A View from The President's Chambers

The PLO Relaunch

Relaunching the PLO

The single focus of this View from The President's Chambers is the need for all involved in public law children cases to reconnect with the core principles of the Public Law Outline ['PLO'], as set out in Family Procedure Rules 2010, PD12A.

Readers will be familiar with the background, but, to set the scene, the headline points are that 10 years ago, when the Norgrove 'Family Justice Review' was undertaken, the average time taken for care proceedings before a judge was 61 weeks. I stress that that was the *average*, with a troubling number of cases taking a good deal longer. The Norgrove Review concluded that "delay has become habitual" and recommended that there should be a statutory time limit of 26 weeks for the completion of care proceedings. That recommendation was accepted and, in April 2014, s 14 of the Children and Families Act 2014 [CFA 2014] came into force, thereby introducing s 32(1)(a) into the Children Act 1989 [CA 1989] requiring the court to draw up a timetable with a view to disposing of an application without delay and, in any event, within 26 weeks.

At the time, reducing the length of care proceedings by more than 50% was considered ambitious, if not unachievable, by many. The vehicle by which it was to be achieved was the PLO, a template formula for the case management of proceedings, drawn up by Sir Ernest Ryder and others. The campaign to achieve the 26 week target was led with characteristic firmness and enthusiasm by my predecessor, Sir James Munby, who, in memorable Churchillian tones, told one and all: "it can be done, it must be done, it will be done.".

And 'done' it was. By 2016 the national average time taken for care cases got down to 27 weeks, with 62% of the 24,150 concluded cases finishing within 26 weeks. Courts were anxious to meet the deadline. Court orders recorded on what date 'the 26 weeks' would be reached and, where that date was not going to be met, the judge was required to give a judgment explaining why not before granting a short extension. It is, I fear, hard now to remember those days and it

will have been a long time since a judge even considered giving a judgment explaining why a case must be extended beyond 26 weeks.

Two separate developments are responsible for the system's failure to hold on to the successes of 2015/6. The first was an unexpected and sustained 25% rise in the volume of s 31 applications, and the second was, of course, Covid 19. It is not necessary to spell out here the impact of these two major challenges. The result of their combined assault on our ability to undertake public law work in the Family Court has been a substantial increase in the backlog of unfinished cases with a consequent rise in the average length of a care case to 44.4 weeks in 2021, with only 23% of the 22,600 concluded cases doing so within 26 weeks.

Both before and during the Covid crisis, the Public Law Working Group ['PLWG'], chaired by Mr Justice Keehan, worked to develop a scheme aimed at reducing the number of new s 31 applications and ensuring that those cases which did come to court were ready to do so (with all necessary assessments and planning stages already completed). In April 2021, the PLWG recommendations became requirements for all local authorities and courts. Whilst it is not possible to measure these matters with precision, the period since April 2021 has seen a consistently lower number of applications being made, with a reduction of around 13%.

This reduction in volume is undoubtedly a welcome development, but the degree of backlog already in the system is such that it has remained difficult for courts to make substantial reductions in the length of each case. This is, in my view, in part because a Family case, unlike most other forms of litigation, does not sit still while it is waiting in the pending list. Put in simple terms, because the cases involve children and their families, as time goes by 'fresh stuff happens'. Thus, by the time the case comes on for hearing, there is not infrequently a need, not only to deal with the original issues before the court, but also to engage with new material. Such a turn of events not infrequently leads to an adjournment which only causes further delay. Like dough sitting on a baker's proving shelf, a Family case that is waiting to be heard expands in size. Delay breeds more delay.

I have for some months been waiting, and hoping, that, as we got back to more ordinary working following the end of Covid restrictions, things might slowly get back to normal. Despite the sustained efforts of all involved, and despite continuing to deploy 25% more judicial resources than was the case pre-Covid, the backlog and delays have proved to be very stubborn.

A further factor has, I fear, come into play and that is the normalisation of delay. It is now some 6 or 7 years since the courts have been able to meet the 26 week deadline and there is no current expectation of doing so. Because there are so many more cases in the system, it is harder to find an expert, when one is needed, who can meet a tight timetable. Social work, CAFCASS and CAFCASS Cymru resources are over-stretched because they have more open cases so that, despite best efforts, normal timetables cannot be met. Courts are not infrequently required to vacate listing dates at short notice because there is no judge available for the hearing. I could go on and add many more examples of what will be the lived experience of everyone involved in these cases. The overall result of all this is that it has, despite the hope of us all to the contrary, become accepted that cases will meet problems of this nature and will experience delay compounded by delay.

It is now clear to me that there is a need for a radical resetting of the culture within the Family Court so that the system reconnects with the strictures of the PLO and, once again, aims to meet the statutory requirement of completing each public law case within 26 weeks.

With the publication of this 'View', I am now embarking on a campaign to exhort, require and expect every single professional, judge, magistrate or staff member in the system to get back to operating the PLO in full and without exception. By announcing this campaign now, in mid-November, my aim is for the necessary change in working practices to 'go live' in all local authorities and courts throughout England and Wales on Monday 16th January 2023.

There are various reasons for deciding to take this course, and for doing so now. In short they are:

(a) The experience of those court centres which have already followed this course is very positive. By constricting the procedural scope of each case to the PLO structure, it is possible for the limited resources of local authorities, CAFCASS/Cymru, the legal profession and the courts to be deployed more effectively. Cases are completed much closer to the 26 week mark and the backlog reduces. In these courts the local authorities and CAFCASS have welcomed the court's initiative;

(b) Taking no action involves accepting that things will remain as they are. Indeed, for the reasons that I have given, the normalisation of delay creates something of a downward spiral in which the situation simply gets worse rather than better;

(c) Whilst shifting gear and working to a tighter procedural template will initially require effort and cause difficulties, and these changes may not be readily achievable in all cases, if the result is that in most courts and for most children the outcome is positive, and that, thereby, frees up resources to address new cases (both public and private law) in a more timely way, then that is a 'win-win' outcome. It is hard to see a reason why one would not try to achieve such a result;

(d) An intensive study ('deep-dive') by the MOJ into the working of six court centres over the summer has confirmed the need for a radical recalibration of the approach to case management;

(e) After a period in which the HMCTS Reform programme has seen the progressive and busy rolling out of new digital products, a process which has inevitably distracted judges, court staff and others from substantive work on cases, it seems that there may now be a period of consolidation before further roll-outs take place. This, together with the reduced volume of applications, presents a window in which to concentrate on other matters.

Having, I hope, explained why I am sold on the need to reconnect with the PLO and for the Family Courts throughout England and Wales to do so together, it is necessary to spell out the basics of what is required:

- The PLO Pre-proceedings process, with the engagement of parents and a thorough assessment exercise, following the DfE Guidance[1] and the PLWG recommendations, is essential;
- Only those very rare cases that are truly urgent should be the subject of an 'urgent' first hearing. Too often an 'urgent' hearing is sought as a matter of course. Urgently fixed hearings are seldom fully effective and a further hearing or hearings will normally be required;

[1] https://www.basw.co.uk/system/files/resources/basw_35223-1_0.pdf

- The first hearing should be the Case Management Hearing ['CMH'], held 'not before Day 12 and no later than Day 18'; an advocates meeting is to be held no later than 2 days before the CMH [see PLO Stage 2];
- Parents to be expressly required to identify any family members for assessment at, or within a week of, the CMH;
- No other hearing should normally be listed after the CMH until the Issues Resolution Hearing ['IRH'];
- Since 2016/7 there has been a 33% rise in the number of experts instructed. Experts should only be instructed where to do so is 'necessary to assist the court to resolve the proceedings justly', rather than where it is merely desirable or helpful [C+FA 2014, s 13(6)].
- The third hearing in the case, if necessary, will be the Final Hearing;
- At the IRH or Final Hearing the court is *only* required to evaluate and decide upon the following issues:
    - Are the s 31 threshold criteria satisfied?
    - If so, what are the 'permanence provisions' of the care plan [CA 1989, s 31(3A)+(3B)]; and
    - What are the contact arrangements [CA 1989, s 34(11)]?
    - By affording paramount consideration to the welfare of the child, what final order(s), if any, should be made.
- The court is not required to consider any aspect of the care plan other than the permanence provisions;
- Robust case management by the court is required at all stages. This will include, where necessary, regular 'compliance' hearings to deal with any failure by a party to meet dates. All parties will be expected to monitor compliance with the court timetable and, if needed, report any failures to the court.

More generally, and in tune with the elements of the PLO that I have listed, there is a need to make cases 'smaller' by reducing the number of hearings per case and by making 'every hearing count'.

I am in the process of discussing the details of the 16 January 2023 PLO Relaunch with the national leaders of the Association of Directors of Social Services, CAFCASS/Cymru, the legal professions, HMCTS and, of course, the judiciary and magistracy. It is my expectation that discussions will now commence within each of the 42 DFJ areas with local authorities,

CAFCASS/Cymru and all court users to agree how new care cases issued after 16 January 2023 will be managed. More specifically, I would urge DFJ's and local authorities to agree a clear timeline that is to apply to any 'viability' or full assessments of connected persons on the basis that that timeline is then adhered to.

The aim must be to effect real change in the management of proceedings. What is required is compliance with a statutory obligation that has been imposed for the benefit of children. In that context excuses based on lack of resources and staffing must not prevent the changes that must now occur.

I do not pretend that what is proposed will be without difficulties, but doing nothing is not an option; currently the system is spiralling in the wrong direction. Some confidence is to be gained from the fact that this 'back to basics' approach has worked well in Stoke on Trent and elsewhere, despite those areas having a range of difficulties which are common to many other courts.

It is my hope that, if we all re-engage fully with the requirements of the PLO at all stages, there will be a radical improvement in the ability of the Family Court to hear and determine public law children cases as we move through 2023.

Rt Hon Sir Andrew McFarlane
President of the Family Division
29th November 2022