

Children Cases in the Family Court: Consultation on Interim Proposals for Reform

The Family Court is currently experiencing an unprecedented and, on current resources, unsustainable volume of cases relating to children. During 2016, the number of 'public law' applications for care orders or supervision orders made by social services departments across England and Wales rose by 25%; the higher volume has largely been maintained since then.

During the same period of the past three years, the number of 'private' law applications made by parents with respect to their children has also been rising, so that it is now at an all-time high. Following the removal of most of these private law cases from the scope of Legal Aid, many parents now come before the court as litigants in person, without lawyers, with the consequence that such cases tend to last longer and require more judicial input.

Delay in decision making is likely to be contrary to a child's best interests. There is both a human and a legal requirement on the Family Court to consider and determine children cases in the course of a matter of weeks or months, with an upper statutory limit on public law care proceedings of 26 weeks. Prior to 2016 the system was just about achieving this demanding target, but the rise in the volume of work has inevitably led to delay as the same number of social workers, CAFCASS officers, lawyers, magistrates and judges and reducing numbers of court staff endeavour to cope with this rising tide of work. Although the number of judicial sitting days has been increased to a degree, the ability to deliver that increase can be compromised by a finite number of available court rooms, support staff, magistrates and judges.

Last July, on taking up the role of President of the Family Division, and becoming responsible for Family Justice in England and Wales, it was very clear to me, as it had equally been to my predecessor Sir James Munby, that there was a need for collaborative endeavour by all those involved in the Family Justice system to consider what might be done either to reduce the volume of cases, or to enhance the ability of the courts to deal with them justly and efficiently, or both. I therefore invited Mr Justice Keehan to lead a '*Public Law Working Group*' and Mr Justice Cobb to lead a '*Private Law Working Group*' to look in detail at what might be done. I am extremely grateful not only to each of those two leading judges but also to the 60 or so professionals, drawn from across the system, who have given their time and a great deal of thought to these parallel projects. I am also very pleased that, despite the tight deadline, each group has produced a substantial interim report and recommendations which is now going out for consultation.

As will be apparent from reading these two reports, the focus is firmly upon professional processes and procedure across the system. The scope of these two projects does not extend

to reform or amendment of the substantive law; rather, it is aimed at improving the ability of the system, and those who work within it, to apply the existing law as it relates to children.

The period of consultation will run from today [3 July 2019] until 30 September 2019. My experience in visiting very many Family Court centres during the past 9 months is that some of the best ideas have come from individuals, it is, therefore, my hope that, in addition to organisations and other institutional consultees, individual professionals and members of the public will read these documents and become directly engaged in the consultation.

The timetable after the end of September is for the results of the consultation process to be collated and considered by each Working Group before final recommendations may be published during December. Thereafter, as indeed has been the case throughout, the implementation of any changes will be a matter for cooperative endeavour between each of the key agencies, including the judiciary and government.

The Rt. Hon. Sir Andrew McFarlane
President of the Family Division and Head of Family Justice
3rd July 2019