

‘Changes were a misguided politically motivated fudge’

Far from opening up, the family courts are now more closed than before, reports **Frances Gibb**

It was championed as a great victory — opening up the closed, secretive world of the family courts. A year ago, thousands of hearings held behind closed doors on removing children into care or on contact with parents were opened to the media after a sustained campaign by fathers’ groups, politicians and the media, led by *The Times*.

Twelve months on, what has happened? After a flurry of interest, the media have stopped reporting family cases in all but rare high-profile disputes because a restrictive reporting regime makes coverage meaningless.

Last autumn Jack Straw set about opening the family courts Mark 2, aware that he had given the media food but no cutlery. The upshot was provisions in the Children, Schools and Families Act 2010, which were watered down as it was rushed through in the parliamentary wash-up.

A coalition of judges, lawyers and children’s groups condemned the plans for more open reporting, warning of harm to children and believing that anonymity curbs would not hold, or prove meaningless in small communities where people are easily identified.

Then there were concerns that if witnesses were named — social workers, council workers, police, doctors — they might be deterred from giving evidence. Originally, the Justice Secretary had said: “If you are a structural engineer and you do the calculations for a bridge and it falls down, you will go to court and have no protection in those proceedings about your privacy.”

So not only should such professionals be named, he said, but family courts would be put under the same reporting regime as the youth courts — open but subject to anonymity for children. But instead, blanket anonymity remains; further reforms to allow media access to evidence are on hold for 18 months and will depend on an independent

review of the workings of the Act.

But it is worse than that. Not only do family courts remain effectively closed because reporting is so restricted, they are now more closed than before. Mike Dodd, editor of *Media Law*, says that the new legislation makes reporting even more difficult. “We’re not allowed to do anything that will identify anyone involved in proceedings. The legislation seems to be completely the opposite of what Straw said he wanted. The way it was rushed through is a complete disgrace.”

Straw has also reversed a ruling (*Clayton v Clayton*) that enabled anonymity to be waived at the end of a case. Now there will be lifelong anonymity — and for both parents and children, not the child alone as before.

“Local papers won’t report these cases — it is now so complex that they won’t know what they can report or

have time to apply for lifting of restrictions . . . local papers on deadlines just won’t bother,” Dodd predicts.

Even lawyers, many of whom criticised greater openness, say that the present regime is flawed. Rachel Atkins, a family lawyer with Schillings, says: “The proposals were a misguided and politically motivated fudge that has understandably satisfied neither side.” The changes have added complexity, uncertainty for the media and a “very substantial and additional layer of legal expense for court users and to a more limited extent the media”.

Schillings has seen client costs rise because of extra hearings to try to keep out the press. “Regardless of what the press can report, people don’t want them to hear private information in the first place.”

In some cases, she says, fear of a media presence has prompted people to settle out of court. Andrew Green-smith, of Resolution, the family lawyers’ group, also sees a move to more

out-of-court dispute resolution. But he finds “little evidence of the press wanting to report family cases; it has been far less a worry than lawyers feared. Only in a few cases has it had any impact.”

The family courts have draconian powers: to remove a child from its family or tell a mother she may never see her child again. Yet, Dodd says, far from exposing them to greater scrutiny, the reforms have achieved the opposite — “and done a disservice to justice”.

Read Rachel Atkins’ Q&A: at timesonline.co.uk/law



TONY STONE / GETTY



Thousands of cases – from removing children into care to parental contact – can only be reported in broad terms

