

VIEW FROM THE PRESIDENT'S CHAMBERS (6)

The process of reform : latest developments

Sir James Munby, President of the Family Division

In my first 'View from the President's Chambers', [2013] Fam Law 548, I sketched out some of the components of the reforms we are all embarked on. In my fourth 'View', [2013] Fam Law 974, I gave an update. It is time for another.

The single Family Court

Planning for the new Family Court continues to proceed apace. There is much being done, though much yet to be done.

I am being kept informed of what is going on and am working closely with HMCTS, discussing such matters as the provision of proper recording equipment in the courts where Magistrates will be sitting (which I believe to be essential), the Case Management System, the naming of the Designated Family Centres and Hearing Centres, the headings for Family Court orders, the numbering system to be used in future for family cases (which will be largely as at present) and the design of the new Family Court seal.

Work is under way in conjunction with the Family Procedure Rules Committee on various topics which will in due course be embodied in Statutory Instruments, Rules or Practice Directions, such as the functions and powers of Justices Clerks (legal advisers), the powers of a single Magistrate, the criteria for allocating cases within the Family Court, the precise scope of the High Court's reserved jurisdiction, and the routes for appeals within and from the Family Court.

In London, discussions are continuing about the plans and ideas I set out in my fifth 'View', [2013] Fam Law 1137. I have appointed Her Honour Judge Carol Atkinson Designated Family Judge for the new Family Court in London Docklands. Formally, her appointment will be from April 2014, when it is anticipated the new court will

open. But she will be heavily involved in the meantime in the planning and organisation of the new court, its premises, judiciary and staff.

The PLO

By the first week of October 2013 all courts will have implemented the revised PLO. Early reports from those courts which have already implemented it are reassuring. Everywhere we are continuing to see further significant and very welcome reductions in the time it takes to conclude care cases. Determined steps are being taken – must be taken – to achieve early finality in that constantly reducing number of outstanding care cases which have been going on for far too long. My objectives are simple: First, that by the end of December this year there should be (with no more than, at most, a small handful of really exceptional cases) no current care case that was commenced in 2012 or earlier. Second, and again by the end of December this year, that the overwhelming bulk of care cases commenced since 1 July this year should be concluding within a maximum of 26 weeks. I believe that these objectives can be achieved. If they can be achieved, then they must be.

In July 2013 the Centre for Research on Children & Families at the University of East Anglia published ‘Evaluation of the Triborough Care Proceedings Pilot’, its Report for the Triborough Care Proceedings Steering Group. The Care Proceedings Pilot project was a joint initiative of the three London boroughs of Hammersmith and Fulham, Kensington and Chelsea, and Westminster, working together with the judiciary, the court services, Cafcass and other key stakeholders, which aimed to reduce unnecessary delay for children undergoing care proceedings.

During the pilot year there were 90 cases, with commencement dates between 1 April 2012 and 31 March 2013. The Report looked in detail at the 65 cases from the first nine months, which would be expected to have finished by the end of June 2013 if they had completed within the 26 week target. The principal aims of the evaluation of the pilot were to ascertain whether:

- Delay in care proceedings had been reduced, and the target duration of 26 weeks achieved;

- Judicial continuity and early involvement of children’s guardians had been achieved;
- The number of hearings had reduced and fewer and more timely assessments completed;
- These changes had impacted on the quality of decision making, and how quicker timescales had affected the children and parents involved;
- The benefits of the pilot can be sustained, and what factors would promote sustainability.

Paragraph 1.3 of the Report summarised its key findings as follows:

- The Triborough pilot has been successful in achieving its key aim of reducing the length of care proceedings. The median duration of care proceedings was 27 weeks for the first nine months of the pilot, as compared to a median duration of 49 weeks in the previous year, a reduction of 45%. Excluding FDAC cases, the median duration of proceedings was 26 weeks.
- The fact that the median length of proceedings is now around 26 weeks means, of course, that half the cases are still taking longer than 26 weeks. This should not necessarily be viewed in a negative light since some case-by-case flexibility about the length of proceedings is surely necessary in the interests of children’s welfare and justice. The pilot demonstrates that some flexibility can coexist with meaningful efforts to bear down on unnecessary court delay.
- Proceedings involving a single child were shorter (median 25 weeks) than those involving sibling groups (32 weeks). Proceedings resulting in a care order, with or without a concurrent placement order were shorter (median 20 weeks) than cases resulting in an SGO (26 weeks) or in the child returning or remaining at home on a supervision order, with or without a residence order (29 weeks).
- The pilot has been successful in reducing the number of court hearings. Excluding FDAC cases, the reduction was from a mean number of 5.2 hearings to mean of 3.9 (24% decrease).

- There is no evidence that the reduction in the length of care proceedings has been achieved at the expense of more delay in the pre-court period.
- While many stakeholders expressed concerns about the potential for justice to be compromised by a rigid 26 week target, no one suggested that this had actually occurred.
- The case manager role was vital to the success of the pilot, and will continue to be vital in the future.
- Commitment and leadership in all agencies (local authorities, Cafcass and the courts), and robust court management by judges and magistrates, were vital to the success of the pilot and will continue to be vital in the future.
- Dedicated court time, and the availability of guardians at the initial hearing have been important to the success of the pilot. The reduction that has achieved could not be sustained if court timetabling problems or non-availability of guardians were to hold things up. This may prove a problem in areas outside the Triborough, or in the Triborough itself in the future if numbers of proceedings were to rise.
- Working in the new way does not necessarily take more time, but it almost certainly requires more energy. This is one reason why active leadership and monitoring of workloads and outcomes continue to be essential requirements.

This is all immensely encouraging. It shows that we are on the right track and, crucially, that the 26 week deadline does *not* compromise justice.

The PLO – further work

The ‘Protocol on communications between judges of the Family Court and Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal’ which I referred to in my fourth ‘View’ was issued, as planned, by the Senior President of Tribunals and me in July 2013.

Work on the Protocol relating to the disclosure of information between the criminal justice system and the family justice system which I also referred to in my fourth

‘View’ is so advanced that by the time you read this it will have been finalised and, I hope, issued.

Work continues on a similar Protocol relating to disclosure between National Health Service agencies and the family justice system. Helpful discussions are taking place with the Official Solicitor which I am sure will bear fruit.

Private law

I am very conscious that the focus since I became President has, inevitably, had to be on public law and that much needs to be done in relation to private law, particularly given the impact – still difficult to quantify and assess – of the drastic changes in public funding introduced in April 2013.

Cobb J has been working valiantly and energetically behind the scenes for some time on a number of the most pressing issues that arise. He has agreed to chair the Private Law Working Group I have established. Its membership includes judges and practitioners. Its Terms of Reference are:

To make recommendations to the President of the Family Division in relation to the resolution of Private Family Law Disputes (concerning children) in the most optimal and efficient way, building upon the President’s Revised Private Law Programme (2010) and the Operating Model of the single Family Court (2013); and preparing such documents as may facilitate those recommendations.

The Working Group had its first meeting on 2 September 2013, when it drew up an action plan. It intends to send me its recommendations on 8 November 2013.

Transparency

In my fourth ‘View’ I set out my plans for improving transparency in the family justice system. I asked for views on the draft Guidance I had issued in July 2013. I am considering a number of responses that have already arrived but there is still time for

you to express your views. Please do so. The issues are vitally important and I do need to know what everyone is thinking.

In relation to this can I draw your attention to the judgment I handed down on 5 September 2013 in *Re J (A Child)* [2013] EWHC 2694 (Fam). You can find it on BAILII.

As I have made clear, I propose to adopt an incremental approach. The first step is the issue of Guidance on the Publication of Judgments, which I intend should take place well before the end of this year. The next step will be the issue of Guidance on the Disclosure of Documents to the Media. This also will first be issued in *draft*, for comment and discussion before it is finalised. In the meantime, however, it would much assist me to have your views on two crucially important matters: first, what classes of documents should, or should not, be made available to the media; and, second, what safeguards and restrictions should be put in place to prevent inappropriate use of documents which are disclosed. I shall welcome and value your views. They should be forwarded to my Legal Secretary, Penelope Langdon (penelope.langdon@judiciary.gsi.gov.uk).

Family Orders

I referred in my fourth ‘View’ to the work being undertaken by a team led by Mostyn J to provide us with a comprehensive set of orders the use of which will in due course become mandatory in the Family Court and the Family Division. They will be published in draft form later this autumn for comment and discussion before they are finalised and introduced in time for the new Family Court in April 2014.

There has been, and for this, no doubt, I am responsible, misunderstanding about the ‘House Rules’ which I referred to in my fourth ‘View’. They are *not* rules which courts or practitioners will have to follow; *their* obligation will simply be to use the prescribed forms of order. The House Rules, akin to house style manuals used by publishers of books and newspapers, are merely internal instructions to Mostyn J’s team to ensure consistency in their drafting of the prescribed forms. They may seem tedious and pedantic but can I make two points: (a) we need house rules, for internal

use, to ensure consistency and (b) they are designed to shorten orders by removing unnecessary verbiage. My view was, and remains, that it is appropriate to share the House Rules with the wider world so that you can express comments on the specifics before the draft orders are crystallised. I appreciate that there is much going on and that this may seem insignificant and even trifling. But given the time and money that is currently wasted in the process of drafting orders that could, and therefore should, be standardised, the arguments in favour of standardisation seem to me to be clear.

We are no longer living in the world of the fountain pen and biro (which still today account for far too much drafting of orders) any more than in the world of the quill pen. I intend that the standardised orders will be available to everyone electronically. The use of standard orders produced at the press of a button will obviate the need for drafts from counsel and solicitors scribbled out in the corridor.

Bundles

I shall be issuing later this autumn, for comment and discussion, a *draft* revised Practice Direction on Bundles. Building on the existing Practice Direction my intention is that it will apply in principle to all hearings, whatever, the level of judge, in the Family Court and the Family Division. I am also determined to make such amendments to the existing Practice Direction as will ensure that in the overwhelming majority of cases the bundle will contain, at most, no more than 350 pages in a single lever arch file. The key principle, as I explained in my fourth ‘View’, is that from now on the bundle should contain only those documents that the court needs to read or which will actually be referred to during the hearing. The existing Practice Direction says much about what must be *included* in the bundle; this needs to be balanced with more explicit reference to what is *not* to be included.

In the meantime I shall welcome and value your views on two important matters: first, whether there are any types of case or types of hearing which should be excluded from the ambit of the Practice Direction (for example, certain types of private law case or cases in which all parties are appearing in person); and, second, what classes of documents should be excluded from the bundle unless the case management judge

directs otherwise. Please forward your views to my Legal Secretary, Penelope Langdon.

Visits

By the end of July 2013 I had visited 17 care centres. By the time you read this I will have visited another 2. Visits already planned will take me to more than a further dozen by the end of the year. I intend to get to all the others as soon as possible.

Everywhere I go I am exhilarated by the enthusiasm, dedication and commitment of everyone I meet: court staff, judges, local authority social workers and lawyers, CAFCASS, Magistrates, Justices Clerks and legal advisers, and legal practitioners. It is invidious to select any for particular mention but I must mark and celebrate the cheerful enthusiasm with which court staff and circuit and district judges go about their daily work in those buildings, of which I have unhappily seen too many, where the facilities are inadequate and, in some cases, little short of scandalous.

We ask a lot of our people; surely the least we can do is to give them decent conditions in which to work. And what kind of impression do such buildings convey to litigants?