

## Top judge's war on secret courts: Family hearings must be exposed to 'glare of publicity'

- Sir James Munby, president of the Family Division of the High Court said parents of children taken into care should no longer be gagged by courts
- Judgment came in case of parents whose four children taken into state care
- Council tried to ban video of seizure in April by social workers and police
- Sir James said there is a 'pressing need' for workings of family courts to be opened up to public scrutiny

By [Steve Doughty, Social Affairs Correspondent](#)

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One of Britain's most senior judges vowed yesterday to expose family courts to 'the glare of publicity' after decades of obsessive secrecy.

In a landmark ruling, Sir James Munby said parents of children taken into care must no longer be gagged by the courts and the public should be told what social workers are up to.

Sir James, who is president of the Family Division of the High Court, said the removal of children from their families had become the most drastic matter judges dealt with now there was no death penalty. He said the rulings could affect mothers for 'upwards of 60 or even 70 years' and children for even longer.

There was a 'pressing need' for the workings of the family courts to be opened to public view and the arguments for scrutiny and public accountability were compelling.

Parents must be given the freedom to criticise judges, the courts and social workers, and the Press must be free to report what has happened without the interference of judges, Sir James added. The break-up of families by the state must no longer happen in secret, on the pretext of protecting the children involved.

The Mail has reported numerous cases where the names of social workers, experts who advise the courts and even the names of councils have been kept under legal wraps. The voices of those whose families are split up by social workers and kept apart on the orders of family court judges have been routinely silenced.

But Sir James's unprecedented ruling is likely to punch a hole through this curtain of secrecy.

His judgement came in the case of parents whose four children have been taken into state care. The father made a video of the seizure in April of the couple's newborn by social workers and police. The film was posted widely over the internet.

Sir James rejected a sweeping injunction designed to effectively prevent anyone in the world from seeing the film, knowing the names of the social workers involved, or even discovering the name of the local authority that applied for the order, Staffordshire County Council.

The order means the video, which includes pictures of the baby, can be more widely distributed and watched by anyone.

The submission by Staffordshire that naming the authority or its social workers would lead to identification of the baby was 'merely fanciful', the judge said.



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**Sir James, who is president of the Family Division of the High Court (pictured), said the removal of children from their families has become the most drastic matter judges deal with**

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However Sir James said the names of the parents and the baby must stay secret in order to protect the child from any harm publicity might bring.

The parents of the baby, known only as J, have never been accused of harming their children, the father said yesterday. Instead social workers decided that his wife was incapable of bringing them up because of her learning disability, he claimed.

**‘Freedom of speech is not something to be awarded to those who are thought deserving and denied to those who are thought undeserving’, Sir James Munby**

‘They were taken away as a preventative or precautionary measure,’ he said.

Sir James said the case raised ‘important questions about the extent to which the public should be able to read and see what disgruntled parents say when they speak out about apparent deficiencies in the family justice system’.

He added: ‘It must never be forgotten that, with the state’s abandonment of the right to impose capital sentences, orders of the kind which family judges are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make.

‘When a family judge makes a placement order or an adoption order in relation to a 20-year-old mother’s baby, the mother will have to live with the consequences of that decision for what may be upwards of 60 or even 70 years, and the baby for what may be upwards of 80 or even 90 years.’

The ruling in the case of child J promises to end years of gagging of parents, who have found themselves threatened with legal sanctions and imprisonment if they try to talk about what has happened when their children are taken into care or adopted.



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**Liberal Democrat MP John Hemming welcomed the judgment**

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Newspapers and broadcasters trying to investigate the behaviour of social workers have found themselves prevented by law from speaking to parents or publishing any details of what has happened to them.

The system has ensured that the stories of how more than 60,000 youngsters who live in children's homes or with foster parents in the care system cannot be known.

Sir James, who took over as head of the family court system in January, set down new guidance for the courts in July that called for much greater transparency. He said the public had the right to read judgements now rarely published.

The guidance also applies to the Court of Protection, the secretive system which decides the affairs of people too ill to make their own decisions.

Earlier this year Sir James and Lord Chief Justice Lord Judge ordered the family courts and the Court of Protection to stop imposing in secret jail sentences for contempt of court.

This followed the disclosure by the Daily Mail that a Court of Protection judge secretly imprisoned 50-year-old Wanda Maddocks for disobeying its instructions and trying to remove her father from a care home his family disliked.

John Hemming, a Liberal Democrat MP who has been pressing for more openness in the family courts, said: 'People have been going to jail for complaining about what is done to them, and that is wrong. This is a good judgement.

'I was very pleased when Sir James was appointed as president of the Family Division because I thought he would change the direction of an unaccountable and opaque system to an open system.'

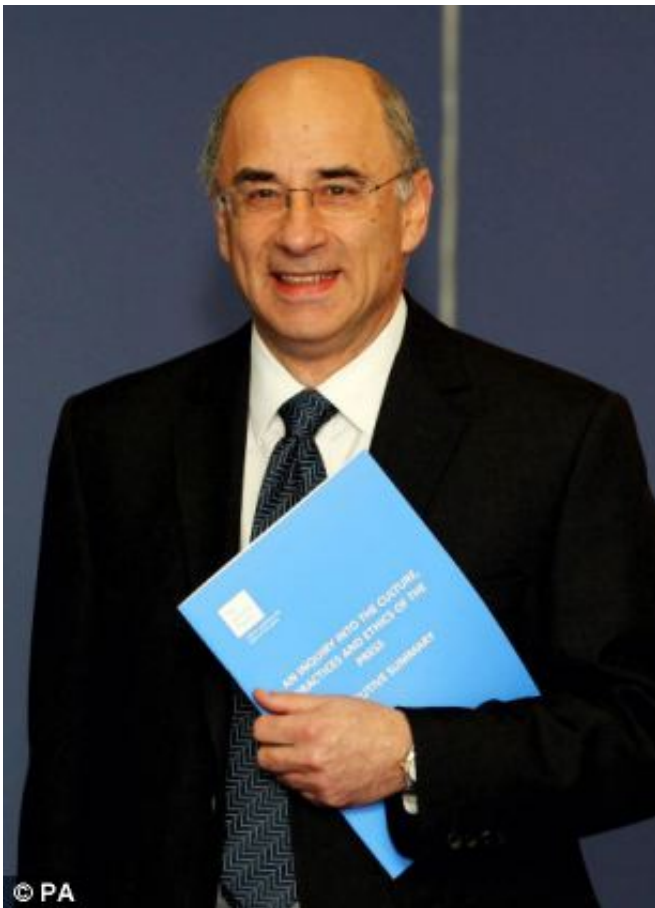
Philip Atkins, leader of Staffordshire County Council said: 'It is a ground breaking ruling because the court has recognised and clarified the need to protect children's interests within the electronic world that we now live.

'Ultimately, this ruling means that websites hosted in England and Wales must not publish information which identifies a child who is being protected by care proceedings. From now on children will have the same protection for privacy in the electronic world as they do in print.'

# We don't need new law to muzzle the Press: Judge's comments put him on collision course with lawyers and politicians

Sir James Munby struck a blow for free speech yesterday, putting the leading judge on a collision course with fellow lawyers and politicians who are trying to restrict it.

As part of a ruling against secrecy in the family courts, Sir James declared: 'Freedom of speech is not something to be awarded to those who are thought deserving and denied to those who are thought undeserving'.



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**Sir James's comments counters Lord Justice Leveson's (pictured) report on the culture, practice and ethics of the Press**

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He defended the right of the Press to criticise – even in the most 'robust' terms – and stressed the importance of its power to expose wrongdoing.

His views clashed starkly with those of other judges who have in recent years developed wide privacy laws that have prevented newspapers and broadcasters from publishing uncomfortable truths about the rich and famous.

It also counters Lord Justice Leveson's report on the culture, practice and ethics of the Press published last autumn.

Lord Leveson condemned the 'outrageous' behaviour of some of the Press and called for a new and tougher regulatory system backed by new laws – effectively state regulation of newspapers.

Sir James, who is president of the Family Division of the High Court, said the Press was necessary to ensure scrutiny of the courts and that occasional bad behaviour by some journalists had to be tolerated.

If Press criticism 'exceeds what is lawful' there are already laws to deal with that.

'It is not the role of the judge to seek to exercise any kind of editorial control over the manner in which

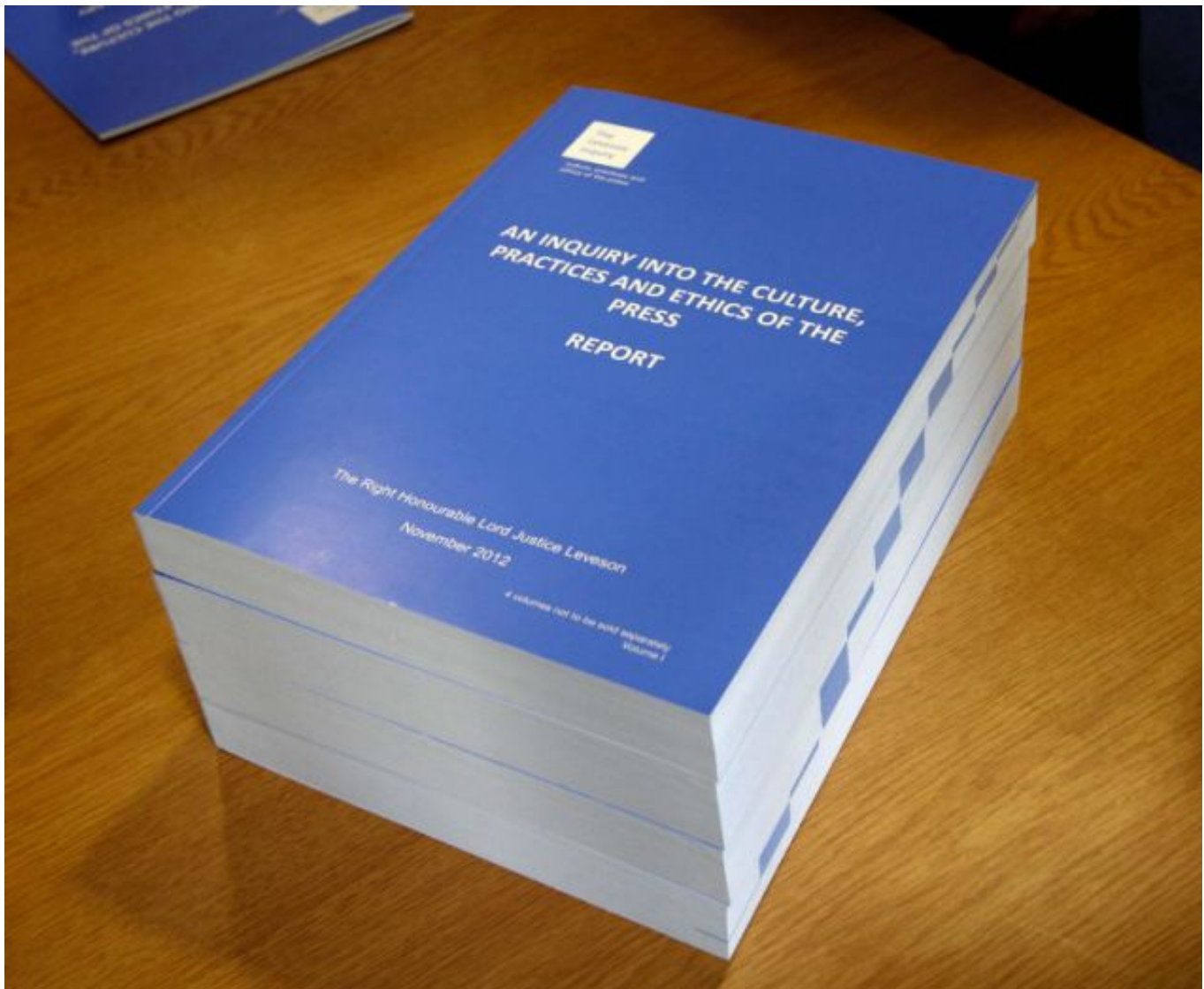
the media reports information which it is entitled to publish,' he said. 'Comment and criticism may be ill informed and based on misunderstanding or misrepresentation of the facts.'

'The fear of such criticism, however justified the fear may be, is, however, not of itself a justification for prior restraint by injunction.'

He also stood up for the rights of tabloid newspapers to express criticism in 'intemperate language'.

'If there is no basis for injuncting a story expressed in the temperate or scholarly language of a legal periodical or the broadsheet press, there can be no basis for injuncting the same story simply because it is expressed in the more robust, colourful or intemperate language of the tabloid press or even in language which is crude, insulting and vulgar.'

'The publicist ... may be an unprincipled charlatan seeking to manipulate public opinion by feeding it tendentious accounts of the proceedings. But freedom of speech is not something to be awarded to those who are thought deserving and denied to those who are thought undeserving.'



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**Lord Leveson condemned the 'outrageous' behaviour of some of the Press and called for a new and tougher regulatory system backed by new laws & effectively state regulation of newspapers**

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Unlike Lord Leveson, he emphasised the 'enormous challenges' posed by the internet 'The law must develop and adapt, as it always has done down the years in response to other revolutionary technologies.'

Privacy law, developed by judges and based on the Human Rights Act, has encouraged increasing numbers of celebrities to apply for injunctions concealing embarrassing stories about themselves.

It led to a controversy in 2011 which led to MPs and peers using parliamentary privilege to name two

individuals who had used privacy injunctions to suppress news of extra-marital affairs, ex-Royal Bank of Scotland chief Fred Goodwin and footballer Ryan Giggs.

## **PUBLIC HAVE RIGHT TO KNOW: EDITED VERSION OF SIR JAMES' RULING**

There is a pressing need for more transparency, indeed for much more transparency, in the family justice system.

There are a number of aspects to this. One is the right of the public to know, the need for the public to be confronted with what is being done in its name.

Nowhere is this more necessary than in relation to care and adoption cases. Such cases, by definition, involve interference, intrusion, by the state, by local authorities and by the court, into family life.

In this context the arguments in favour of publicity – in favour of openness, public scrutiny and public accountability – are particularly compelling.

The public generally, and not just the professional readers of law reports or similar publications, have a legitimate, indeed a compelling, interest in knowing how the family courts exercise their care jurisdiction.

I have said this many times in the past but it must never be forgotten that, with the state's abandonment of the right to impose capital sentences, orders of the kind which family judges are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make.

When a family judge makes a placement order or an adoption order in relation to a 20-year-old mother's baby, the mother will have to live with the consequences of that decision for what may be upwards of 60 or even 70 years, and the baby for what may be upwards of 80 or even 90 years. We must be vigilant to guard against the risks.

We must have the humility to recognise – and to acknowledge – that public debate, and the jealous vigilance of an informed media, have an important role to play in exposing past miscarriages of justice and in preventing possible future miscarriages of justice.

The compelling need for transparency in the family justice system is demanded as a matter of both principle and pragmatism.

It is vital that public confidence in the family justice system is maintained or, if eroded, restored. There is a clear and obvious public interest in maintaining the confidence of the public at large in the courts.

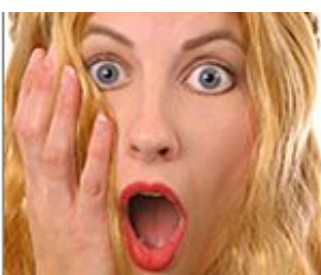
It is vitally important, if the administration of justice is to be promoted and public confidence in the courts maintained, that justice be administered in public – or at least in a manner which enables its workings to be properly scrutinised – so that the judges and other participants in the process remain visible and amenable to comment and criticism.

The family lawyer's reaction to complaints of "secret justice" tends to be that the charge is unfair, that it confuses a system which is private with one which is secret. This semantic point is, I fear, more attractive to lawyers than to others.

The remedy, even if it is probably doomed to only partial success, is – it must be – more transparency; putting it bluntly, letting the glare of publicity into the family courts.

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