

View from the President's Chambers: May 2019

1. As I have indicated to those attending the FLBA Dinner in February and elsewhere, rather than use the occasion of that otherwise very jolly gathering to deliver an annual 'state of the nation' address, it is my intention to issue some form of written overview from my perspective as President each year in May to coincide with the judicial timetable, and the FLBA's annual Cumberland Lodge Weekend at which the President traditionally speaks. By publishing a written overview, my aim is for this to be available at the same time to anyone and everyone who is interested in Family Justice, whether or not they may attend any of the events that I have mentioned. I therefore intend to honour that stated intention and to use this, my second 'View from the President's Chambers', to deliver my perspective on the current state of affairs so far as the Family Justice system is concerned.

Court Visits

2. In October I embarked upon a circumnavigation of England and Wales, making a visit to each of the 44 DFJ Family Court Centres, together with some additional courts, in order to understand just how the current unprecedented burden of work was being experienced at each place and, hopefully, to learn something of the causes of the rise in caseload and to identify strategies that may improve our ability to cope with this volume of work. Each visit lasts for a very full day, and sometimes for more than one day at the larger centres, during which I meet for 45 minutes or an hour separately with each tier of judges, magistrates, legal advisers, court staff, the local Directors of Children Services and lead local authority lawyers, and with CAFCASS. As part of each visit, save for central London where this has occurred by different means, I have held an 'open session' attended by any local practitioners (legal or otherwise) who wish to hear an account of my current thinking and, most importantly, who may wish to bend my well-positioned ears with their own thoughts on matters that are affecting the professions.
3. This progression inevitably takes time. To devote every working day to the task of visiting 44 courts would take nine working weeks and, of course, it is not possible to ignore the other pressing demands on the diary to focus entirely on court visits. As I write this 'View' I have visited 24 courts and by mid-June I will have spent a day at another 9. In addition, I will seek to visit other courts nearer to London on specific dates before August as the diary may allow. My aim is to complete this initial 'drains-up' familiarisation with the system by October, or early November.
4. As well as being extremely grateful to all those at each court centre, and the team in my office, who have made each visit run so efficiently and who have made me feel so welcome, I have been both *surprised* and *heartened* by what I have learned at every turn. I can honestly say that there has not been a single encounter during

the very many conversations that I have thus far undertaken that has been wasted or otherwise of little use. On the contrary, I have picked up new perspectives and learned of different approaches to the work at each turn. This is, to a degree, a surprise as we all undertook the same training when the PLO and CAP came in and yet, different courts seem to approach common tasks in very different ways. Such diversity does, however, provide useful information as we try to identify what does, or does not, 'work' in terms of efficient and effective case progression.

5. The need to address our individual and collective 'well-being', which hit me full-square as soon as I became re-acquainted with those working in the system this time last year, has continued to be a priority. It is a topic about which I speak during each court visit, often five or more times in the day as I meet various groups of professionals and HMCTS staff. I have been heartened, in a number of ways, by the reaction that there has been to the focus on 'well-being'. Firstly, from what has been said to me in response, it is crystal clear that there is indeed a need to own up to the impact of the current workload in emotional, social and physical terms on each of us in whatever role we play in the Family Justice system. Secondly, there is, in each locality, an appetite to discuss these matters collectively and I am pleased to learn of individual DFJ areas beginning to produce agreed statements of understanding as to specific working practices. Thirdly, although this varies very much from court to court, I am heartened by the surprisingly good level of morale that I have observed in the majority of places despite the increased burdens that are being placed upon us all.
6. Having mentioned the development of local statements of understanding as to working practices, I wish to say that I accept that this way of developing some common ground amongst the judiciary, the local legal and social work professionals and the court staff, has the clear potential to cause difficulties for those who practice across different court centres and who may not therefore know what is, or is not, to be expected in Court A, as opposed to Court B. I have nevertheless encouraged local conversations and the production of local statements because I believe that that is much more likely to result in changes in working practices that are actually taken up on the ground and 'owned' by all involved, rather than there being some dictat or other issued nationally by the President and the national professional bodies. My hope is that, once we see what has been developed locally, it will be possible to identify key points of common ground (I cannot think that the various local practices that will be identified will be very radically different from each other) from which a national template may be drawn and issued to identify the bottom line expectations that should apply to all court centres.
7. In terms of substance, my court visits have provided a rich harvest of information and ideas which have been fed into the two central working groups that I have

established to focus on Public Law and Private Law. It is to the work of these two groups that I now turn.

The Public and Private Law Working Groups

8. As is well known, in response to the rise in both public law and private law children cases, in the autumn I invited Keehan J (public law) and Cobb J (private law) each to lead a cross-professional working group to look at process and practice in these two key areas.
9. I am immensely grateful to Keehan J and to Cobb J and to the large number of people who have given up a very significant amount of time to the work of these groups, which have been labouring under a tight deadline. In order to recognise each individual contribution, I wish to record the membership of the two groups here. In addition, each group has been assisted by the attendance of representatives from the MoJ and DfE.
10. The Public Law Working Group is made up of:
 - Mr. Justice Keehan
 - HHJ Kambiz Moradifar (DFJ Reading)
 - HHJ Rachel Hudson (DFJ Newcastle upon Tyne)
 - DJ Martin Leech (District Judge Plymouth)
 - Iram Anwar (Legal Adviser Nottingham)
 - Anthony Douglas (CEO CAFCASS)
 - Teresa Williams (Director of Strategy CAFCASS)
 - Stuart Carlton (Director of Children's Services – North Yorkshire)
 - Nigel Brown (CEO CAFCASS Cymru)
 - SallyAnn Jenkins (ADSS Cymru: Director of Children's Services – Newport)
 - Gareth Jenkins (ADSS Cymru: Director of Children's Services – Caerphilly)
 - Hannah Markham QC (Family Silk)
 - Alex Laing (Family Barrister – Secretary of the Working Group)
 - Lucy Moore (Local Authority Solicitor Swansea)
 - Natasha Watson (Local Authority Solicitor Brighton)
 - Jo McGuinness (Child Care Solicitor Stoke)
 - Caroline Lynch (Solicitor - Family Rights Group)
 - Helen Johnston (CAFCASS Assistant Director for Policy)
 - Rob Edwards (CAFCASS Cymru Legal Adviser)
 - Christine Banim (CAFCASS National Service Director)
 - Helen Blackman (Director of Children's Social Care, Nottingham CC)
 - Shona Gallagher (Service Manager, South Tyneside)
 - Sarah Alexander (Assistant Director, Bolton Council)
 - Simon Manseri (Principal Social Worker, Bolton Council)

11. The following are members of the Private Law Working Group:

Mr Justice Cobb
Helen Adam (Mediator)
Beth Altman (CAFCASS Cymru)
Melanie Carew (CAFCASS Head of Legal)
HHJ Martin Dancey (DFJ Dorset)
Michael Edwards (Barrister)
Sandie Hayes (CAFCASS)
Rosemary Hunter (University of Kent)
Rebecca John (CAFCASS)
Helen Jones (Magistrate)
HHJ Robert Jordan (CJ Manchester)
Santosh Kumar (Solicitor)
DJ(MC) Vanessa Lloyd (DJ(MC))
Steve Matthews (Magistrate)
DJ Mulkis (DJ Central Family Court)
Sarah Parsons (CAFCASS: Asst Director)
Hannah Penfold (Legal Adviser)
Olivia Piercy (Solicitor)
Matthew Pinnell (CAFCASS Cymru: Deputy Chief Exec)
DJ Katherine Suh (DJ Dartford)
Teresa Williams (CAFCASS: Director of Strategy)
Alex Clark/Hannah Phoenix (Secretariat)

12. At this stage, it is right to note my particular appreciation for the sustained contribution that has been made by Steve Matthews JP, not only to the Private Law Working Group (both now and in its previous formulation 4 years ago) but more generally as a leading member of the London Family Magistrates Panel for many years. It is a sign of Steve's prominent position that I had met him in no fewer than three different capacities during the past six months. Shortly before Easter we received the shocking and very sad news that Steve Matthews had died very suddenly. Many will miss his presence amongst us for the valuable contribution that he made, for his commitment to the cause of local Family Justice and for his companionship. Our thoughts are with his family, friends and colleagues at this sad, sad time.

13. For the sake of completeness, I will also set out the membership of the Working Group on Expert Witnesses, under the chairmanship of Williams J, which is working to a different timetable:

Mr Justice Williams
Melanie Carew (CAFCASS Legal)
HHJ Kharin Cox
Alison Firth (Paediatrician)

Alistair Henderson (Academy of Medical Royal Colleges)
Dylan Jones (Solicitor)
Frances Judd QC
Samantha Little (Solicitor)
Caroline Makin (Solicitor)
HHJ Gillian Matthews QC
Adam Oates (Paediatric Radiologist)
Rachel Rogers (Resolution)
Sharon Segal (Barrister)
HHJ Malcolm Sharpe
Alison Steele (Gt Ormond St)
Reena Zapata (BMA)

14. In two Key Note Addresses that I have given, firstly on public law to the ALC Conference in November 2018¹ and then on private law to the Resolution Conference in April 2019², I have sketched out in very broad terms the likely direction of travel of these two groups. I will not repeat that detail here. The interim reports of both groups are to be discussed by the DFJ's and FDLJ's at the President's Conference on 16th May before being published for general consultation very shortly thereafter. I do, however, wish to stress that, whilst these initiatives have been set up at my direction and are each chaired by a judge, they are very much collaborative endeavours that draw equally on the experience and expertise of the wide body of judiciary, professionals and civil servants that can be seen on display in the list of membership.
15. In all that I have said over the past six months on the need for change in both public and private law, I have been at great pains to stress that any change in practice must come organically from across the professions and be developed in partnership rather than being imposed from above. In this regard I have been and remain committed to working closely with the Association of Directors of Children Services; where change may be needed in social work practice that is very much a matter for local authorities and not something to be dictated by the judiciary. Equally, I have been open in accepting that the system may well benefit from some changes in judicial behaviour and, if that is so, it is a matter that I am willing to discuss with judges and magistrates. More widely, the need to work in partnership plainly extends to all involved whether they be lawyers in private practice, or professionals working in CAFCASS, HMCTS, the Legal Aid Agency, the MOJ or DfE.
16. My aim is for the period of consultation that will follow publication of the two interim reports to close by October with a view to firm proposals for change being developed during the autumn and implemented soon thereafter.

¹ <https://www.judiciary.uk/announcements/speech-by-rt-hon-sir-andrew-mcfarlane-association-of-lawyers-for-children-conference-2018/>

² <https://www.judiciary.uk/announcements/speech-by-president-of-the-family-division-to-the-resolution-conference-2019/>

17. Before closing on this topic, it is impossible not to mention that there is a most striking degree of common accord in the air about the need to change our working practices in both Public and Private Law work. We are at a 'moment' when change is needed and is likely to occur. We are also, rather surprisingly, at a moment when there is much common ground about the detailed focus of any such change. Those who follow the detail of what is said by the ADCS, MOJ, the Chief Social Worker (Isabelle Trowler), the National Family Justice Board and by me will easily spot that we all seem to be 'on the same page'. That this is so is more a coincidence of thought than a conspiracy. It arises from a spirit of engagement, listening, mutual respect and a joint recognition of the need to 'do something'. I earnestly hope that this spirit of partnership and common endeavour continues and achieves some real change for the better during the coming months.

Other Matters

18. For obvious reasons, I have taken up space and time to deal with the important and pressing matters relating to children cases. Without indicating any lack of focus on the remaining topics on my part, I will, if I may, deal with these more shortly.

Financial Remedy Court

19. Reports of the progress of the Pilot for the Financial Remedy Court at Birmingham continue to be entirely positive. The Pilot is now being rolled out in a further nine areas and I have made it plain that I would be happy to approve its adoption in any additional areas which indicate that they are ready to do so. Whilst, in procedural terms, the FRC is little more than the introduction of judicial 'ticketing' gatekeeping and allocation processes that have long been in place for children work, its potential to provide a professional and experienced court to deal with Financial Remedy work is a prize of true worth that should be readily achievable and available in all parts of England and Wales.

20. As I described in my address to the Resolution Conference³, the development of the FRC should bring additional benefits, for example, by adapting the data that is captured on the D81 Form, providing a ready resource that records the basic features and outcome of *every* Financial Remedy case so that, within a short time, it should be possible to publish tables identifying in broad terms the 'norm' for particular categories of case or commonly encountered circumstances.

Divorce Service Centres

³ <https://www.judiciary.uk/announcements/speech-by-president-of-the-family-division-to-the-resolution-conference-2019/>

21. I would again refer to my words to the Resolution Conference³ in which I fully acknowledged and apologised for the failure, despite the best efforts of the individual staff employed there, of the 11 Divorce Service Centres spread around the country to provide an adequate service for the progress of divorce petitions and the making of Financial Remedy consent orders. These centres are being phased out during the current 12-month period and replaced by an online system based in the new national Civil and Family Service Centre at Stoke on Trent. I am confident that the senior staff at HMCTS are entirely clear that the unacceptable service levels currently experienced from the paper-based centres is not to be repeated as Stoke gradually takes on more and more of this work. I have already visited the new centre at Stoke and, while I was impressed by what I saw there, I intend to keep a continuous and keen eye on the process as it moves forward.

Court of Protection

22. In my travels it has become very clear that the Court of Protection is both a busy and an area of work which is attracting genuine interest both from the practitioners and the judiciary and staff who work in the COP. The Court is most ably led by Hayden J, as its Vice President, and HHJ Hilder, as its senior judge. I have been very impressed by the enthusiasm of CoPPA (Court of Protection Professionals Association) which, uniquely in my experience, is formed of professionals working in the COP from all fields, whether lawyers or not. Very recently a COP Bar Association has been formed; I wish this new association well and look forward to meeting its members in the near future.

23. One bug-bear for the COP since its formation is that, for reasons that are hard to fathom, its busy Rules Committee has never been put onto a statutory basis. I have supported Hayden J in his firm lobbying for this lacuna to be rectified. The COP is an important and, for the families who are required to turn to it, essential part of the Civil and Family Jurisdiction. Any suggestion that it is in some manner a Cinderella area of work is, to my thinking, wholly wrong.

Forthcoming Practice Guidance

24. In early June I will issue *Practice Guidance on Short Form Court Orders in Children Cases* as a result of the almost unanimous view that I have heard at each court to the effect that, in the current climate, the benefit of long-form narrative court orders is far outweighed by the burden in terms of the time that it takes to draft them. The benefit of narrative orders in both public and private law cases is that all involved can turn to one document that sets out a comprehensive account of the issues, the position of the parties, the timescale of the case and the orders that have been made. At present we do not, however, have a universally accessible and accepted computer programme that can create long-form orders at the proverbial click of a mouse. Until a time when the software catches up with what is needed, it will be acceptable for an order, after a long-form order at the first hearing of a

case, to be in a short form which simply records the attendance at any subsequent hearing and any orders made or agreements reached on that day.

25. Following the recent decision of Sir James Munby in *M v P* [2019] EWFC 14, I am preparing Practice Guidance on Defective Divorce Petition/Decrees to replace the interim Guidance on this topic issued by Sir James on 23 April 2018.
26. Finally, alongside the publication of this 'View', I am circulating draft Practice Guidance on the approach to be taken where a journalist or legal blogger attends a Family Court hearing and applies for the statutory reporting restrictions to be lifted. The guidance arises from an appeal by journalist Louise Tickle that was heard in February, *Re R (A Child) (Reporting Restrictions)* [Sir Andrew McFarlane P and King LJ].

The Reform Programme

27. The HMCTS Reform Programme continues to develop and is, increasingly, producing online processes which will in time include every aspect of the work of the Family Court. Again, I would refer readers to the passage in my Address to the Resolution Conference for an account of the present position.
28. Irrespective of the progress of 'Reform', I consider that the Family Court should be making full (and by that I mean fuller) use of the current technology to conduct short, without notice, hearings by telephone. This would typically be at the first hearing of a Family Law Act injunction application. With the closure of outlying courts, it is not uncommon for solicitors and clients to have to travel very significant distances in order to appear before a judge or magistrate at these short uncontested hearings. The use of telephone hearings, which are fully transcribed over a BT system, is now common place in small civil claims and I see no reason why this practice should not be more widely used by Family Courts in appropriate cases. On each occasion it will be a matter for the judge or justices whether a case that has been set down for a telephone hearing is in reality suitable for that process, or whether the personal attendance of the party is required.

Transparency

29. The issue of 'transparency', namely the degree to which the workings of the Family Court should be more open to the public, remains one that is regularly raised in the Press and in discussion by those who seek to persuade The President to one view or another. It is important that the Family Justice system is as open and transparent as is possible, whilst, at the same time, meeting the need to protect the confidentiality of the individual children and family members whose cases are before the court.

30. It is now some time since the issue was looked at on a root-and-branch basis. In the intervening time we have operated the current arrangements were journalists may attend any Family Court hearing, but not report the substance of the cases that they may observe. Following Presidential guidance, more cases are now regularly published on the BAILLI website. In recent years full reporting has taken place of some important cases. In addition, the work of the Transparency Project, Dr Julia Brophy and others, together with the voices of young people who have involved in the system, has produced a significant amount of further information and experience on the issue.
31. It is important that the issue of Transparency should be kept under active review. As previous consultations have demonstrated, it is an issue which divides opinion. The valuable process undertaken in 2006 by Lord Falconer when Lord Chancellor was entitled 'Confidence and Confidentiality', thereby neatly teeing up the twin, and competing, priorities of enhancing public confidence in the system and, at the same time, maintaining confidentiality for the individuals who come to the court. As that process, now more than a decade ago, found, 'Transparency' may be a circle which is difficult to square.
32. I therefore intend to establish a 'Transparency Review', during which all available evidence and the full range of views on this important topic can be considered (including evidence of how this issue is addressed in other countries). The aim of the review will be to consider whether the current degree of openness should be extended, rather than reduced.
33. I intend to invite two or three respected individuals, not known as having a firm view on the issue, to assist me as fellow assessors in this process. It is my aim to conduct the review over the next 9 months with a view to producing a report and recommendations by this time next year.

Changes in The President's Office

34. After nearly a decade of service to the Family Division, firstly as Secretary to the Family Justice Council and latterly, for the past seven years as Private Secretary to the President, Alex Clark has decided that the time has come to move on to pastures new. Alex, who came to us after a period of working on the Family Justice portfolio under Lord Irvine at the Lord Chancellor's Department, brought with him a wealth of knowledge of the key issues and players which he has consistently used and developed, together with sound administrative skills, to our collective advantage over the intervening years. We all wish Alex well in his future career and thank him for all that he has contributed to the development of Family Law thus far.

35. Pending a permanent appointment to replace Alex Clark as Private Secretary, his place is being taken by the Family Division Lawyer assisted by the other members of my office team. I am very grateful to the team for all the support that they are providing during this period of change.

Anthony Douglas CBE

36. This month sees the retirement of Anthony Douglas CBE as the Chief Executive of CAFCASS after more than 15 years in the post. Anthony's record of achievement at CAFCASS is astonishing. He took over a failing organisation, which few thought would survive and about whose demise few would, 15 years ago, have shed a tear. During the Norgrove Family Justice Review, there was almost common ground across all sectors that CAFCASS was failing. The fact is that these doomsayers have been proved wrong and the organisation did not fail. My experience of seeing CAFCASS staff around each region and hearing what others in each court now say of the organisation is almost entirely positive. CAFCASS is seen as a soundly functioning and valuable element in the inter-dependent Family Justice 'system'. That this is so is a testament to Anthony's tenacity, insight and adept leadership. His contribution over this extended period has been of the highest order. I shall miss his wisdom and his friendship. We all join in wishing Anthony and his family every good wish for a long and happy retirement.

A Final Word ...

37. Before closing, I return to the start of this 'View' by recording one further observation from the many court visits that I have now made. It is simply to acknowledge my appreciation for the HMCTS Staff who keep our system running to the best of their ability in a period that has been made difficult for them, not only by the rise in the number of cases, and not only by the need for the staff to take on board new systems of working that are gradually being rolled out as part of the Reform Programme, but also to undertake their work having been informed that, in due course, a consequence of 'Reform' will be a reduction in staff levels at each court centre. I have been extremely impressed by the commitment to the work and the good humour that I have experienced on meeting very many staff members all over the country and, in closing this 'View', I simply wish to record my thanks to each and every one of them.

Sir Andrew McFarlane

President of the Family Division

7th May 2019