

## **THE MAGISTRATES' ASSOCIATION**

### **FAMILY COURTS COMMITTEE**

#### **Evidence to the Family Justice Review**

##### **Introduction**

The Family Courts Committee (FCC) of the Magistrates' Association (MA) represents family magistrates sitting in Family Proceedings Courts (FPCs) in England and Wales. There are over 5,000 family magistrates selected from all backgrounds, age groups and ethnic groups. They are unpaid but receive special training and are regularly appraised. They are assisted in court by a qualified legal adviser.

Sitting as a bench of three, family magistrates, with their legal adviser, conduct case management. The magistrates make final decisions and orders for both Public and Private Law applications. In the decision-making process, they scrutinise the papers, hear evidence and representations and order reports. The welfare of the child is paramount and they are always mindful of avoiding delay. They are, however, dependent on the parties and agencies and, where appropriate, experts filing statements and reports as directed.

FPCs usually hear matters lasting up to 5 days duration. Longer and more legally complex matters are transferred to the County Court. However, suitable cases that start in the County Court are increasingly being transferred to FPCs, based on criteria set out in the Allocation practice direction. Most public law cases start in the FPC while private law applications can commence at either court.

**We have confined our evidence to the areas affecting our work.**

##### **Evidence**

- 1. What does the family justice system mean to you? What should the purpose of the family justice system be? What should not be included in the family justice system?**
  - 1.1 The purpose of the family justice system should be to protect by law vulnerable children who are at risk of harm.
  - 1.2 It should focus on children who are subject to applications for a court order from the Family Court, whether from public authorities or private applications
  - 1.3 The family justice system is large and complex; it should cover children where court intervention is activated. Agencies often intervene using their powers at different levels

of concern for children and many issues are resolved without recourse to court proceedings.

**2. What should the role of the state be when dealing with family-related disputes that do not concern the protection of children or vulnerable adults? To what extent should the state fund this?**

2.1 The state should focus resources where there is most need. Early intervention is desirable where there is evidence of the escalation of potentially serious family problems which could lead to serious harm to children. The state should not intervene in internal family disagreements which do not threaten serious harm, nor can it protect against the emotional inadequacies and associated ‘wear and tear’ which all family members have to learn to live with, even though these can affect future outcomes for children. The emphasis should continue to be on the welfare of the child, including where the child remains within the family unit after intervention.

2.2 The law is often an overly blunt instrument in relation to family issues and its use should be kept reserved for cases where it is really needed to protect children’s welfare. In private disputes, such costly intervention should only take place where it is justified in children’s interests and after mandatory mediation/conciliation has taken place. Any such court orders resulting from legal action should be enforceable.

**3. How effectively does the current family justice system meet the needs of its users?**

**a. Does it have the capacity to deal with all cases comprehensively?**

3.1 The current family justice system does not have capacity to deal with all cases comprehensively.

3.2 Early intervention is not practiced and matters often reach crisis point before anyone intervenes.

3.3 In practice, thresholds for intervention vary across the country and are often reactionary rather than based on assessment and planning. The flow of applications is erratic and unpredictable, with publicity of certain cases having a big impact on applications, such as in the Baby Peter case.

3.4 Once the threshold for court intervention has been reached, producing comprehensive assessments, reports, and recommendations often causes extensive delays and this can affect final outcomes. While ensuring the child is protected, the court has to delay any decisions while sorting out what information, assessments, reports are needed to assist. Currently, in some areas, FPCs do not have the benefit of a Guardian to give comprehensive advice and assess levels and quality of information. This often delays proceedings and places extra strain on the court. Similarly in private law, issues in the case are not identified early on and Section 7 reports from Cafcass are delayed.

3.5 Delays are endemic in the system. Court directions are frequently not activated on time, reports are often late, expert assessments are a particular cause of delay and the level of assistance does not always justify such delays. Requesting expert assessments or reports is sometimes used by parties as a means of delaying decisions and as a final throw of the dice after all else has failed. Ordering such specialist expert reports should therefore be confined to circumstances where there really is a need for specialised input.

**b. How could capacity in the system be increased?**

3.6 Capacity could be increased by reducing delay and planning resources efficiently.

3.7 Issues should be identified early on and positions clarified.

3.8 When matters are brought to court, hearings should be focused on the issues, comprehensive information should be available, a timetable for the child be made and adhered to and a final decision made accordingly.

3.9 Proper resources should be available to enable FPCs to work to full capacity and complete the correct level of work, but we are sometimes prevented from doing so due to staff cutbacks by HMCS. In particular, there is a shortage of family legal advisers and administration staff. Additional courts are not sanctioned when they are needed because of shortages. This can result in cases being transferred to higher courts that are more costly.

3.10 We should like to see the formation of a single family court completed as soon as possible to promote specialisation and — at FPC level — to remove the constant battle with crime for court resources.

**c. How efficient is the system?**

3.11 The wider family justice system is inefficient and the family court is left trying to make the best decisions it can in the interests of the child.

3.12 In the inner cities particularly, social workers are overworked and demoralised, consequently constant change takes place which reduces continuity and causes delay.

3.13 Section 41 of the Children Act 1989 specifies that the court shall appoint a named Guardian to a case where the court considers it necessary. This is no longer happening throughout the duration of a case. In many cases, Cafcass either ignore the request or inform the court of the work it considers necessary on a case. This is unacceptable as it is the court that makes the order in every case. The lack of a Guardian at key points in the case makes it more difficult for appropriate decisions to be made. This often causes further delay.

3.14 The court administration is short-staffed, causing delay. In courts where the administration is combined, the administration is not always as efficient as it could be.

**d. Does the system ensure equality and diversity?**

3.15 As far as we are aware, the system ensures equality and diversity to the best of its ability.

**Better Courts and Alternatives to Legal Processes**

**4. Are there areas within the current system where we could adopt a more inquisitorial approach, whereby the court actively investigates the facts of the case as opposed to an adversarial system where the role of the court is primarily that of an adjudicator between each side?**

4.1 Family courts currently employ both inquisitorial and accusatorial approaches effectively, where appropriate, although where possible, the main emphasis is on an inquisitorial approach. Each approach has its advantages and disadvantages and family courts have the flexibility to employ the best of each approach fairly and effectively.

4.2 We consider that we have made significant progress in this respect, but it should be recognized that when the final decision is the permanent removal of a child from its parents or instigating breach proceedings, the situation may well be adversarial.

**What are the options, and advantages and disadvantages, for:**

**a. Private disputes arising from divorce or separation?**

4.3 All parties should recognize that the paramount concern of the court is the welfare of the child and not the relative merits of other disputes between the parties. Increased use of mediation and conciliation can cut through some of these issues and focus on the issues that affect the child. Any issues that remain unresolved and require court intervention are then more easily identified and can be dealt with more efficiently.

**b. Public matters, where the state intervenes to ensure the protection of children?**

4.4 In public law cases, early intervention is key — so, if and when a matter comes to court, all relevant information should be available. Appropriate assessments should be made and relevant action taken. Where there is no resolution, no co-operation and the case deteriorates, the matter should be brought to court when the threshold for court intervention has been met. At this stage, all relevant documentation should be available, issues identified, and care plans drafted. If the threshold criteria for significant harm is in dispute, the process may well be more adversarial, but should be more inquisitorial when deciding what is best for the child. More leverage and options for the courts than just arbitrating between two viewpoints would facilitate this. We consider that we have made significant progress in this respect, but in these cases, positions are sometimes polarised.

- 5. How far are users able to understand the processes and navigate the family justice system themselves?**
  - a. Are there clear signposts throughout the system?**
    - 5.1 There may be signposts but they are not necessarily recognisable to those wishing to use the system. Language should be simple and age/ethnic-related. We support the proposals in the Green Paper that more information should be more readily available to adults, families and children. Information on dispute resolution should be more easily accessible. This should not only be in traditional ways such as leaflets in family centres, doctors surgeries and local government offices but also on websites, IT information sites, ethnic radio stations, soap, other television and media outlets and court open days.
  - b. Do users know how and where to access accurate and timely information and advice? Is it readily available?**
    - 5.2 No. Currently, it is easier to consult a lawyer and then adversarial court hearings develop where sides become entrenched.
  - c. What are the options to support/enable people to resolve these issues without recourse to legal processes?**
    - 5.3 Mandatory mediation/conciliation should be undertaken before a court hearing can take place. Viewpoints should be supported by reasons.
- 6. How best can we provide greater contact rights to non-resident parents and grandparents?**
  - 6.1 The emphasis of this question is the wrong way round, as the court should always concentrate on what is best for the child. It should be understood that contact is in the best interests of the child unless it can be proved otherwise. All viewpoints should be supported by reasons. When court orders are made, they should be enforceable. We are of the view that grandparents should continue to seek leave of the court prior to making a court application. Although in most cases, grandparents are a positive influence, our experience shows that it is not always the case. This acts as a filter to prevent inappropriate applications to be made that might be detrimental to the child and make a positive outcome more difficult. Once an application is made to the court, all respondents have to be notified and this can make difficult situations worse if it is a frivolous application.
- 7. How effective is alternative dispute resolution (ADR), such as mediation, collaborative law and family group conferencing? What types/models of ADR are more effective and for which circumstances? Does this differ according to cases?**

**How could we improve it and incentivise its use and what safeguards need to be put in place?**

- 7.1 We support compulsory attendance at mediation information and assessment meeting in relation to all family cases (with limited exemptions) before a court application is processed. That would increase the take-up of mediation, reduce court waiting lists and encourage co-operation over children. Family disputes which are resolved through mediation are cheaper, quicker and, according to academic research, less acrimonious than those disputes which are settled through the courts. Despite these advantages, only some 20% of people who are funded by legal aid for family breakdown cases (excluding those involving domestic violence) currently opt for mediation.
- 7.2 The National Audit Office (NAO) found that the average cost of legal aid in non-mediated cases is estimated at £1,682, compared with 752 for mediated cases, representing an additional annual cost to the taxpayer of some £74 million. Not all cases are suitable for mediation, for example, where there has been a history of domestic abuse. Nevertheless, if 14% of the cases that proceeded to court had been resolved through mediation, there would have been resulting savings equivalent to some £10 million a year. Making assessment for mediation compulsory would therefore lead to instant savings for the LSC. The NAO also found that mediated cases are quicker to resolve, taking on average 110 days, compared with 435 days for non-mediated cases.
- 7.3 At the moment, such data is only available for legally-aided cases. We support compulsory assessment for suitability for mediation in all family cases including those which are privately funded.
- 7.4 Family Group Conferencing can be very effective in resolving or identifying issues. In particular it enables extended members of the family to be involved in the issues. We would like to see these provisions extended.

**8. To what extent do issues around enforceability of court orders motivate decisions to go to court? To what extent does it affect decisions within and outcomes of cases?**

- 8.1 We are unable to comment on what motivates decisions to go to court except to say that at the outset all parties think they are going to be successful. Early indications are that the attachment of a warning notice to orders concerning non-compliance has seen an increase in contact take-up.
- 8.2 The decision making process is unaffected by enforceability issues. The court considers that orders made by agreement between the parties have a better chance of success.

**9. Are there elements of cases which could be considered outside of a court setting and if so by whom? For what type of cases would this be appropriate and what sort of settings might be suitable alternatives? What are the benefits and disadvantages?**

- 9.1 In public law, early intervention and pre-proceedings work is essential to prevent cases from coming to court and/or identifying issues. Therefore, fewer court applications should be made and court cases should adhere to the PLO timetable.
- 9.2 In private law, we support mandatory mediation. Before the first application conciliation. Therefore issues should be identified and the parties in no doubt that the court decision will be made in the best interest of the child. These sessions should in our view take place in suitable semi-formal offices.
- 9.3 Although applications for Education Supervision Orders have declined over recent years we consider that non-school attendance should be dealt with within the education system and not by the court.
- 10. Would adding a triage stage, whereby cases are assessed as to the appropriate course of action, make the system more efficient; i.e. by speeding processes up, ensuring resource could be allocated appropriately etc? In what areas might this be appropriate?**
- 10.1 At first sight, this seems an attractive proposition as there is a need for some cases to be prioritised and the ability to ensure appropriate resources are available where needed is key. However, this is not necessarily the answer. First of all, who would be responsible for operating a triage system? The courts may well be the natural body to carry this out this as they case manage, but would not be the best use of scarce resources. Currently, when a court asks that a case be prioritised, it is sometimes told that this does not meet with Cafcass criteria. In addition, it means that children of lower priority continually get pushed down the pecking order.
- 10.2 We would prefer to see the system working properly. In both private and public law it is essential that pre-first-hearing work is completed and issues identified. In Care cases, the PLO should be followed and the timetable for the child agreed and adhered to. The timetable for the child should identify specific needs of a case which automatically allocates extra resources for complex cases. The Bench and Legal Adviser have roles to play here and should take a consistently robust approach with standards and criteria agreed with the full-time judiciary.
- 10.3 Applications for EPOs are available for serious cases to enter the court arena as quickly as necessary. FPCs can convene out of court hours.

## **Governance and Management**

- 11. Do you think the family justice system is well organised and managed? What are the strengths and weaknesses of the current governance and management structures? Who should take responsibility for the decision-making process? Who should be responsible for the administrative running of the system?**

- 11.1 We do not think that the family justice system is well managed.
- 11.2 The FPC is frequently the first court appearance for public law cases and for many private law ones as well. With the best interests of the child in mind, we scrutinize papers and assess what additional information is required to make a structured decision. In our opinion intervention to protect children is often too late, despite long-term local authority involvement. Often information between agencies has not been shared. Necessary assessments are not carried out prior to court intervention and a culture of court ordered assessments has developed sometimes causing unnecessary delay. In addition, a culture has developed whereby court has become the venue for negotiation between the parties, rather than a decision-making venue for specific issues. Reports are frequently late not only causing problems for the bench, but delay while lawyers take instruction. In private law, the issue is usually clear, but there is often a failure of the parties to recognize that the court is child focused and it is not a venue for an adversarial battle between the parties. Mandatory mediation / conciliation should assist this.
- 11.3 Once cases are subject to court applications the court should be fully in control. We consider that the main strength of the family justice system from the FPC perspective is that the welfare of the child is paramount. Under the present system adjournments and delays are justified in order that all information is obtained to make the best decision in the interests of the child. It is essential that cases are heard at the appropriate level, and under the allocation order this is improving from a judicial point of view.
- 11.4 From the perspective of the FPC, we consider the main weakness is its dependency on other agencies. In the inner cities in particular, social workers are overworked and demoralized and always moving on; information is not shared between agencies and cases are allowed to drift. (The change in approach post Baby Peter exemplifies this.) Frequently the issues are not clarified until court proceedings are underway, and so a culture of assessments has built up.
- 11.5 There are issues regarding the provision of Cafcass reports. For some months now, the court has been working without the full services of the Guardian as outlined under S 41 of the Children Act and court direction an appointment are ignored. In private law s 7 reports do not meet agreed filing dates. This imposes strain on the bench and on other agencies and causes delay, which is costly and not in the child's best interests.
- 11.6 Proposed cuts in legal aid are likely to increase difficulties in legal representation and lead to an increase in litigants in person. The court takes great care to ensure that parties understand the issues and so delay ensues when they are not legally represented.
- 11.7 In addition, the FPCs themselves are subject to cuts imposed by HMCS and are therefore short of administration staff and legal advisers. HMCS has not demonstrated that it understands the nature of family proceedings and imposes unrealistic targets, unrealistic financial accounting and inappropriate resources. Local authorities are

working under financial constraints and working to targets imposed on them by Government.

- 11.8 External factors also have bearing on the family court work. Inspections by OFSTED on agencies focus on safeguarding rather than court requirements. Human Rights considerations has seen a greater emphasis placed on parental rights and therefore an increase in assessments
- 11.9 Once an application is made to court, it should have the responsibility for decision-making. This applies to all decisions made during the progress of a case, which should be adhered to. There is an excellent appeal system but very few cases from the FPC's are subject to appeal.
- 11.10 There should be a specialised administrative system comprising of members who understand the nature of the work. Present administration is fragmented between the Department of Education and the MofJ.

**12. What systems issues are there? For example. How could things like IT, filing and administrative processes be improved?**

- 12.1 Data: From the courts' perspective there is a need for accurate and appropriate data recording system to enable the MofJ to report on the implementation of any proposals including:
- (i) *Workload within the family justice systems:* There is a need for a single comprehensive and complete family court data recording and reporting system. Current reporting by HMCS, Legal Service Commission and Local Authorities is inconsistent and there is no agreement on the number of cases, number of children involved, number of cases in the FPCs and County Courts, etc.
  - (ii) *Performance of the courts:* Appropriate recording and reporting of court direction and actions is required. Current systems are crude and the only measures are 'number of weeks' which do not take into account need for experts reports, the agreed 'timetable for the child', assessment periods etc.
  - (iii) *Cost of the Family Justice system:* Any new reporting system must enable the proper cost of the family justice system to be known. This would include costs of:
    - HMCS Family Court
    - Legal Service Commission
    - Local Authority
    - Cafcass
    - Experts, assessments, etc
    - Any other costs incurred by the family courts.

- 12.2 There should be greater use of IT within the system so that data can be updated with the latest developments. In the USA court, IT systems record all the latest movements and attendance on programmes so that the latest information is available to the court and other interested parties instantly.
- 12.3 Within the court system, IT should be available to court clerks and the judiciary to speed-up proceedings. Magistrates' reasons should be drafted on pro-formas to speed-up decision time. A good IT system would ease listing and save space for storing and transporting files.
- 12.4 Hearings could be greatly assisted if papers arrived on time and work allocated to courts efficiently.
- 13. Who should take ownership of cases when they are in the family justice system? Who is the case manager? And at which point do and should they relinquish responsibility?**
- 13.1 Once matters are referred to court, the court takes control, is responsible for case management and makes decisions in the case which are enforceable by law. At this stage the court must have ownership of the case but FPCs have expressed concern that in certain instances their directions are not followed, causing delay. Some examples: on hearing the evidence at first hearing, the bench can state a public law case to be a priority case for allocation of a Guardian only to be informed that it does not fulfill all the Cafcass criteria for priority; directions for a Guardian to be appointed urgently are ignored. In addition, the court has to battle with a culture of refusing additional assessments, when all parties have already agreed to one. Parties tell us that the full-time judiciary are less questioning of the need for experts than magistrates. In private law, section 7 reports are not filed on time often with no or late information offered. The court makes life-changing decisions about vulnerable children and it requires the correct information to enable it to do so.
- 13.2 Once a final order is made, the court ceases to have control of a case. Although the court takes great care and considerable time in agreeing a care plan with the local authority, we have concerns regarding the implementation of that plan. Given the outcomes of children in care, we are concerned that they are frequently stigmatised, moved from placement to placement, and underachieve at school. There are mandatory requirements for a six monthly review for looked after children by an Independent Reviewing Officer. We find it difficult to believe that this system is effective, since we are unaware of any case having ever been returned to court regarding concerns over the care plan.
- 13.3 In private law, the court tries to conclude a case by agreement between the parties. If this is not possible, the court will make an order. Once the order is made, the court ceases to have control, but the parties are always made aware that they can make a fresh application to the court, or an application for enforcement if that should become necessary.

**14. How can we ensure that there is sufficient and appropriate accountability throughout the system?**

14.1 The court has its own control mechanisms. There is an efficient appeals system. Very few cases concluded in the FPCs are appealed. Magistrates have frequent training sessions which are designed centrally by the JSB for consistency. There is an appraisal system, which seeks to regulate magistrates' performance.

14.2. Given the cost and finality of bringing cases to court, we feel it is essential that at that stage, the court is in control and that court orders are implemented and upheld.

**15. How well do different organisations/partners in the family justice system communicate, share information and work together to resolve cases?**

15.1 Although inter-disciplinary co-operation has greatly improved, there remains a culture of ring-fenced information that is often only shared when legal action is taken. We speculate that this may have something to do with funding of different agencies. For example, Rule 28 investigations into deaths of children in care, or enquiries into deaths as a result of domestic violence, have indicated that vital information is not always shared with the appropriate agencies.

15.2 Occasionally, information is disclosed in court, which indicates that information has not been shared.

15.3 Information from the Police and Probation is slow and sometimes difficult to obtain. Procedures agreed with police forces in the Private Law Programme are slow to materialize.

**16. How clear are the different roles and responsibilities of those who are involved in the family justice system (such as the judiciary, legal practitioners, social workers, Cafcass officers, expert witnesses, administrators, IROs, court staff)? Are all these roles necessary? How effectively are these roles fulfilled?**

16.1 The court is the arena where all agencies come together working in the interests of the child who is the subject of the case in hand. When it works well, it works very well, cases are dealt with expeditiously, and the best result is achieved. A mixture of adversarial and inquisitorial approaches works well to achieve this. It ceases to function properly, when delay creeps in and cases begin to slide.

16.3 In public law cases, the LA does not always complete the necessary assessments before bringing a case to court. Although they may have been working with a family for some time, early intervention has not been effective and the situation has been allowed to reach crisis point.

- 16.4 In private law, we anticipate that when the President's Programme is fully implemented, this will reduce delay. The late filing of section 7 reports by Cafcass causes unnecessary delay. Courts are increasing direct take up of parenting projects and other programmes.
- 16.4 At first hearing, a full-time Guardian is not always available. This makes decision-making difficult in the absence of welfare advice and can delay proceedings at that stage. Cases can progress to CMC and beyond without the advice of a Guardian. The court always takes into account the wishes and feelings of the child, but increasingly, the Guardian is not able to advise the court on the best way to approach this.
- 16.5 Although we understand the role of the IRO we are not usually aware in the court process that they have any direct input.
- 16.6 We fully support the tandem model of representation for children by lawyer and guardian and have been used to this excellent service. Without full instructions from a named Guardian, strain is put on lawyers who usually represent children to the highest standard but are not social workers. Generally, we find that lawyers work with the courts and other parties to progress a case.
- 16.7 We consider all the roles mentioned in this question are necessary and when they work well, are efficient. Once delay sets in with one area, cases have a habit of sliding. Delay is very costly for the court and all agencies. When one contributor fails then extra strain and cost is endured by other agencies and is certainly not in the best interests of the child. At present, the greatest causes of delay are Cafcass and expert assessments. We feel the court should be able to exercise greater control over the timetable for the child.

### **Finance and Funding**

- 17. Where do you think there is scope to make efficiency savings within the family justice system?**
- 17.1 Early intervention, which will hopefully reduce the number of cases that will require court intervention. When entering the court process, reducing delay and adhering to the timetable for the child will help to increase efficiency.
- 17.2 Adherence to the PLO, by which, at first hearing, relevant assessments/reports should be available. A named Guardian to be appointed in accordance with section 41 of the Children Act.
- 17.3 A reduction in the number of assessments ordered.
- 17.4 In private law, strict implementation of the President's Programme. Mandatory mediation/conciliation, careful use of section 7 reports, and the use of programmes to facilitate agreement.

17.5 A fully developed single family court should increase specialisation at magistrates' level and enable resources to be focused on the family court rather than as part of an overall criminal court budget. This should increase the efficiency of listing.

**18. What improvements to funding arrangements and mechanisms could be made?**

18.1 At magistrate level, full implementation of a single Family Court would ensure that funding is directed to the Family Court, thereby increasing specialisation. At present, funding is part of the overall magistrates' courts budget which is focused on criminal proceedings.

**Workforce Development**

**19. Please tell us about your role in the family justice system. What value does this add to the family justice system?**

19.1 Please refer to the introduction.

19.2 Family magistrates care passionately about children and bring a wealth of different experiences to the bench. They display considerable empathy to parties in proceedings whilst remaining child centred, independent and judicial. They continually strive to improve outcomes for the vulnerable children and families subject to court proceedings.

19.3 Family magistrates often sit outside court hours to hear/complete urgent cases.

**20. What qualifications and experience should be required for the different roles of those who work in the family justice system? What should be included in initial training and continuous professional development?**

20.1 We are concerned at the low morale, and high turnover of social workers especially in the inner cities. We recognise the valuable and difficult work they undertake and think this should be recognised by Government. However, lack of continuity on a case complicates proceedings and adds to delay.

20.2 We commend the high quality of individual Cafcass officers but are concerned that heavy caseloads are causing stress and sick leave is currently high. In addition, work on a case and welfare advice to the court is restricted by local offices. The court requires recommendations from Cafcass and not a summary of existing reports.

20.3 The training of family magistrates is of a high quality and is centrally designed by the JSB. Not only do magistrates receive core training but receive additional training for court chairmanship training on legal developments and training on children's development. We do not believe that HMCS can cut this budget without adverse effects of both performance and the quality of decision-making.

20.4 Performance management tends to relate to adjournments, court time and completion times which is not always helpful as it fails to recognise the nature and complexity of family work.

**21. Are there sufficient performance management and feedback mechanisms throughout the system as a whole?**

21.1 We refer to paragraph 12.1.

21.2 The FPC deals with early applications, and completes less complicated cases. Our feedback is therefore different from other levels of court and is not always afforded due weight.

**A More User Friendly and Child Focused System**

**22. How could the system be improved to ensure it meets the needs of users and secures positive outcomes for children?**

22.1 Early intervention may lead to resolution of problems rather than allowing situations to reach crisis point. Court proceedings may well be avoided which could be the best outcome for the child.

22.2 The FPC needs to be focused on issues, rather than sorting out assessments and work that has not been completed when it ought to have been.

22.3 Filing dates should be kept.

22.4 In public law, the PLO should be adhered to and the timetable kept.

22.5 In private law mediation /conciliation should be mandatory.

22.6 Delay must be kept to an absolute minimum.

22.7 A named Guardian should be appointed by the court as and when it considers it necessary. Section 41 needs to be implemented in full.

22.8 Court-ordered assessments should only be made when necessary to assist the decision-making process. The culture of allowing applications for assessments effectively unchallenged needs to stop and the focus returned to the interests of the child.

22.9 Cases allocated to the correct level of court and adequate resources for the FPC to play its full role in the timely completion of cases.

22.10 The voice of the child should always be heard and due consideration be given to it in court decisions.

**23. How can we ensure sufficient protection is afforded to vulnerable adults through the system?**

23.1 Vulnerable adults should have good legal representation.

23.2 Family Proceedings Courts deal with many disadvantaged people. However, when a parent lacks capacity the case presently has to be transferred to the County Court, although in every other respect the case is suitable for the FPC. Draft rules allow for FPCs to deal with such cases and we would suggest that this is implemented without delay. We would suggest that there is a review of the present arrangements into arranging for a person lacking capacity to have the benefit of a litigation friend when they are legally represented.

**24. In what types of cases is it important to hear the voice of the child to assist with decision-making? How should the child's voice be heard in the family justice system?**

24.1 It is important that the voice of the child is heard in all cases and is taken into account in the decision making process and recorded in our reasons.

24.2 How best children's views can be given varies from child to child. We consider that the Cafcass Officer is the best person to advise the court on how this should be done. They receive special training, usually build a relationship with the child, explain the issues to them and understand the court scenario.

**25. How effective are Cafcass and CAF/CASS Cymru? What should their role and remit be in the future?**

25.1 We have been concerned for some time about the service that Cafcass (but not Cafcass Cymru) provides to the FPCs in both public and private law cases.

25.2 At its last AGM in November 2009, the MA unanimously passed the following motion: - *'Cafcass is failing to deliver its core services to vulnerable children appearing in our courts and calls upon the Government to conduct an urgent review of how best to meet the needs of such children, reduce delay and improve local accountability.'*

25.3 We are concerned that, despite extra funding by Government, a large backlog of cases requiring Cafcass input remains in parts of England. We hear many cases where children going through the courts have not had the services of a Guardian at an appropriate stage and the court does not have the benefit of a Guardian representing the child to assist in its decision-making. We therefore would like to see s.41 of the Children Act fully implemented. Despite a large and sustained increase in Public Law applications, we consider it essential that the court has the benefit of a Guardian throughout proceedings to support the child, communicate the views of the child and to advise the court on welfare

issues. The court is responsible for the conduct of the case and expects its directions to be carried out in the best interests of the child. It cannot be right that where the court is required to make the child's interests paramount that the child does not have someone reporting to the court representing their interests.

- 25.4 The level of private law applications has tended to follow those in public law and a similar increase is being experienced. Cafcass frequently fails to meet the filing date for reports which can take up to 26 weeks and beyond. Frequently, the non-availability of a report is only communicated to the court late into the adjournment, after a hearing date is fixed. Not only does this cause unnecessary delay, but it is particularly difficult to explain this to parents who are upset and feel they are being punished for matters beyond their control. We hope that full implementation of the President's Programme will ease this.
- 25.5 Failure of Cafcass to appoint Guardians in public law and file section 7 reports in private law matters according to the directions of the court causes delay, puts pressure on the court and other agencies and is expensive.
- 25.6 We recognise that Cafcass and the services it provides are under severe financial pressure — and that this is likely to continue — but we believe that it is more cost effective for resources to be directed in children's interests at an early stage. If that does not happen there are increased risks of inappropriate decisions being made and incurring greater costs and difficulties for the children later.
- 25.7 When Cafcass was originally set up, it came under the auspices of the Lord Chancellor's Department. It was later moved to The DCSF, now the Department of Education. As Cafcass provides a service to the court, we have advocated for some time for a return to the now-named Ministry of Justice. This would emphasise its independence, and allay fears that it is another department of social work. All too frequently we find that the Guardian's role can overlap that of the social worker in the case. In addition we think that MOJ Court statistics should be reliable and independent and not have to rely on Cafcass to supply statistics.
- 25.8 Children's Guardians were introduced after the tragic death of Maria Caldwell to act as an independent adviser/expert to the Court. It is worth noting that had the court been involved in the Baby Peter Case and a Guardian appointed, he would have been protected. The court requires analysis and advice from the Guardian and not a summary of the case.
- 25.8 Cafcass Cymru serving the Welsh region is administered by the Welsh Assembly Government. We are not aware of similar concerns affecting its service delivery. They are, however, experiencing a similar increase in applications, which is adding pressure to resources.
- 25.9 We have called for a full review of Cafcass. We propose a greater degree of local accountability so that a full service to the court is resumed.

## General

- 26. What has guided your response to the questions posed above, eg. personal experience, feedback from the public, specific research or evidence?**
- 26.1 Please see our introduction.
- 27. What can be learned from the way in which other sectors work, which could be transferred to the family justice system?**
- 27.1 No comment.
- 28. Do you know of any good and innovative practice in the UK that the Review Panel should consider? What wider services could be tapped into (especially in the children's sector) to support the family justice system?**
- 28.1 No comment
- 29. Is there anything we can learn from international examples?**
- 29.1 No comment other than to suggest that other European examples are looked at especially Denmark.
- 30. What question would you have liked us to ask that we haven't posed and what would your response be?**
- 30.1 *The provision and quality control of foster carers:* The FPCs are concerned at the number of placements experienced by children in care proceedings. Not only is there a shortage of foster carers but placement breakdowns and difficult placements can seriously affect children's wellbeing and successful outcomes. Fostering provided by the voluntary sector appears to have a record of better outcomes. We would propose a review of fostering provision in England and Wales.
- 30.2 *Finance for carers:* Currently there is disparity between financial allowances paid to local authority foster carers, kinship carers and Special Guardians. The MA proposes a review of such payments to assist in ensuring that appropriate court orders and placements are made in the best interests of the child. We consider that this could well save money in the long run.
- 30.3 *The adoption process:* Some magistrates are concerned that the national disruption rate is approximately 20% (The voluntary sector quote around 5% for their placements.) We propose a review of the adoption process.

- 30.4 *Links between youth and family courts:* It is our policy that where the youth court finds overwhelming welfare concerns which would appear to affect the offending behaviour of a defendant, it should be able to call for a section 37 report to the family court before deciding whether or not to proceed with the offence matter. We propose a review of this issue.
- 30.5 *Transparency:* We are concerned that the recent Children Schools and Families Act makes provision for future relaxation of reporting restrictions by the media to be allowed, following a review, by a vote in Parliament. Whilst we support transparency in the family courts we are concerned that children's views and expert evidence could be compromised if reporting of highly personal and confidential information is allowed.