FJC RESPONSE TO TRANSPARENCY CONSULTATION PAPER DATED 15 AUGUST 2014

Listing issues

1. The Consultation seeks views and suggestions as to whether any steps can be taken to enhance the listing of cases in the Family Division and the Family Court so that court lists can, as the media have suggested, be made somewhat more informative than at present as to the subject matter of the cases. The Consultation makes it clear and emphasises that it is not intended in any way for parties to be named. **This caveat is supported and endorsed.**

2. The Consultation accepts that the obvious considerations of costs and practicable feasibility suggest that there is probably only limited scope for expanding the amount of information that appears in court lists. However, the Consultation seeks views about the suggestion that a catch-phrase or a few catch-words might be added after each case number to indicate in slightly more detail what the case is about.

Identification of court names

3. It is not suggested that changing the use of identifying codes for the place at which proceedings have been issued will be of particular use to the media because in many cases the geographical location of a case is the least interesting or relevant factor about a case. Nor it is suggested that the inclusion of more detailed information in a court list will be of assistance, particularly in cases which move between court centres for various reasons.

4. **However, it is suggested that the definitive list of court identifying codes should be included in the proposed Information Leaflet so that the media and members of the public can**

understand the geographical origin of a case (see paragraph 12 below).

Identification of the type of case

5. At present there are 7 types of possible family cases that can be identified by case letters –

    a. Public law - C
    b. Divorce - D
    c. Family Law Act – F
    d. Judicial Separation – J
    e. Nullity – N
    f. Private law (Children Act cases) – P
    g. Placement and adoption – Z

6. In general terms, it is not suggested that such lettering system needs to be altered because it would appear to provide the most useful and readily understandable way of understanding the nature of an individual case.

7. However, at present there appears to be some confusion and lack of consistency about the way in which applications brought under the HFEA 2008 are identified – some cases are categorised by use of the letter 'P' (denoting private law applications) while others are categorised by use of the letter 'C' (denoting public law). **It is therefore proposed that a separate eighth category of family case be introduced, with the identifying letter 'H', to denote applications brought under the HFEA 2008.**

Identification of the key issue(s) in the case

8. It is suggested that there are two key difficulties associated with the suggestion of the introduction of catch-words or catch-phrases to assist the media in understanding the nature of a case.

9. Firstly, it is unclear who would be responsible for actually attributing a particular catch-word or catch-phrase to a particular case. It is suggested that in reality the task would inevitably fall to court staff or to the parties. It is suggested that both of these options carry greater risks than benefits. Court staff will not necessarily always possess a clear understanding about the complex issues underpinning a case. Increasing numbers of advocate-free cases involve only litigants in person who may simply not be able to carry out such a task (for example, parties may not have English as their first language, they may have learning difficulties, a woman making an application under the FLA 1996 may be too traumatised or frightened in advance of the hearing, and so on). In a public law case, the requirement that it should be the applicant local authority that should attribute a catch-word or a catch-phrase is inevitably not value-free and may increase the chances of respondent parents or family members feeling hostile or aggrieved.

10. Secondly, while at first blush appearing to be a simple task, the most complex cases often involve multiple issues. Similarly, there are other cases that begin by involving one issue but then transform into something quite different by the end (for example, an application for a child arrangements order in a private law case involving entrenched and hostile parents may ultimately develop and turn into a public law case involving the intervention of the local authority). It is difficult to see how requiring court staff or the parties, particularly litigants in person, to ensure that a catch-word or catch-phrase is regularly updated would be of real or meaningful benefit to the media.

11. **It is therefore not proposed that the suggestion of the use of catch-words or catch-phrases to describe cases be adopted.**

How can the media and the public be informed?

12. **In the alternative, it is proposed that a short Information Leaflet be produced, in accessible and straightforward language, for the media and users of the court system which explains the way in which family cases are identified, categorised and listed. Such Information Leaflet should include the various categories of family case and the also definitive list of court identifying codes.**

What documents should be disclosable to the press?

Which types of documents should be included in category (1)?

13. The Consultation seeks views about which types of documents should be included in category (1). Category (1) documents are defined as including documents prepared by the advocates, including case summaries, position statements, skeleton arguments, threshold and fact-finding documents. The Consultation envisages that advocates will prepare the documents in a form that can be released to members of the accredited media in order to facilitate their understanding of the case and to assist them in performing their watchdog role.

14. It is suggested that there are three significant difficulties with this proposal.

15. Firstly, litigants in person may simply lack the skills or ability to prepare even the simplest of documents in a form that can be released to the media. In a case involving no advocates at all, the task of drafting such documents will inevitably fall to the judge who is already required to draft what may often be a complex court order. Such a requirement will

inevitably add to an already time-pressed busy judge's list of tasks and carries the risk of causing further delay and cost to family proceedings.

16. Secondly, while it is accepted that the drafting of such documents will add to the workload for advocates, it is difficult to see how the requirement for additional work would garner the support of already hard-pressed lawyers, particularly in publicly funded cases. Almost all family cases are characterised by the fact that different parties take different positions to a greater or lesser extent; this differentiation in position means that parties will either need to submit each individual skeleton argument or position statement - which would appear disproportionate, or to spend additional time drafting an agreed case summary – which would inevitably add to advocates' list of tasks and carries the risk of causing further cost in family proceedings.

17. Thirdly, it is difficult to see how the proposal to provide members of the media with case summaries could operate without placing advocates under almost intolerable pressure. In the most complex cases, or in cases where instructions are required from professional clients (such as social workers or guardians) or from clients whose first language is not English or who are imprisoned, documents may need to be submitted to the court at the eleventh hour or in a reserved, contingent format. It is proposed that it would not be in the interests of fairness to all parties to require advocates to submit such documents for the media in an incomplete or limited format.

18. **It is therefore difficult to see how the process of disclosure of documents in category (1) could be simplified so that it minimises the risk of increasing delay and/or cost in family proceedings, while at the same time providing the media with a meaningful understanding of the case to facilitate their watchdog role. It is therefore not proposed that the suggestion of the disclosure of documents in category (1) be adopted.**

Which types of expert should be included in category (2)?

19. Category (2) includes some experts' reports, or extracts of such reports.

20. The Consultation seeks views about which types of expert should be included in category (2). **The suggestion that only those experts' reports that have been identified by the judge, having heard submissions (in particular, those in the 'hard sciences') should be disclosed is supported. It is suggested in the first instance that, pending completion of the proposed pilot project, access to such documents should be confined to members of the accredited media who actually attend hearings until the efficacy and outcomes of such process can be evaluated.**

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17th April 2015