PUBLIC LAW FAMILY FEES CONSULTATION PAPER

RESPONSE OF THE FAMILY SUB-COMMITTEE OF THE COUNCIL OF HER MAJESTY'S CIRCUIT JUDGES

1. The consultation asks quite limited questions on a limited range of topics. The proposals in the paper, however, argue the case for vital changes of principle in the way that fees are paid by local authorities in Care Proceedings. We are not aware that there has been any previous consultation on these significant issues. We know that there has been previous consultation about increasing certain fees in family as well as civil proceedings and that some increases have indeed been made in the field of private law. However, we had no idea that such matters were to be brought forward with such speed. We are dismayed that such a consultation has not taken place. The document argues the questions and we propose to comment on several matters

2. The Executive Summary is quite clear and does not need our summarisation in this Response. The matters on which we wish to comment are as follows:-

   A. We question that it is necessary for there to be Full Cost Recovery. Family proceedings, and, in particular, Care proceedings are quite distinct in character from other civil litigation. They are an essential part of the provisions made by the State for the protection of children. The court is also engaged in the protection of family life. The seriousness of the step of removing a child permanently from his parents and placing him in another family or institutional care is a matter that affects the whole community. It is not far fetched to make the analogy with an attempt to make the Crown Prosecution Service or the Police pay to bring a criminal case. That analogy is not complete, of course. There must be some regulation by fees of the bringing of cases by local authorities but the assertion that the cost to the state should be neutral does not answer a call for justification of the increase and the question: "Why is this necessary?"

   B. We have made the best enquiries we can as to whether local authorities are able to take advantage of the money provided for the extra fees. We have found only lack of knowledge and/or apprehension. Only one local authority solicitor among those to whom we have spoken is sanguine about the increases. .He, however, thought that the money provided would be "ring-fenced". We understand that the money will not be ring-fenced. We acknowledge the undesirability of local authorities being told how to spend their money. Regrettably, the lack of ring-fencing gives us apprehension about whether cases will not be brought when they should have been. It may be unlawful for local authorities not to carry out their responsibilities to children but money cannot cease to be a consideration when important decisions have to be taken against the background of stretched resources in relation to staff as well as finance. We have been told that the City of Birmingham estimates that its budget for starting proceedings would increase from £37500 to £1.5million.

C. In any event, our experience is that budgetary considerations DO enter into decisions to take care proceedings. That can be the only reason that in many areas proceedings are not commenced promptly when money is tight at the end of a financial year.

D. That leads us to the most important mistaken assumption. That is that on a regular basis care proceedings are taken unnecessarily or prematurely. This is linked to the assumption that the introduction of the Public Law Outline Pre-Proceedings arrangements somehow shows this.

E. We wish to state in the strongest possible terms that Circuit Judges in general have no significant experience at all of care proceedings being brought for no good reason. It is far more common for a judge to indicate that proceedings ought to have been brought earlier. The pressure created by social workers' heavy caseloads cause proceedings to be neglected. When budgetary considerations are added, there is unacceptable pressure to bring as few cases as possible .This is to be deplored and is dangerous to children. We note that in the response.

F. All Care Judges acquire experience of cases that are brought:

1. Too late after delay and drift.

2. Where the children have been accommodated by agreement so that there is delay in ascertaining their real needs. These compromises or temporary "fixes" are also dangerous because the children's rights are unprotected by the intervention of a Guardian and drift results. The principle of section 1(5) of the Children Act 1989 does not apply only to delay during proceedings. When this type of case is finally brought before the court it is very often more expensive and long drawn out.

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3. Where proceedings are brought and a Supervision Order is applied for, whereas a Care Order appears more appropriate on the facts. It is not difficult to infer that the hope is for a quick ending to proceedings by compromise, which may be detrimental to the best interests of the child.

G. We are unclear how there would be an improvement in decision-making by local authorities or how this would be ascertained. It must be pointed out that the statistics relating to care proceedings are doubtful. As far as we are aware, PSA 4 remains fundamentally flawed by the removal of cases which end in other than an order under Section 31 when the effect of the proceedings themselves may have produced a better outcome for the child. There are multiple factors that affect how different authorities approach proceedings, how the resources of the Court Service can be deployed in a particular area, how the judiciary are deployed etc.

H. We do not accept that in some way there is an appropriate link with the co-incidental introduction of the Public Law Outline. The Family Sub-Committee has always given it support to the PLO. Its benefits should be,

in the context of this consultation, to give a clearer focus to the case both before and during proceedings by the insistence on such a focus in forceful case management. It MUST NOT provide a disincentive to care proceedings being taken promptly where the safety of a child is at stake. It MUST NOT provide an incentive to an early compromise that is botched and resource driven. It is indeed to be hoped that time and money will be saved by the successful implementation of the Outline. There is a serious danger that it may be compromised by a "one size fits all" mentality. For example, cases that involve numbers of children, often with a number of different fathers, and whose needs are different cannot be fitted into a pattern. It is not conducive to the welfare of these children to make the assumption that a local authority should be rewarded for a "quick fix". We emphasise that we are only giving an example to illustrate a general point.

3. We very much hope that these and other submissions will cause fresh thought to be given to the proposals. Furthermore, to introduce them at a time when it is not known how the PLO will work and where there is bound to be uncertainty in local authorities and in CAFCASS about how proceedings should go forward. The introduction of the protocol itself was the cause of delay in some areas while its provisions were being adjusted to. It is important to give the participants the opportunity to make the Outline work without additional pressures. The proposals in this paper are not relevant to the provisions of the Outline.

Question 1-We do agree.
It seems right that fees should be payable when an application is made. We do have reservations about the premise that the fee structure might be used to encourage good preparation. There is a need to monitor the number of applications made but cases have a habit of changing and it would be wrong to penalise proper applications.

We would like to point out that the 28 day renewal of interim care orders ought to be replaced by a regular monitoring system by the Case Progression Officer in consultation with the DFJ. In the absence of a CPO, the renewal does an opportunity for a DFJ to scrutinise the progress of the case. However, repeat applications, when the original legislation contemplated only one renewal are not a way in which a local authority should be financially penalised.

Question 2-We do agree.
Case preparation is obviously important. We have referred to the importance of the necessity for a rigorous approach by the maintaining of a focus on essentials. However, other factors are more important. We would draw attention to the time spent in monitoring in the way described.

Question 3-We agree that pay as you go should exist, as now but with the fee levels at a lower level which will not deter the taking of proceedings and will not encourage a quick compromise which is not for the benefit of the child.

Question 4-See above.

Question 5-See our reply to Question 1 above.

Adoption Proceedings

Question 6-In accordance with government policy to encourage adoption and speedy adoption we agree that there should be an incentive created by a single fee that should remain at a low level. We agree with the Family Justice Council that there should be one fee only, paid by a local authority if placement proceedings were to be heard at the same time as care proceedings. This is, in our view, would be a legitimate incentive to move forward in such matters.

Conclusion

We have had the advantage of reading a draft of the response of the Family Justice Council, with which we agree, and adopt. We add our own response because of the importance of the points to be made and because we wish, in particular, to emphasise the experience of the Circuit Bench as a whole that care proceedings are rarely, if ever, taken unnecessarily.