VIEW FROM THE PRESIDENT'S CHAMBERS (13)

The process of reform : an update

Sir James Munby, President of the Family Division

In my last 'View', [2014] Fam Law 978, I set out the next steps in the on-going process of reform. How do matters stand in August 2014?

Working Groups

The Financial Remedies Working Group chaired by Mostyn J and Cobb J has produced its first report, dated 31 July 2014. The Children and Vulnerable Witnesses Working Group chaired by Hayden J and Russell J has produced its first report, also dated 31 July 2014.

I am grateful to all the members of both Working Groups who have worked so effectively to produce such impressive reports in such a short time. I am anxious that their recommendations should be subjected to the widest possible consultation, discussion and comment. I therefore encourage everyone with an interest in any of the topics dealt with by either Working Group to let me have their observations as soon as convenient. Responses to the Financial Remedies Working Group should be sent to Alex Clark, by email to Alex.clark@judiciary.gsi.gov.uk. Responses to the Children and Vulnerable Witnesses Working Group should be sent to Jo Wilkinson, by email to Joanna.wilkinson@judiciary.gsi.gov.uk. I shall be inviting the Family Procedure Rules Committee to consider the reports of both Working Groups at its next meeting on 6 October 2014.

The work of the Family Justice Council Working Group chaired by Roberts J, carrying forward the Law Commission's recommendation that authoritative guidance on "needs" be produced by the Family Justice Council, is well advanced. I will publish its report as soon as it is available.

Transparency

I have published the consultation paper foreshadowed in my last 'View'. I encourage everyone with an interest in this important topic to let me have their observations as soon as convenient. Responses should be sent to Andrew Shaw, by email to Andrew.shaw@judiciary.gsi.gov.uk.

The Family Justice Young People's Board

I should like to draw attention to and praise the work of the Family Justice Young People's Board. Anyone who has worked with them, as I have, or had the privilege of hearing one of the incredibility powerful and moving presentations where they describe their personal experiences of the family justice system, as an ever increasing number of judges have, will know how important it is that we listen to their highly relevant and often thought-provoking views.

The FJYPB's second annual conference took place on 24 July 2014. It was an inspiring occasion, attended by a number of family judges. The conference was opened by the Family Justice Minister, Simon Hughes, who announced the government's commitment that children and young people involved in family court proceedings will have access to judges to make their views and feelings known. Giving the closing address, I stressed the importance of children and young people being given the opportunity to communicate with professionals, including judges and magistrates. I expressed my support for the government initiative.

I am working with the FJYPB to make a reality of the vision set out in their draft *National Charter for Child Inclusive Family Justice*. I was delighted to read the feedback from their tours in May 2014, at the invitation of Her Honour Judge Finnerty, of the seven family court buildings in North Yorkshire. I am supportive of their proposal to extend the process to other parts of the country. I very much hope that further such tours, supported by the local judiciary, will be possible.

Experts

The pilot scheme in relation to DNA and hair-strand testing for substance abuse is now up and running in the Bristol and Taunton DFJ areas. All the reports are that the pilot is progressing well. It will, I hope, validate the pilot model for the provision of funding for such tests by MoJ under arrangements administered by CAFCASS.

I referred in my previous 'View' to the particular problem in relation to the experts in highly specialist disciplines whose involvement is absolutely crucial if 'baby shaking' and similar types of case are to be determined fairly and justly. I said that I was having on-going discussions with officials and Ministers and that I would report whenever there was anything positive to report. I regret that there is, thus far, nothing positive to report.

The wider issues in relation to the funding of experts whom the court has found, in accordance with section 13(6) of the Children and Families Act 2014, to be "necessary" to assist the court to resolve the proceedings "justly", remain unresolved.

Legal aid

I referred in my previous 'View' to the judgments of Holman J in *Kinderis v Kineriene* [2013] EWHC 4139 (Fam) and of HHJ Bellamy in *Re R (Children: temporary leave to remove from jurisdiction)* [2014] EWHC 643 (Fam). The sequel to the first is to be found in the judgment of Judge Bellamy in *Kinderis v Kineriene (No 2)* [2014] EWHC 693 (Fam). His judgment in *Re R* is complemented by his more recent judgment in *Re AB (A Child: Temporary Leave to Remove From Jurisdiction: Expert Evidence)* [2014] EWFC 2758. The sequel to the judgment of HHJ Wildblood QC in *Re B (A Child) (Private law fact finding – unrepresented father), D v K* [2014] EWHC 700 (Fam), to which I also referred, is to be found in my judgment in *Q v Q* [2014] EWFC 31.

Taken together these judgments make melancholy reading. What is to be done?

A Californian solution?

On 18 June 2014 Professor Dame Hazel Genn chaired a Seminar at University College, London: *Litigants in Person: What can courts do?*

For the family judges who were present, the most interesting presentation was by Bonnie Rose Hough, of the Center for Families, Children & the Courts, of the Administrative Office of the Courts of California, who spoke on *Building the Capacity for Justice System Innovation*. Her PowerPoint presentation, which I have circulated widely, is fascinating and provides much food for thought. It merits very careful consideration by everyone with any concern about the plight of litigants in person in our family justice system.

Not for the first time, there is much we can learn from American innovation.

Divorce

In April 2014 I floated various ideas about divorce law reform. In my speech in the President's Court on 29 April 2014, [2014] Fam Law 820, I referred to the need to reconsider practice and procedure in ancillary relief (financial remedy) cases. In relation to divorce, I said this:

> "Has the time not come to legislate to remove all concepts of fault as a basis for divorce and to leave irretrievable breakdown as the sole ground? Has the time not come to uncouple the process of divorce from the process of adjudicating claims for financial relief following divorce, just as we have finally uncoupled the process of divorce from the process of adjudicating disputes about the children following divorce? Indeed, may the time not come when we should at least consider whether the process of divorce still needs to be subject to judicial supervision?"

These comments attracted much attention in the media, not all of it entirely accurate.

What I had in mind were four quite separate issues.

First, there is the issue of practice and procedure in financial remedy cases. This is being dealt with by the Financial Remedies Working Group chaired by Mostyn J and Cobb J. As I set out in my previous 'View', there are various strands to the Working Group's review: (a) the need to adapt our processes in financial remedy cases to the new world of those who, not through choice, have to act as litigants in person; (b) the need to encourage and facilitate the use of out-of-court methods of resolving financial disputes, whether by mediation, arbitration or other appropriate techniques; (c) examining whether there is any scope for more closely aligning practice and procedure in the three major types of financial remedy cases: those following divorce (or dissolution of a civil partnership), those under Part III of the Matrimonial and Family Proceedings Act 1984, and those under Schedule 1 to the Children Act 1989; and (d) the review of all the application and other forms used in financial remedy cases to see whether any adjustments are appropriate and to create a comprehensive body of standard form orders for use in such cases.

Secondly, there is the proposal to uncouple the *process* of divorce from the *process* of adjudicating claims for financial relief following divorce, just as, following the repeal of section 41 of the Matrimonial Causes Act 1973, we have finally uncoupled the process of divorce from the process of adjudicating disputes about the children following divorce. This, I emphasise, would not affect in any way either the substantive law of divorce or the substantive law relating to financial remedies. Nor, from the point of view of the parties, would the process of divorce be made any easier. It is simply a proposal that there should be two separate sets of proceedings, one for divorce and the other for financial remedies following divorce, each with its own separate case number and court file. HMCTS is, with my active support, proceeding to centralise the handing of divorce petitions, concentrating this work in a limited number of locations where petitions will be issued and all special procedure divorces will be processed. Ultimately, it *may* be that the process could be centralised in a single national centre. These administrative changes – desirable in terms of streamlining the process, making more efficient use of resources and reducing administrative costs – can surely be facilitated and enhanced by the administrative uncoupling of the two processes. It is an issue being considered by the Financial Remedies Working Group chaired by Mostyn J and Cobb J.

Thirdly, there is the issue of legislating to remove all concepts of fault as a basis for divorce and to leave irretrievable breakdown as the sole ground. This is *not* a matter within the remit of the Financial Remedies Working Group. It is a change to the substantive law that would require primary legislation. It is therefore a matter for Parliament.

Finally, there is the question of whether we should at least consider whether the process of divorce still needs to be subject to judicial supervision. Again, this is *not* a matter within the remit of the Financial Remedies Working Group. It is a change to the substantive law that would require primary legislation. It is therefore a matter for Parliament. In my press conference on 29 April 2014, the transcript of which can be found at
http://www.judiciary.gov.uk/wp-content/uploads/2014/05/munby-press-conference-290420141.pdf
I elaborated the point:

> "there are countries where the system is that a divorce which is by consent and where there are no children is treated as an administrative matter dealt with by what, using our terminology, one might describe as the registrar of births, deaths, marriages and divorces. It seems to work."

For an example of what I had in mind see *Solovyev v Solovyeva* [2014] EWFC 1546.

In short, the first and second topics are on the agenda. They will not, as some have feared, make divorce easier nor provide for divorce 'over the counter'. The more fundamental changes – the third and fourth – are, I repeat, for Parliament.

The question has been raised as to whether any of this would impact upon the important protections arising under the Divorce (Religious Marriages) Act 2002, inserting what is now section 10A of the Matrimonial Causes Act 1973. The short answer is that, so far as I am concerned, nothing must be done to affect the operation of this very important provision. Steps must be taken to ensure that no procedural or other changes indirectly or inadvertently prejudice the interests of those who might wish to take advantage of section 10A.

Other developments

A revised version of the social work evidence template for use in care cases has been produced under the aegis of ADCS. No doubt it may require further adjustment in the light of practical experience but it is a valuable tool whose use I recommend.

The Advicenow Action Guide *Applying for a financial order without the help of a lawyer* has now been published. Written with assistance from the Family Justice Council, it is an excellent guide to financial proceedings for litigants in person. Applying for a financial order without the help of a lawyer is a daunting task for anyone. I believe that this guide provides the sort of help that litigants in person need and presents complex information in an accessible way. I commend it and feel that it should be brought to the attention of all litigants in person who appear before the courts in financial proceedings.

Orders

I have circulated for discussion and comment a further batch of draft orders prepared by Mostyn J's family orders project for use in the High Court.

The full use of standardised orders is still impeded by the inadequate state of the IT available to judges and courts. In the medium and long term the only solution is the provision of modern, up-to-date, IT. In the meantime we have to do the best we can with what we have.

District Judge Geoff Edwards has up-dated his invaluable templates, which have long been appreciated by so many judges, to provide an interim solution for some of the most immediately pressing problems. I was thus able very recently to send out news of his template program for completion of CAP 02 and 03, which is now available to the judiciary. It should assist greatly in reducing the time judges and court staff are spending on completing the existing orders. I am extremely grateful to Geoff and also to District Judge Martin Dancey for their work on producing the program, which I hope will be widely used.

The Red Book

Finally, may I voice, I am sure on behalf of all of us, my appreciation and thanks for the enormous effort that everyone involved with the Red Book put into the preparation of the 2014 edition.

The Red Book is indispensable. It is the single book that every family practitioner and every family judge *must* have. Where would we be without it?

The sheer scale of the reforms that came into effect on 22 April 2014 – how many pages of the 2013 Red Book were left unscathed? – imposed immense challenges on the publishers, the editors and everyone else involved in the process of producing the 2014 edition. It was vital that the new edition should contain the 'new' law, not the old, and that it should be available as soon as possible after 22 April 2014, but the final pieces of the statutory jigsaw were still being put in place in March and the resulting delays meant that the usual publishing schedule had to be pushed back. The editors and contributors worked heroically to finalise the text as soon as possible, Jordan Publishing willingly agreed to re-arrange the publishing schedule, and the production team achieved great feats. The 2014 Red Book was available, completely up-to-date, first on-line and very shortly after in print, remarkably soon after 22 April 2014. An astonishing feat! Thank you!