



## Family Judicial Ways of Working (JWoW) Communication

### Introduction

Many of you responded to the Family JWoW document which was distributed to the Family judiciary in April of this year. Thank you. The aim of this exercise was to ensure Reform is done “with” you and not “to” you. The LCJ’s and SPT’s July communication to all judicial office holders contained the key themes to emerge from analysis of the survey responses, and the accompanying events. In their more recent communication in November, they shared progress on how myself and other members of the senior judiciary have acted on what you said about cross-jurisdictional topics such as Training, Estates and IT systems.

This message is to tell you more about what you, collectively, said about the Reform proposals specifically for the Family jurisdiction, how this is being acted on, and what you can expect to see over the course of the next year.

I hope that you read the entirety of this message, the headlines of which are as follows:

- HMCTS Reform Team assure us that there will be robust technology in the Family Court which is fit for purpose and developed with input from the Family Judiciary;
- There is to be testing in Birmingham and Manchester of First Directions Appointments in Financial Remedy cases being conducted as Fully Video hearings; there is no current plan to extend Fully Video Hearings into other areas of family law;
- There will be no Case Officers in the Family Court. Consideration is being given to extending Legal Adviser powers in the Family Court at the Magistrates’ tier.
- All Family Courts will be staffed to agreed minimum levels, and the staff will be carrying out agreed roles, to ensure that the judges can be supported in their work effectively and efficiently;
- You will start to see features of Reform and its innovations being more widely rolled out in the Family jurisdiction throughout the course of 2019.

### The JWoW Process

The JWoW documents summarised the Reform proposals for the Family jurisdiction and set out changes to how the Family judiciary might work in the future. You gave your views on what was proposed through responding to the survey and attending events. We received 229 Family responses. Out of these, 195 were individual responses and the remaining 34 were responses on behalf of a representative group. In addition to the survey responses, you may have attended one of the 38 Courts and tribunals Reform events which were held across the country and were attended by over 750 judicial office holders. If you wish more information about the nature and content of the responses, please contact [JOCourtsandTribunalsReform@judiciary.uk](mailto:JOCourtsandTribunalsReform@judiciary.uk)

Since then, a huge amount of work has been done by my predecessor, by myself, the Family Judicial Engagement Group (JEG), Judicial Executive Board (JEB) and Judicial Reform Board (JRB) to ensure your views are reflected in Reform. You will find details of the membership of these bodies at Appendix 1. Your responses were meticulously analysed to find common themes, new ideas and overall sentiment to help identify the most important points of feedback for the Family jurisdiction.



The Family JEG Chair, on behalf of myself and the Family JEG, wrote a paper over the summer helpfully identifying the Family Priority Reform topics based on your feedback.

Three topics were identified as highest priority for the Family jurisdiction: Effective Digitised Systems, Video Hearings, and Case Officers and Legal Advisers. In addition, Training, Estates and Open Justice were topics considered across all jurisdictions.

Between August and October, the senior judiciary and HMCTS have participated in a significant number of meetings to discuss each topic in detail to reach common positions on how Reform will be implemented and to ensure that the concerns and ideas from the judiciary were listened to. These positions have led to updates to the Reform designs, delivery plans and changes to the underlying assumptions in the Reform business case.

## **Priority Topics Discussed**

### ***Effective Digitised Systems***

‘Common Components’ will support the IT infrastructure for use across Civil, Family and Tribunals jurisdictions (CFT) to ensure digital case progression and judicial case management and to reduce the amount of paper and paper files used. This system is also intended to support paperless hearings for appropriate cases. You told us that your principal reservations on technology are based on the reliability of new IT systems and the need for them to be user-friendly. You felt strongly that the new system must enhance current ways of working. In order for it to better current practice, you recommended various system functionalities - please revert to Appendix 2. for this list.

In their November communication, the LCJ and SPT made clear that HMCTS is committed to providing robust, fit for purpose technology designed with judicial input. HMCTS have confirmed that suggested system functionalities will be delivered. As requested by many of you, judges are able to guide the design of the Common Components by inputting into the Judicial User Interface Group. For the identification of the Family Judiciary members of this, and other Reform Groups, please see Appendix 3. Additionally, judges will be closely involved in the testing of the Common Components in CFT. As such, the CFT judiciary will be able to benefit from the time savings associated with a robust and fit for purpose digital system which has been designed to their needs.

There has been some confusion around what HMCTS referred to as ‘Assisted Digital.’ In discussions over the summer and in a paper recently provided, HMCTS have clarified that ‘Assisted Digital’ both describes the process by which competent digital participants can be assisted to use the digital system to achieve access to the Courts; and describes the range of channels – telephone, webchat and face to face – in place for litigants who require support to interact with the system digitally.

HMCTS recognise that ‘Assisted Digital’ may not be suitable for some users. Some may not want to stay on the phone to receive support; a centre may not be in travelling distance; or they may want to share a paper form with trusted friends to complete with them. As a result, HMCTS will continue to make provision for litigants to continue using paper documents (albeit that at the point at which the information on paper enters the system, the information transitions to a digital format, and converts back to paper when passing back to the litigant). HMCTS want to include the offer of a choice of channels into the design of ‘Assisted Digital’ to allow a user to choose the channel most suitable to



their needs, as well as multi-channel movement where a paper form can be used in conjunction with text message notifications from 'Track Your Appeal.'

### ***Video Hearings***

HMCTS is exploring greater use of technology in the Family jurisdiction and we have discussed at length the potential for wider use of Video-enabled Hearings (for example, hearings at which Video technology is used for the purposes of taking evidence). Separately, HMCTS conducted the first ever pilot in England and Wales for Fully Video Hearings; this pilot took place in the First-tier Tribunal Tax Chamber and has now concluded; this pilot demonstrated, amongst other findings, that the technology utilised required further development: 3 out of the 8 cases could not proceed because of technical issues of one sort or another. The Tribunal judges involved in the other 5 were cautiously positive about the experiment. The litigants themselves were positive about the video hearings.

The expectation that Family hearings would be conducted by Fully Video means (i.e. all parties and the Judge on video) is the area of Reform which generated the most concern by the Family judges. On the whole, you are very cautious about the concept of the Fully Video Hearings. Some of you feel they are being proposed in the name of cost reduction but at the risk of justice. You are more open to the use of Video Links in Family Hearings recognising the value for vulnerable parties, and parties and witnesses who cannot travel to Court.

Although some of you need to be persuaded of the appropriateness of Fully Video Hearings in Family altogether, some of you felt that uncontested cases could be appropriately held in this way. As such, testing of First Directions Applications (FDAs) in Financial Remedy (FR) cases has been cautiously approved by the Family JEG, given that they are, in the main, principally dedicated to case management using pre-prepared documents. You can be reassured that participation in Fully Video Hearings is not being foisted on anyone, and safeguards as to the process – and participation in it – are being built into the testing. Evaluation of the FDA test will also entail a detailed analysis of the Tax Tribunals pilot. It is firmly accepted by HMCTS that the decision on whether a hearing is conducted using Video technology of any kind in any particular case remains an exercise of judicial discretion.

You have expressed a range of legitimate concerns about the increase of using Fully Video Hearings beyond this. You are understandably apprehensive of the potential for parties (and their lawyers) to be denied the valuable opportunity for pre-hearing (and mid-hearing) face-to-face meetings at Court when crucial and time-saving negotiations and discussions take place and agreements are often reached; you are worried about compromising the gravitas of the proceedings; of the reduced ability to assess non-verbal cues and body language of the parties; and have concerns relating to security and confidentiality of the Court processes (particularly concerning children) including the ease at which they could be recorded and posted publicly on social media. As such, there is currently no specific proposal to expand Fully Video Hearings in the Family jurisdiction beyond the current test. Specifically, and subject to the evaluation of the test, it is felt that fully Video Hearings will not normally be appropriate for contested cases involving the giving of oral evidence, multi-party cases, cases concerning Litigants in person, and/or cases concerning children.

Building on the Family judicial responses, myself, the Family JEG Chair and HMCTS have accepted that:



- Robust technology is required for Fully Video Hearings to succeed.
- Anyone appearing before the Court must be clearly seen and heard throughout, as would be the case if they were physically in the Court room. The video should ideally capture more than just the head-and-shoulders image.
- Broadband speed, Wi-Fi, and equipment used by those taking part in the hearing must be of a sufficient quality.
- The use of Video technology should not compromise the confidentiality of Family Court proceedings. The senior Family judiciary proposes that Family Court litigants participating in any Fully Video Hearing should do so from an ‘authorised place.’ (which could include for example a CAB office, a PSU office, or a solicitors’ office)

### ***Case Officers and Legal Advisers***

It was abundantly clear from your responses that clarification of the proposed Family Case Officer and Legal Adviser roles was urgently required. We took this up, and after detailed discussions on the proposal, myself, the Family JEG Chair and HMCTS have accepted that the term Case Officers should now be regarded as obsolete. The term “authorised officers” will hereafter be used to describe all non-judicial persons who perform administrative litigation functions within the Court system. In the Family jurisdiction, a Legal Adviser is a legally qualified “authorised officer.” It is not envisaged that there will be other sub-classes of “authorised officers” in this jurisdiction.

There is concern expressed by some of you about the expansion of the scope of the functions of Legal Advisers. There is apprehension about expanding an already heavy workload amongst a limited number of current resources. Some of you spoke of certain Courts and regions which are struggling with particularly low numbers of Legal Advisers. As such, there will need to be significant recruitment in order to fulfil any potential increase in their work. HMCTS is currently running a Recruitment Programme with a second scheduled upon its completion.

There is also unease amongst you about blurring the separation of powers if Legal Advisers are to carry out any form of judicial function. Legal Advisers currently carry out a multitude of tasks which assist the Magistracy and District Judges, including box work. Any expansion of the powers of Legal Advisers operating within the Family Courts are likely to be focused at the Magistrates’ tier. Specifically, HMCTS and the Family judiciary accept that there is currently significant regional variation in the extent to which Legal Advisers carry out First Hearing Dispute Resolution Appointments (FHDRAs) up to the point of a consent order. Legal Advisers are keen to extend their powers to include the ability to make a consent order at the conclusion of a FHDRA. Currently, Legal Advisers cannot offer judicial continuity from FHDRAs (or, given that they are not judges, at all). This is relevant to a consideration of extending their powers. The detail of any extended powers will need to be considered by the Family Procedure Rule Committee, and requires further consultation and evaluation; this issue is likely to form part of the upcoming work of the re-constituted Private Law Working Group. Any update to this extension will be communicated to you without delay.

### ***Staffing of Courts and Courts and Tribunals Service Centres (CTSCs)***



As a number of you acknowledged, it is beyond doubt that staff cuts at Courts are an integral part of HMCTS' Reform proposals. Following discussions centred on the Civil and Family Court in Bristol, which was taken as an example of how the staff cuts would operate in practice, it was concluded that the proposals then being made were unworkable. As a result, the proposals are being reworked by HMCTS.

Concern has been expressed about the effect of cuts on listing and, if listing is a function that is to be split between the Courts and the CTSCs, a number of you asked how that process would work in practice. One underlying concern is that not enough Listing Officers are being identified as being required in the Courts.

There was also a wider concern about the interface between the Courts and the CTSCs. The problem with embarking on any more focussed analysis was – and remains – that no detail has yet been provided as to what functions will remain at Court, what functions will be moved to the CTSCs, what the interface will be between the two, and how that interface will work in practice, on a day-to-day basis. That vital work is ongoing.

HMCTS acknowledged all of these concerns. They are building the model for the future staffing at Courts (including listing) and CTSCs, by reviewing the workload of all administrative tasks, to reach an estimate for required staffing levels. The business case assumptions will not be used as a 'top down' target to be met come what may. The Family JEG will discuss staffing in the Courts once the proposals are provided and will inform HMCTS of their views on the required roles and appropriate staffing levels needed to support the judiciary. All Courts will be staffed to agreed minimum levels, and the staff will be carrying out agreed roles, to ensure that the judges can work effectively and efficiently.

Work is ongoing on the detailed design of the CTSCs. This will be discussed with each of the jurisdiction JEGs, to include an agreed, effective and responsive system of communication between the CTSCs and the Courts, and a structure to deal with the handover from one to the other.

It is agreed that all Courts will have an appropriate number of Listing Officers based at the Court; that those fulfilling that role will be fully supported; that any listing work performed at the CTSCs is fully integrated with the listing at the relevant Court; and everything will be designed to ensure the judges retain proper judicial control of all listing functions.

Future decisions about where listing takes place will be taken on the basis of an appraisal of the most suitable location. HMCTS will define this with the judiciary. There is no expectation that most listing work will be completed in CTSCs: it is accepted that intimate knowledge at a local level is often critical to effective listing. It is expected that new scheduling and listing tools will support Listing Officers and make the process more efficient. Staffing decisions should be reviewed once more is known from pilots about the software's capabilities and how they might evolve.

### ***Estates***

Estates was a topic raised by many of you in survey responses and at events. The message in November from the LCJ and SPT explained what has been agreed about Estates.

This need not be repeated here, save to say that appropriate access is required into the Family Courts. Many of you referred to the importance of accessible ushers for the parties/witnesses, literature/information boards, CAFCASS rooms and Personal Support Unit (PSU) schemes. HMCTS will consider this when they revise the Court Design Guide which sets out how Courts should be laid out.



## **Open Justice**

As the JWOW document made clear, there is an acknowledgement that Family Courts must be at least as open in the post Reform era as they are now. The public must be able to see and hear that which they can currently see and hear in a Family Court. You were unanimous on the need to preserve this, and I agree with it.

When Judges conduct hearings in the Family Court by telephone now, they do so in such a way that the hearing is recorded. Where hearings are to be conducted by telephone or fully video (that is, no one in Court, all parties connected via technology) in the future, similar arrangements will need to be made.

We will keep an eye how technology develops and how arrangements are made for hearings, so that the balance continues to strike appropriately between confidentiality and openness when the hearings are conducted using video systems. I can assure you that nothing will be done through the Reform programme to reduce the openness of the Family Court process or to undermine it.

## **The Year Ahead**

I would like to let you know that much remains to be done. The Business Case for the Reform programme is updated every year; this provides an opportunity to revisit the assumptions on which the Business Case is made. HMCTS is currently developing the latest iteration to reflect changes proposed by us in its Programme Business Case 5 (PBC5), which is yet to be agreed with HM Treasury.

The pace at which Reform is implemented is expected to increase over the coming year as we see more changes introduced locally. Inevitably there will be frustrations along the way, and I ask you to bear with us. With increasing workloads in the Family Courts, and heavier demands upon you all, it is crucial that reformed systems work effectively and reliably; that is our common objective with HMCTS.

You will continue to see the progression of Divorce, Probate and Family Public Law projects over the next 12 months. There will also be ongoing work in several cross-jurisdictional projects including: Courts & Tribunal Service Centres (CTSCs), Courts, Tribunals and Regional Tier, Scheduling & Listing and Video Hearings. Further progress in relation to Private Family Law has regrettably been put on hold until 2020, but we will ensure that it remains high on the agenda. Similarly, we will ensure that there is proper judicial engagement in Reform programmes relevant to the Court of Protection.

Your input into the design of specific projects and their testing, through working groups, and your involvement of training development via the Judicial College will be critical. There will be further communications to the Family judiciary on these changes. At the Family JEG meeting in December, discussion focussed on how best to engage further with you.

## **Conclusion**

Reform will only succeed with the input of judges' knowledge and experience. The continued efforts of the Family judiciary involved in Reform are greatly appreciated. You are asked to continue putting any issues forward to any of the judges who are listed in the appendices to this communication who can then feed the points into their respective working groups.

I want to give you my assurances that the senior judiciary are working hard to reflect the Family judicial views and maintain the immutable principles of family justice.



With very best wishes,

Sir Andrew McFarlane, President of the Family Division



## Appendix 1

### Membership Bodies

Body	Members
Family Judicial Engagement Group (JEG)	Cobb J
	HHJ Robin Bedford [DFJ]
	HHJ Mark Horton
	DJ Tim Jenkins
	DJ Jonathan Whybrow
	DJ Lorna Grosse
	DJ (MC) Nina Tempia
	DJ Graham Stuart
	Hannah Penfold
	Frank Shipway JP
	Stephan Hays JP
	Nadine Scaife
Judicial Executive Board (JEB)	Lord Chief Justice, JEB Chair
	Master of the Rolls
	President of the Queen's Bench Division
	President of the Family Division
	Chancellor of the High Court
	Vice-President of the Court of Appeal (Criminal Division)
	Chair of the Judicial College
	Senior President of Tribunals
	Senior Presiding Judge
	Vice-President of the Queen's Bench Division
	Deputy Senior Presiding Judge
	Chief Executive of the Judicial Office
Judicial Reform Board (JRB)	Jenkins DJ
	SPT
	Thirlwall LJ
Judicial Reform Board – Courts (JRB-C)	Cobb J
	Coulson LJ
	Jenkins DJ
	Thirlwall LJ
	Senior Presiding Judge



## Appendix 2

The Judicial User Interface should be able to carry out the following functions:

- Remote access;
- Indexing functionality and information to aid document filing;
- Search;
- Note-taking, highlighting, cutting, and pasting (editable PDF if PDF is the software);
- Allowing for multiple documents to be opened simultaneously;
- Allowing for early accessibility for allocated parties;
- Allowing for the adding or subtracting of documents without altering the established pagination;
- Access to Court calendars via icons;
- Date and directions functionality;
- Alerts / notification systems;
- Consistent pagination for all parties to ensure the smooth-running of referring a witness to a document;
- Case summary; and
- Miscellaneous categorisation for papers that do not fit elsewhere.



### Appendix 3

#### Family Judiciary Reform Working Group Members

Group	Member
Public Law and Adoption Working Group	HHJ Sharpe [DFJ]
	Karen Andrew JP
	HHJ Berkley
	DJ Whybrow
Judicial User Interface Group	HHJ Berkley
	DJ Corkill
	Tribunal Judge Carlin
	Tribunal Judge Froom
	DJ Nightingale
Digital Financial Remedies Pilot Group	HHJ Pearce
	HHJ Hess [DFJ]
	HHJ Andrew Greensmith
	Recorder Nicholas Allen
	DJ Alun Jenkins
	DJ Desmond Bloom-Davis
Scheduling and Listing Working Group	DDJ Shaun Underhill
	Brooks TJ
	Chambers HHJ
	Cobb J
	Ikram DJ (MC) (SDJ)
	Richardson HHJ [DCJ]
	Swann REJ
Thirlwall LJ	
Video Hearings Working Group	Cutts J
	Cobb J
	DJ Marshall Phillips
	DJ (MC) Crane
	Regional Employment Judge Swann



Thura Win JP