the number of potential applicants served by the court, the judge concludes that the identification of the local/unitary authority would carry with it no risk of identifying the children (or any of them[7]); or

    (b) Having balanced the remaining risks concludes that the public interest in identifying the applicant is so important that it outweighs any risk of identification of the children (or any of them[8]).

    (c) When the judge has in mind to criticise the local authority (or a social worker)[9] in a judgment to be published, it may be procedurally fair to:

        (i) Warn the applicant/social worker and to give them the opportunity to address the criticism[10];
        (ii) Consider a direction that the judgment be provided to the named Director of Children's Services and a named senior manager;
        (iii) Consider a direction that the judgment be provided to Ofsted as a notification to Ofsted to review the practices of the local authority[11];

[7] There are circumstances where publication may carry risks for an older sibling who is not a subject child but may be even more at risk in the community if the family's whole story is made public (see checklist 2, page children in previous proceedings). In this context it may be necessary to consider the Article 8 rights of associated children/young people when undertaking a balancing act as to publication issues.
[8] See note 4 above.
[9] The court has a legitimate interest in the quality of social work practices and the management of that work by the local authority according to the statutory duties, regulations and guidance but as the Family Justice Review indicated (2011, Para 3.17) trying to improve this from the bench can be costly and ineffective.
[10] By way of comparison, the Chilcot enquiry (a public inquiry into the nation's role in the Iraq war, chaired by Sir John Chilcott, announced in 2009 and reported in 2016) reserved public criticism of a person until that person has had an opportunity of such representation in relation to that enquiry. In a case centred on the care needs of a child it may be the case that unless such an opportunity is given the court may have an incomplete picture.
[11] Ofsted and the DCS have the right to see these documents; the reality however is that the DCS may only see documents relating to individual cases if they are specifically brought to his/her attention, and Ofsted will

(iv) Where the judge considers that the LA has acted unlawfully (as opposed to poor practice) the judge may consider a direction to provide the judgment to the Monitoring Officer[12] with a view to it being brought to the attention of elected members.

(d) When identifying the local authority applicant in a public judgment, the judgment should also state the name of the Director of Children's Service (or equivalent)[13].

(e) It will be open to any interested party, including representatives of the media, to apply to invite the court to determine whether the case comes within the exceptions in (a) or (b) above.

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normally only see documents if they happen to see them during an inspection. The focus here is to enable the court to require that they see a specific judgment (in the terms of note 9 above).

[12] The Monitoring Officer is appointed under Section 5 of the Local Government and Housing Act 1989.

[13] Where this service is outsourced and thus the application may come from an organisation commissioned by the local authority, a named person and that organisation may have to be inserted. It seems likely that the statutory duty will remain with the LA but commentators argue that what makes this 'cloudy' at this point is that expected outsourcing is to be effected by an instrument of government, rather than under contract following a process of commissioning. While a commissioner would usually retain liability under a contract for the acts of its agents, it remains unclear at this point how liabilities will remain imputable to the local authority if outsourcing occurs under an instrument of government. Guidance may need to address that development.

**APPENDIX 4**
**Anonymisation of children judgments – some early messages from similar jurisdictions**

## 1 INTRODUCTION

**Australia, New Zealand and Canada**

- Australia is a federal system of government and law with (mainland) six states and two (self governing) territories; states and territories retain jurisdiction for child protection and other types of juvenile proceedings. Canada is also a federal (and bijural) system with 13 provinces/territories retaining jurisdiction for child protection proceedings; seven of these operate a unified family jurisdiction – each has its own version of the model. New Zealand (like England and Wales) is a unified family jurisdiction.

**Some caveats**

- The summary below is drawn from a 'first level' review undertaken in a very limited timescale; it is in no way a comprehensive review of policy and practice in some 22 jurisdictions concerned with family law children proceedings. Information was drawn from websites and professional contacts within family justice systems. As with England and Wales, a desk based review of published materials, albeit supplemented with assistance from people 'on the ground', is no substitute for first-hand experience of jurisdictions and direct work with judges, practitioners and other stakeholders.

- While documentary evidence (policy documents and case law) indicate jurisdictions now adhere to the principle of placing more family judgments in the public arena, with notable exceptions it is fair to say that overall, practices for many if not most trial courts are likely to lag behind the principle. Indications to date are that this is at last in part due to the fact that these courts are not funded as courts of record by state/regional governments; equally there is no indication that they have addressed concerns about the privacy and safeguarding needs of children.

- In the time available I have benefited enormously from the generosity of family justice colleagues and academics in other jurisdictions, in terms of their time, knowledge and willingness to try and answer questions in an impossibly tight timescale. However, caveats apply to the headlines below[14]: (a) any errors are entirely mine, and (b) I have hardly scratched the surface for some areas (e.g. the provinces/territories of Canada). While the 'direction of travel' for publishing judgments in child protection proceedings indicates experiences may be similar, that requires further work.

## 2 OTHER JURISDICTIONS: A SUMMARY OF WORK TO DATE

**Guidance in the anonymisation of judgments – higher courts**

- Investigations to date indicate one jurisdiction (Family Court of Australia)[15] has specifically addressed anonymisation of judgments in family cases and issued guidance (see below); guidance is thus limited to private law judgments and does not address the treatment of 'sensitive' information. Guidance does however address some key personal identifiers for children/others, and Judicial Publications Office (see below) training materials indicate awareness of risks of jigsaw identification of children - albeit this is not specifically detailed in existing guidance.

- There is evidence of attention to anonymisation of judgments in general from the Canadian Judicial Council (CJC, see below), it was aimed at the higher courts, did not specifically address children cases but did address aspects of personal information in judgments. It was not however anticipated the resulting protocol would be adopted by the lower Provincial (family) courts/other judicial councils.

[14] This is a summary drawn from a working paper prepared in the context of developing this guidance: Anonymisation of children judgments: Messages from other common law jurisdictions.

[15] The Family Court is a superior court of record established by Parliament in 1975. It commenced operations in January 1976 and now deals with the most complex/international aspects of family law disputes; it consists of a Chief Justice, a Deputy Chief Justice and other specialist judges and staff. The Court maintains registries (courts) in all Australian states and territories except Western Australia.

**Guidance in the anonymisation of judgments: child protection - trial courts**

- To date there is no evidence of guidance applicable to judgments arising from trial court decisions in child protection litigation.

- There is anecdotal evidence of concern about the risks to vulnerable children from information published in judgments, but to date no evidence of research/evaluation of practices.

**Judicial support for anonymisation of judgments**

- Two jurisdictions have established a specialist office/unit to deal with the anonymisation of judgments. One is well established: The Judgment Publications Office (JPO), Family Court of Australia - a court of record for the (federal) matrimonial jurisdiction, and one very recent publications unit for the Family Court of New Zealand.

- It is very early days for developments in New Zealand but it may be the first jurisdiction to provide support for the work of courts in the anonymisation and publication of judgments in *all* children cases (i.e. private and public law).

- However caution is necessary: there are indications that some courts at least in Canada have access to Courts Privacy Counsel. For example, in Alberto the Courts Privacy Counsel covers the Court of Appeal, Court of Queen's Bench and the Provincial court. The detail of that role and its replication across all provinces and territories requires further work but at this early stage in enquires, there are indications of concern about jigsaw identification of children.

**Potential child populations and resource implications**

- With regard to the cost implications of a support unit for the anonymisation of judgments, and thus perhaps political will to support such a service, is it helpful to consider relative populations. At mid 2015 New Zealand had an estimated total population of some 4,596,700, with a child population (0-14 years) of about 915,000[16], while Australia had a total population of some 23,781,200 and a child population (0-14 years) of some 4,476,045[17]. Estimates for this period for England and Wales were a total population of some 57,885,413 and a child population (0-14 years) of 10,627,406[18].

- Determining the number of children subject to care proceedings in each jurisdiction those cases for which a judgment may be issued, is a complex exercise (and beyond the remit of this work). More detailed work is necessary but raw population figures for children indicate the potential number of judgments for England and Wales is likely to be substantially higher than for New Zealand and Australia.

**Numbers of judgments published**

- This is complex data to ascertain - in part because of differing approaches to the circumstances in which a judgment may be published (within and across jurisdictions) and access to criteria/case outcomes data (e.g. those resulted in a contested final hearing) but to date, there are notable divisions with higher courts in all jurisdictions more likely to publish all/most judgments, while trial courts publish much less.

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[16] Statistics New Zealand: http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/NationalPopulationEstimates_HOTPAt30Jun15.aspx;

[17] Australian Bureau of Statistics: http://www.abs.gov.au/ausstats/abs@.nsf/featurearticlesbyCatalogue/7A40A407211F35F4CA257A2200120EAA?OpenDocument: (calculated from Table 8: for June 2015 ('Data Cubes' - Population by Age and Sex Tables).

[18] Office for National Statistics, 2011 Census data, update at June 2015 – England and Wales: https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland, (UK and regional population estimates 1838 to 2015 - The tab GOR SYOA 1991-2015 has figures for each year from 1991 to 2015. It has totals for each region of England and for Wales. It also has figures for each year of age, but separately for males and females. Figures are a result of isolating the sections for 2011 and for 2015 and calculating males and females aged 0-14 across all the regions of England, plus those for Wales.

**DATA TO DATE - BRIEF OVERVIEW**

**AUSTRALIA**

- **Guidance in the anonymisation of judgments:** guidance has been issued by the Judgment Publications Office (JPO), Federal Family Court of Australia and thus limited to matrimonial proceedings. It does however address some of the key personal identifiers for children (e.g. dates of birth, schools etc) and indicates naming protocols to be adopted in judgments. The guidance does not specifically cover issues of jigsaw identification but the JPO is well aware of and concerned about jigsaw identification of children and for example, training materials (Newlands 2015[19]), alert audiences to the dangers of jigsaw identification of children/families.

- **Children's Courts (states/provinces/territories)**: to date there is no evidence of formal guidance in anonymisation practices but there is evidence of changes to practices in some areas. For example in New South Wales real names are not now used and other names can be anonymised if likely to identify a child. However, practices may not be consistent, for example, in the State of Victoria a range of 'de identification' practices exist alongside wide variations in the length and structure of judgments and without any common conventions (Horsfall, 2016).

- To date, there is no evidence of research/evaluation of children judgments in Australia (within and across jurisdictions) – or engagement with young people about this issues.

- **Resources for anonymisation practices**

  - **Family Court of Australia:** the federal government funds a Judgment Publication Office: it has two full time staff plus temporary staff for the anonymisation of judgments. Concerns have been expressed about the capacity of the JPO to manage the volume of judgments; these have risen from an estimated 200-250 in 2007 to some 1500 in 2016.

  - **Children's Courts (States/Territories)** data to date indicates these are unlikely to be funded as 'courts of record'; they thus have limited resources for this exercise; publication is a matter for the presiding officer.

- **Volume of judgments published:** The FCA aims to publish all/most private law judgments. Data for the Children's Courts however is limited and difficult to obtain but indications are that the number of judgments published is small, and selective. The reason for small numbers is reported as limited time/resources for the work plus concerns regarding children's privacy and safeguarding.

- **Public access to judgments:** potentially two sites: the court's own website (FCA website (appeal court and first instance judgments), and where it exists, the Children's Court website in states/territories, and AustLII.

- **Data gaps:** statistics on the number of public law applications by state/territory, criteria for a written judgment, numbers posted by court, evaluation of practices across Children's Courts and views of stakeholders including young people.

**CANADA**

- **Guidance in the anonymisation of judgments:** there is no evidence to date of guidance on practices in child protection courts in the provinces/territories but that requires further work.

- **Higher Courts:** some guidance emerged through the work of the Judges Technology Advisory Committee (JTAC), Canadian Judicial Council (CAC 2005)[20] in which some members expressed concerns about posting family judgments. Amongst other things the report addressed some personal data

[19] www.lvi2015.org/programme/papers/LVI2015_Lyn_Newlands_Publishing_Family_Court_judgments.pdf

[20] JTAC's Open Courts subcommittee discusses the interface of technology and access to courts, including openness of the judicial system and privacy of litigants. It develops various studies, guidelines, model policies that are submitted for adoption by the JTAC and ultimately by the Canadian Judicial Council (see, https://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_committees_en.asp)

identifiers but guidance did not specifically address children or jigsaw identification. The CJC is a federal body, and it was not anticipated lower courts or Provincial Councils would adopt the CJC protocol.

- **Resources/specialist support for anonymisation practices**: data is far from complete but evidence indicates some superior courts have a 'Counsel for Privacy'/Judgment preparation (Alberta, Nova Scotia) this requires further work with other Provinces/territories but early discussions with the former indicates there are concerns about jigsaw identification of children.

- **Decision to post judgments - trial court:** this remains with presiding judge

- **Numbers of public law judgments posted:** indications are these are likely to be small. For example, in British Columbia at 2007 numbers were small but expectations were that they would increase (Brophy, 2009). At 2015 however they remain small and limited judicial time/resources are implicated: family court judiciary report applications continue to rise despite new rules and processes in family and child protection matters aiming to relieve pressures.

- **Public access to judgments:** Family Court website ('Decisions'), Provincial Court Websites, and in some cases, CANLII.

- **Data gaps**: practices across all 13 provinces/territories hearing child protection cases, percentage of first instance cases resulting in a written judgment and criteria for judgment, the percentage posted, resources and time/cost data (for High Court judgments and Provincial Court judgments).

**NEW ZEALAND**

- **Guidance in the anonymisation of judgments – High Court:** anonymisation issues were addressed by way of advisory memos from Chief High Court Judge (CHCJ) (2009, 2013, 2016):

  - These indicate changing approaches to anonymisation of names (from initials to pseudonyms followed by concerns and a review of the use of pseudonyms)

  - Some concerns are emerging about unnecessary personal information appearing in judgments and possibilities for offending parties by poor choice/inappropriate use of pseudonyms

  The privacy and safeguarding issues of children – and potential for jigsaw identification of children in public law cases does not appear to have been addressed.

- **Public access to judgments**: At 2007 very few judgments appeared on the Family Court NZ website, the intention at that point was that more would be published over time (Brophy, 2009). In 2015 a new Family Court website was launch but a decision was taken not to publish judgments on that site; readers trying to access these are directed to (fee charging) commercial/legal sites (Westlaw and LexisNexis) or law libraries. Higher Court decisions are available on 'Judicial Decisions Online' (JDO) this site covers Supreme Court judgments, summaries; HC decisions (from 2005); CA decisions (from 2003); there is a link to 'Recent Decisions of Public Interest' database but this database appears to exclude children and family judgments.

- Reasons for limited posting by trial courts and poor public access to judgments are unclear but likely to be related to resources issues: the recent establishment of a **Publishing Unit** in Chief Judges Chambers may explain some of the above and indicate a change of direction.

- It is too early to say how the Unit will work in terms of the content and volume of public law judgments published and issues of guidance and monitoring/evaluation etc. but early indications are that it is intended the NZ family jurisdiction will adopt the use of pseudonyms.

- **Data gaps**: there are considerable data gaps which require further work but the situation in New Zealand, so far as the anonymisation and publication of children protection judgments is concerned, has been in some 'flux'. However the establishment of a Publishing Unit offers potential for a range of improvements to policy and practice in this field.

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