



Document number **11/25**

Date **23 June 2011**

Committee **Family Courts Committee**

Response to **Family Justice Review Interim Report**

Issued by **Ministry of Justice –
Family Justice Review, Chairman David Norgrove**

Response to the Family Justice Review Interim Report from the Magistrates' Association, Family Courts Committee

The Magistrates' Association broadly welcomes the Review and its aim to achieve an integrated system which is built around the needs and timetables of the children unwittingly and generally unwillingly involved in it. We have sought input for this response from all family proceedings courts and their over 6,000 magistrate members in England and Wales. We have been very heartened by the depth and breadth of engagement with this process, and whilst this response has been informed by those responses we have also encouraged both panels and members to make direct response to the consultation so that the Review has direct benefit of all the information we have received.

The original authors of the 1989 Children's Act would scarcely recognise the timescales and scope of assessments and processes that have accreted to the lean children's-timescale-focused infrastructure which was intended.

Since the introduction of that act magistrates have formed the bedrock of the judicial resource deployed on children cases in the family courts, with FPCs dealing with (based on the best available evidence) between 25 and 85% of all the public law cases, an increasing percentage of the private law children cases and a significant percentage of adoptions. They have shown themselves competent, flexible, committed, adaptable and available. They have demonstrated those characteristics through all the legislative and organisational changes that have occurred, indeed leading on many where these could be shown to be of benefit to the children and their often-beleaguered parents and families.

Magistrates do family work because they care passionately about children and families, are interested in all the issues affecting them and their development, and are prepared to take regular extra, special training in children's matters often well beyond the core requirements of the law (where budgets allow, which is increasingly not the case). They are called on outside their regular time commitment and at unsocial hours. They are regularly appraised in their work. They strive to create a friendly court; they are empathetic and always put the child's welfare first (a stance which puts them in increasing conflict with HMCTS, CAFCASS and local authorities). They have often been complemented on their ability to ensure that parents understand what is happening and what decisions are being taken. That said, magistrates are members of the judiciary and are there to ensure that the human rights of all the parties are given due consideration, but that the best interest of the child prevail. We applaud the efforts of the Review to re-establish the family court as the centre of decision making on those matters which come before it whilst seeking to divert as much, primarily private law children, work as is safe to divert to alternative resolution. In many places we are

frustrated by the lack of availability of sufficient CAFCASS advice to enable us to take all the cases that are suitable for us to hear.

We believe that the single most important key to change will be ensuring that the child's timetable, and the guardian's role in advising the court what it is, is paramount and dictates the process, procedures and permissible interventions by the other parties. Case management can be made as robust as imaginable but it won't help if timescales are dominated by the human rights considerations of the parents rather than the child: and neither will judicial continuity, valuable though both of these undoubtedly are.

The integration of the court's social work arm, currently invested in CAFCASS, is also to be welcomed. Jurisdictions which have embedded social work expertise, along with access to other professional advice, within the courts' service appear to be able to control the process of achieving permanent solutions for children more effectively. If such an arrangement allows closer and more effective partnership with the judiciary in identifying issues and speeding decision making in the best interests of the child – as it seems to – then it will be a very positive outcome of the changes proposed.

Along with robust continuous case management (implying, as with most of the other recommendations, considerable investment) and judicial continuity, the Review makes much of specialisation, but demonstrates little definition of what it means by the term, which could imply an incomplete understanding of the magistracy itself. Before offering a full response to this thrust the Magistrates' Association would wish to see much more clarity on the topic in order to be able to satisfy itself of the viability of any proposals and their consequences for magistrates and family proceedings courts.

Whilst we support the aim of (re-)establishing local authority social work departments as accountable, child-focused units, we cannot accept that it would be right to remove scrutiny by the courts of care plans, particularly when paired with the recommendation that Independent Reporting Officers should remain within those same local authority structures. We have seen no evidence that magistrates keep open unnecessarily cases where they wish to be certain of the implementation of every aspect of a care plan, but we hear reports of many cases where local authorities' plans have changed significantly in the child's favour as a result of judicial scrutiny within the structure of care proceedings. Much is being invested by the Family Justice Review in the recommendations of the Munro Report, it is fervently to be hoped that this is justified and that those recommendations are funded and speedily implemented by government (although we do not underestimate the length of time that will be needed to refocus a whole generation of social work professionals who have grown up under the old risk-avoidance philosophy).

As always, the devil will be in the detail – not least the detailed costing of the changes which are necessary to make them work. Very little detail is included in the draft report, and given the timescale to the final report we are very concerned that the detail will not be included in it either. However we consider the observations that have been made publicly significantly underestimate the setup and running costs of a Family Justice Service.

Towards the end of our consultation process, and having reached a general consensus on the answers to the explicit questions posed by the Review, we engaged in a debate about the underlying messages that were perhaps only alluded to or hinted at. The issue which, on the surface, had caused us most consternation was the idea of a 26 week limit for public law care cases (and if this were taken forward we see no argument to support doing so on a gradual basis). However, if one were to posit the argument that all attempts to "fix" the current environment by practice direction, encouragement, urging, training etc had failed to refocus the system back on to the twin principles of the paramountcy of the best interests of the child and that delay generally was inimical to those best interests, then it becomes more

understandable as an option. One of our members highlighted the huge improvements that had been achieved in youth court timetables resulting from the early decision by the 1997 Labour administration to set a time limit for proceedings which was half what was being reported. It was achieved because the political will was there to do so and everyone in the system understood that and knew that “no” was not an acceptable answer to achieving it.

So, we believe the precedent has been set. Thus, if one starts from an assumption of 26 weeks, what must follow? Firstly that such a timetable could be made human rights legislation compliant (particularly regarding Articles 6 and 8 as they apply to the parent(s)), secondly that it could not be routinely circumvented by last minute applications for extension –for instance by the emergence of “new” family members – and thus a robust legislative framework to inform judicial decision making in this area would be needed. It would also follow that certain parts of the current system could not be entertained (or only with difficulty) – for example residential assessments, instruction of popular and thus very busy experts or of serial instruction of more than one expert. It is clear why the Review could see the attraction of a much more definite track and timetable for proceedings, and it would undoubtedly lead to greater ease in ensuring judicial continuity, robust and effective case management, and would reduce the call on HMCTS resources through fewer, potentially more focused court hearings. If we are right in our thinking and the conclusions we draw then we believe that the Review should be much more explicit in their final report and we would welcome any opportunity to discuss this that they would consider helpful.

We are extremely concerned that only those recommendations of the Review which show early costs savings will be implemented. This would be a travesty and further undermine a stressed and inadequate service to children and their families.

We look forward to the opportunity to work with the Review on any aspect of its proposals that affect magistrates and family proceedings courts.

Family Justice Review Interim Report – April 2011
List of Questions

Question 1: Do you agree with the proposed role that the Family Justice Service should perform?

Yes, and we support it being separate from HMCTS to ensure its functions do not suffer as a consequence of competing for budget priority with the criminal and other responsibilities of HMCTS as has been the case heretofore. Given the reducing budgets and workforce this will only get more severe.

The Service needs to be headed up by a chief executive who commands the wholehearted support of all the bodies who would be either constituent parts or users of the Service, and untainted by the failures and shortcomings of the past. There needs to be a clear understanding by the Service at all levels that the judiciary is amongst the recipients of the service as well as part of the provision of it.

It is clear from other jurisdictions to which the Review makes reference that the more a family justice service owns the resources necessary to carry out the objectives of the service the more likely it is to succeed in a child-relevant timeframe.

We do not agree that IROs should remain within Local Authorities. The Review proposes that care plans should be subject to less, if any, scrutiny by courts; families have a right, and society should expect, that the future of children permanently removed from their families by order of a court should be subject to independent monitoring and review – and if that is not independent of the body responsible for implementation of the care plan then it will not command the confidence of the judiciary and the change in practice promoted by the Review will not happen. The lack of evidence of cases being referred to CAF/CASS under the current arrangements is powerful evidence that IROs working for the authority against which such referral would occur is not effective.

Question 2: Ensuring that a child's voice, wishes and feelings are central to the Family Justice Service is crucial. What would you recommend as the crucial safeguards to enable this to happen?

In public law, once proceedings have been commenced then we are confident that, if the provisions of the Children Act are implemented as drafted and not modified for resource considerations, children's voices are heard through their solicitor and the court-appointed guardian. We have concerns that the increasing importance of the pre-proceedings activities (with which we do not take issue if it leads to less cases coming to court, or those that do being better prepared and defined) occurs without an independent voice for the child, and support the idea of a guardian being involved in any pre-proceedings activities. Please also see our response to question 16.

The consequence of this approach is that the guardian is a vital conduit for the voice of the child in the proceedings. The guardian must be enabled to have sufficient contact with the child to ensure that their voice can be heard, and the determination of what is "sufficient" must be judicial one, guided by the professional judgement of the appointed guardian and not an administrative or CAF/CASS management one based on generalised resource allocation considerations.

In private law the courts have historically struggled with the issue of the extent to which it is appropriate to engage with the children who are at the heart of any application. There has been a significant disincentive to go as far as many of the magistracy would wish because of

the inability for CAFCASS to report in a timely fashion – and thus to make orders, particularly agreed orders, without consulting the child(ren).

The new service should include wide provision for children's voices to be heard, not least through the pre-court diversion, ADR and mediation services envisaged by the Review.

In summary, for children to be confident that their voices are heard in proceedings which directly affect them and their futures, those appointed by the court to represent them must be appointed at the earliest moment and stay with the case to its conclusion, enabling them to advise the court, at any hearing the child, the professional or the court considers relevant, of the developing views of the child.

Question 3: Do you agree that children should be offered a choice as to how voice can be heard in cases that involve them, including speaking directly to the court?

Children should be offered an age-appropriate menu of ways in which they can engage with the process. They should be enabled to be confident that their voice has been heard by those charged with making decisions affecting them. We would encourage greater direct interaction between children and the judiciary where the child would find this helpful, but this should not be for evidential reasons outside of the normal process of proceedings.

Children must never be made to feel that they are responsible for making the decision, of having to choose between (the positions of) their parents.

Question 4: Do you agree that there should be a single family court?

Yes. Those areas of the country where co-location of family proceedings court and county court has happened have seen significant improvements occur. We agree that there are rural areas where this may be difficult; but if the creation of a single family court is taken together with the Review's ideas on taking hearings outside the conventional court settings then even this may be viable. It must be right that family matters, even more than any other, should be handled by a specialist service.

Lack of funding for the capital investment necessary to roll out co-location should not be an excuse for failing to adopt the model – creativity and local empowerment could result in imaginative local solutions to at least some of the issues.

The Review's interim report does not explain what problem it believes exists that will be solved by moving the entry point for public law proceedings from the FPC. We do not believe the Review has been shown any substantial evidence of delay (which we can only speculate is the ground for the change) caused by the current system. We have heard anecdote that there are late transfers which in turn cause delay. Our observations in response to this are firstly that it is anecdote not evidence of a significant or widespread issue, secondly that in a resource-constrained world it is illogical to suggest that it should need two lawyers to have oversight of the system, thirdly any determination of "late" is necessarily subjective and takes no account of the developing nature of cases (emergence of allegations of sexual abuse for example), and lastly that it is probable that those who seek to adduce evidence of late transfer are likely to be those least minded to work in partnership with FPCs to address any underlying systemic problem. The Review highlights the entirely unjustifiable variation in public law caseload percentages between even adjacent areas of the country across FPCs and their care centres; magistrates have understandable concern that this evidence suggests wildly differing interpretations of the existing allocation criteria which are, in places, significantly to their disadvantage. Were the worst case scenario to become the norm once initial allocation was removed from the FPC it would be unacceptable to magistrates – and more importantly lead to precisely the delays the Review is rightly

seeking to address. We would welcome the opportunity to discuss this issue further with the Review.

Allocation should be based on the needs of the case, not the accounting model of the service. It will almost never be the case that allocation cannot be to the FPC for want of magistrates, but there is plenty of evidence where it does not happen for want of legal advisor resource; courtroom sitting time (purely because the accounting system says an additional courtroom cannot be opened, not that it does not exist), or localised judicial interpretation of the existing allocation criteria; or, in private law cases, for lack of CAF/CASS resources for additional FHDRA appointments.

To repeat, we do not believe that there is any widespread objective evidence of the current system of allocation causing delay. Those cases which are transferred after the initial decision to keep jurisdiction in the FPC are almost invariably because they have changed significantly. It would be wrong to make an allocation at issue on the basis of the worst case scenario, far too many cases would be allocated to a higher court than they need for proper and timely disposal (a problem which already hampers the effectiveness of the criminal court).

We believe that it is a vital aspect of the recommended IT system that it can capture and report on allocation and transfer decisions so that patterns of practice can be monitored, analysed and used to establish and promote best practice.

Whilst we agree that some more standardised approach to the use of PPOs and EPOs would be helpful, we feel that the flexibility which magistrates can offer to convene a court to hear an EPO at the necessarily short notice should not be underestimated. Reports of magistrates sitting, for example, until the evening of Christmas Eve, or until 2 a.m., to conclude hearing an application and making their decision, have come to us – and many more could be adduced without much effort.

Case law guiding courts hearing applications for EPOs has rightly added significantly to the criteria needing to be satisfied before such an order can be made and we have heard alarming anecdotal evidence of some areas where PPOs seem to be sought rather than EPOs since they are “cheaper and easier to obtain” – particularly out of hours. Post the Baby Peter case our members report both a significant increase in EPO applications and in the percentage which have been refused. It must be the case that courts are the better venue for determining the appropriateness of these most draconian orders – magistrates have 20 years of experience in dealing with them very successfully (as evidenced by the vanishingly small number of successful appeals).

Question 5: Do you agree that the changes we have proposed to the judiciary – including greater continuity, specialism and management – will lead to improvements in the operation of the family justice system?

Having different members of the judiciary, and as appropriate their legal advisors, handle each hearing of a case is inefficient, ineffective, and clearly not right for or fair to the parties. Continuity will undoubtedly enable tighter control of cases to be maintained – but on its own is no panacea. Exactly the same arguments hold for the advocates, guardian and social work team and we would welcome more a robust infrastructure to support this. We have supplied the Review with evidence of the consequences in at least one case where this principle has failed to be applied.

Magistrates are united in support for greater judicial continuity, and stand ready to engage in discussions as to how this can be achieved. We have evidence of magistrates being prepared to return for subsequent hearings of the same case, even cancelling holidays to do

so. However, it must be understood that to achieve it may cost. Continuity may imply more sittings – and whilst magistrates cost little or nothing to bring together for a case, HMCTS are seeking every opportunity to reduce sittings, close courtrooms and allocate reducing resources to other jurisdictions where there is more public accountability of their performance.

It appears that the Review is promoting judicial continuity as the panacea or key to solving all the ills of the family law court processes. It is not. Robust, consistent, ongoing case management is much more important. Decisions taken by family proceedings courts in pursuit of taking control of the process and the timescale need to be supported and reinforced, in the first instance by their legal advisors (who consequently need to be well trained and have adequate time provision to ensure they can actively engage in case management outside of the court hearings) and subsequently by the higher courts. Magistrates continue to doubt that this latter is the case. We share the evident frustration shown by the Review that nothing that has been tried over the last 20 years has had a lasting positive effect on delay and performance. Whilst we have addressed the specific questions asked by the Review, in our introduction we have attempted to address what we see as the implicit leitmotif of the interim report. We would welcome further discussion, particularly if we are right in our assessment.

We applaud the Review's attempts to define a better judicial management infrastructure that involves all of the judiciary and other professionals in the Service – and beyond. We agree that it should not always be the assumption that the most senior judge chairs such fora; others, and particularly magistrates, may have more background, experience and competence at such team leadership. We agree that such structures are required at national and local level. The administrative support necessary to make this work should not be underestimated. We are not convinced that the functions of the national Family Justice Council can continue to be effectively and independently performed if it is subsumed into the Family Justice Service.

We welcome the support of both the Review and the President to the maintenance of our public law family jurisdiction, but it must be understood that the advantage that we bring to our role of being part of, representative of, and professionally engaged with our communities brings with it the consequence of our not being available all day every working day of the week and year. Family Proceedings Courts, overwhelmingly presided over by magistrates, historically have dealt with the majority of public law cases (and given the wide variation noted in the report, there is much scope for them to do more with both financial and system benefits) and an increasing amount of private law work. They do so successfully, with remarkably few appeals. We have received many comments about our ability and preparedness and success in engaging directly with the (typically) very vulnerable and disadvantaged adults who come before us.

We make no comment on the Review's observation about judges' training, mentoring, appraisal, or management development, but we would observe that magistrates, taken as a whole, have wide-ranging life experiences including extensive people and organisational management up to and including public board and international levels. Further, they have been mentored, trained and appraised for many years. Magistrates universally acknowledge the improvements that appraisal and feedback can bring to any body of professionals. As the Review will be aware, until six years ago magistrates were responsible for the strategic management of their own courts – a job which hindsight demonstrates they did even more effectively than was appreciated at the time.

Specialism is a topic which divides the magistracy, not least because there is no common definition of what is meant by the term or, even if a common definition is arrived at, what objective it is intended to serve. On one topic there is broad agreement – magistrates, as

non-lawyers, feel that the requirement first to become familiar with the judicial system and their role within it in the criminal court should be retained. We will welcome the opportunity to discuss the broader issue with the Review Team since it is not clear whether such "specialisation" is primarily for court chairman, is intended to seek greater availability for more sittings, is aimed at increasing the robustness of case management – or what? Every magistrate is a specialist in the jurisdiction in which they sit – how could it be otherwise in a system which continually trains, appraised and develops each and every one of them – and has systems in place to deal with lack of proficiency or performance?

Many magistrates believe that the experience and knowledge gained by dealing with, for instance, cases of domestic violence and their consequences in both their criminal and family jurisdictions improves the quality of their insight and judgement and they believe justice would be ill-served by preventing this through forcing them to choose one jurisdiction or the other. If the Review wishes to continue with this concept we believe nomenclature such as "family-only" to describe magistrates who sit in only that jurisdiction would be more helpful and accurate.

For example, in Nottinghamshire the entire family panel (over 90 magistrates) were canvassed on their interest in specialising in only family work. Not one came forward. It is not clear from the Review's proposals whether all members of the judiciary would have to choose to work only in their family jurisdiction – if not we fear that a hierarchy would develop with those who "specialise" being seen as "better" – the magistracy is based on the concept of demonstrated and appraised competences – we are either good enough or not – with consequences including, ultimately, removal of the bench where competence cannot be displayed. However, there are some of our members who are being frustrated their attempt to undertake family work only – they claim as a result of administrative convenience rather than judicial considerations.

Seeking to allow recruitment of family magistrates directly and without any link to the rest of the magistracy is a fundamental change to the judicial system and would bring with it many consequences that would go well beyond the judicial process and the court. Advice we have received suggests that such appointees could not be magistrates but would require the creation of an entirely new and separate strand of the judiciary. Whilst it may be true that enabling lawyers to become family judges directly would increase the pool of appropriately motivated candidates, we do not see this for the magistracy. We would resist any suggestion that changes should be made to the magistrate recruitment criteria so as to reflect knowledge of child development or family dynamics for instance. We would welcome the opportunity to discuss this further with the Review but consider that it would need its own wide-ranging and in-depth investigation, consultation and analysis.

Given the length of time necessary to train, mentor and then appraise the competence of a magistrate in their adult criminal jurisdiction we do not think it practical or appropriate to remove the two-year rule before joining the family panel.

We do agree that if the situation continues that members of the judiciary sit in more than one jurisdiction then it has to be clear that family work (particularly in pursuit of continuity) takes precedence over other work – and not the reverse as so often seems to be the case now.

This also, indeed especially, applies to legal advisors. For the system to work in FPCs then legal advisors need to be dedicated to family work for a defined percentage of their time which also allows for all of the out-of-court case management that is a necessary part of case progression (which also requires adequate administrative support) and recognised in their extensive delegated powers. Ideally legal advisors should be encouraged and enabled to work exclusively in family law and their career path should not be adversely affected by doing so.

Question 6: Do you agree that case management principles, in respect of the conduct of both private and public law proceedings, should be introduced in legislation?

Whilst there ought to be no need for this particularly given the recent introduction of new rules covering all proceedings in all venues, given the difficulty of achieving change through the previously implemented procedures, the available options, and "local" interpretations it may have more force.

Question 7: What changes are needed to the culture and skills of people working in family justice and how best can they be achieved?

The culture needs to become (or more realistically in some areas at least, be re-established as) one of mutual respect and collaboration. We hope that the Review is right to vest so much confidence in the final Munro Report and the expectation that it will be implemented. Social work at local authority level needs to be re-professionalised with the effect that all the pre-proceedings work should be invariably completed except where cases start in crisis – and there ought to be less of those too; CAFCASS needs to refocus its attention away from filling gaps in LA social work to being able to provide effective analysis for the court; the judiciary needs to be able to be confident that in resisting unnecessary requests for experts they will be supported by the Court of Appeal; and all professionals must comply with all directions (and appreciate their responsibility to do so jointly as well as severally).

The overarching consideration should be the timetable for the child. All other considerations, including the human rights of the parents and extended family, must be subservient to this. The single most important service the guardian can provide to the court is an early view of this timetable in order that the court can establish and maintain control of the case in concurrence with this timetable.

Question 8: Do you have any other comments you wish to make on our proposals for system management and reform?

No.

Public Law (Chapter 4)

Question 9: Do you agree with our proposals to refocus the role of the court?

Broadly, yes. However, we do not support the concept that courts should not scrutinise the care plan, particularly with regard to issues such as sibling placement and educational continuity. Courts need much more confidence in the performance of local authorities in the creation of their care plans before they will willingly give up their responsibilities with regard to care plans. The legislation is currently very clear that courts need to be satisfied that the lodged care plan is the one that is right for the child before it can be adopted – it is not enough merely to conclude that the threshold is passed. Without knowing what the care plan envisages how can the court be satisfied that the "no order" principle is complied with for instance?

We do not recognise the scenario the Review has posited regarding courts keeping cases open to cross every "t" and dot every "i". Our experience is that care plans are only rejected where they are palpably incomplete, inadequate, or frankly inchoate – and that does not create an evidence base that says we are yet in a position where we can abandon the check the court provides on the power of the state. We do not see how the court could properly assess a parent's application for contact with a child in care without examining the care plan. Further, it is not unusual for some negotiation around the care plan to be necessary to obtain consent to the plan by the parent(s). Failure to allow the courts to be involved in such

negotiations could well create more delay, more cost, and more contests. Finally, we are not convinced that the removal of the courts oversight would be Human Rights Act compliant.

Please also see our earlier comments about the status and reporting line of IROs.

Question 10: Do you think a six-month limit with suitable exceptions, for all section 31 care and supervision cases should be introduced?

Such a time limit would only be feasible consequent upon the systemic changes envisaged by the Review. To implement it beforehand would merely lead to excessive appeals for exception and/or inadequate investigation and thus care orders being made with inchoate care plans and/or children being left at risk because an application had timed out. The creation, early in a case, of a child-focused timetable would be a more effective way to proceed given both the current system framework, or that which appears on the face of the interim report. This would be made more viable if the proposed Family Court Service had in-house experts as some of us have seen in the Children's Court of Victoria, Australia for instance, where multi-disciplinary resources are immediately available to the court as a result of being in the same location and under the court's direct control. We have addressed a broader response of the consequences of such a move in our introduction.

Question 11: Do you agree the timetable for the child should be strengthened?

Yes, please see our response to Question 7.

Question 12: Do you think our approach to the strengthening of judicial case management is correct?

In general yes. We are concerned that the potential, or indeed default, for interim orders to last six months may result in more interim contests with the delays and costs that would bring.

We support removing the duplication of placement order application scrutiny

Question 13: What criteria should be used in the decision whether or not to appoint experts? And should the judge draft the letter of instructions?

The criteria and process already exist in the existing Practice Direction and guidance. They have the potential to be effective if they are complied with. We have received evidence that when FPCs attempt to implement them to control the process they are told that "other courts" do not require such compliance; where it would result in the refusal to appoint then FPCs are reluctant to do so simply because history does not suggest that they will be supported on appeal. Magistrates would welcome more robust precedents for us to rely upon.

We do not believe it is appropriate for the judge or magistrates to draft the letter – but we do agree that courts should regain the position where the instruction of experts is clearly by the court and for the court's benefit – rather than by the parties for the benefit of one or more of them. For instance the practice of letters of instruction being lodged with the court only after they have been issued to the expert should cease.

Question 14: Under a proportionate working system, what are the core tasks that a guardian needs to undertake in care proceedings?

We agree with the Review's proposals in paragraphs 93 to 97. We have already commented to earlier questions about the role of the guardian and IRO. The guardian must

be, and seen to be by all parties, independent, and as such must be free to use professional judgement in determining what it is necessary for them to do to comply with the court's implicit and explicit requests.

The use of the term "proportionate" must be defined by the court, which appoints the guardian, in light of the needs of the case as it determines, and not by some allocation formula defined by an arbitrary workload model. This would remain true even if the responsibilities of CAF/CASS were to be transferred into a Family Justice Service.

Question 15: Could there be a greater role for other dispute resolution services in support of the public law court process?

We feel there is merit in exploring further how such services might support early resolution of permanence for children, particularly prior to the issuing of care proceedings. We are aware of the use of Family Group Conferences and believe they can be successful in dealing with such issues as engaging the wider family network in seeking a family-based placement for affected children, and gaining the support of the parents to such a resolution. They should be widely and easily available, and their potential better understood by all social work departments. They are however, in our view, even more effective prior to proceedings when they may actually identify to the family ways to prevent the need to issue such proceedings. Whilst we agree that the FDAC has demonstrated promise, we find it difficult to see how such processes can run alongside live care proceedings and still maintain a child-focused timetable, let alone a limit of 26 weeks to finalise care considerations.

Question 16: Do you have any other comments you wish to make on our proposals for public law?

The Review notes the pilots whereby a guardian becomes involved in pre-proceedings activities. We support these pilots, but would further suggest that it is vital that parents have access to sufficient legal representation to ensure they understand the gravity of the situation they find themselves in and the consequences of non-cooperation or non-compliance with any agreements that they may enter into at this stage.

Private Law (Chapter 5)

Question 17: Do you agree there is a need for legislation to more formally recognise the importance of children having a meaningful relationship with both parents post-separation?

We do not see any substantial evidence that courts behave in any way other than in support of this contention and as such do not see the need for legislative change. However, we do not see that it would adversely affect the ability of the court to deal justly with individual cases. The removal of legal aid entitlement from most private law cases will have a much more significant deleterious effect we believe.

Question 18: Do you agree with the proposals to remove the terms 'contact' and 'residence' and to promote the use of Parenting Agreements?

We are supportive of the thrust of reinforcing the responsibility that is part of the title of parental responsibility, and the consequent desire to move to a position of that responsibility being shared and underpinned by a parenting agreement. Whether that will be furthered by changing terminology and applications is questionable.

We believe that there will be a significant further increase in litigants in person as a result of legal aid changes; this will increase the difficulty of negotiation in such cases. This is likely to significantly outweigh any benefit in court time or the quantity or quality of agreements reached before application to court.

Question 19: Do you agree that there should be a requirement to consider dispute resolution services prior to making an application to court?

Yes.

Question 20: Do you agree with the processes we outline for the resolution of private law disputes?

Yes.

Question 21: Which urgent and important circumstances should enable an individual to be exempt from the assessment process for Dispute Resolution Services?

The biggest issue will be domestic abuse, the definition of which must be drawn much more broadly than that envisaged in the Government's recent legal aid consultation. Additionally there may be issues connected with the occupation of property, or the existence of non-molestation orders.

Question 22: What do you think are the core skills required for mediators undertaking an assessment?

This is not an area on which we feel competent to comment. We would say that ensuring an externally accredited standard for all mediators engaged in work with the courts ought to be available. This could be a pre-requisite for any contract with the Family Justice Service for instance.

Question 23: Is there any merit in introducing penalties, through a fee charging regime, to reflect a person's behaviour in engaging with Dispute Resolution Services, including the court?

No, the court is trying to promote a lasting relationship between parent(s) and child. It will not help if penalties are introduced: we anticipate they would be rarely implemented or enforced anyway. Colleagues who sit in the Youth Court observe that although parenting orders were introduced, very few have been successful if the parent chooses not to engage with the system.

Question 24: Do you have any other comments you wish to make on our proposals for private law?

We refer the Review to our response to the Legal Aid consultation (http://www.magistrates-association.org.uk/members/index.php?option=com_docman&task=cat_view&gid=415&Itemid=62&ref=05_legal_aid_reform_response.pdf). We support the approach of integrating legal aid for family cases into the Family Justice Service.

Implementation

Question 25: Do you have any comments about how these proposals might best be implemented?

The Review's proposals are wide-ranging and fundamental. Any aspect which is susceptible to piloting should be – with sufficient time allowed for evaluation of and reflection upon such pilots before any decision for full-scale implementation is made.

Many of the proposals, particularly those affecting the structure and operation of the courts, will not work without the overarching recommendation of a properly funded Family Justice Service being in place first.

Others, such as those relating to structures within and for the support of the judiciary, could happen independently – but not independently of the funding to make them happen. Judicial continuity, stronger case management, allocation based on the needs of the case not the availability of judicial, legal advisor or CAFCASS resources – all will cost. This cannot be a zero sum game if the timeframe under which its success is judged is too short.

Finally, if the proposal to enshrine a 26 week default timescale into primary legislation is taken forward then the societal, human rights and system implications will need to be spelled out very much more explicitly than the interim report has done.