

VIEW FROM THE PRESIDENT'S CHAMBERS (4)

The process of reform : an update

Sir James Munby, President of the Family Division

In my first 'View from the President's Chambers', [2013] Fam Law 548, I sketched out some of the components of the reforms we are all embarked on. In my second 'View', [2013] Fam Law 680, I explained the emerging details of the revised PLO. It is time to bring matters up to date.

The single Family Court

The essential shape and organisation of the new Family Court was set out in 'The Single Family Court: A Joint Statement by the President of the Family Division and the HMCTS Family Business Authority' issued in April 2013: [2013] Fam Law 600. We said that it would be the responsibility of the Designated Family Judge, in conjunction with the Family Division Liaison Judge and in consultation with the Clerk to the Justices, to agree with the HMCTS Head of Civil, Family and Tribunals a draft Designated Family Centre Operating Model which would take effect when approved by me and the HMCTS Family Business Authority. A further document, 'The Single Family Court Operating Model: A Joint Statement by the President of the Family Division and the HMCTS Family Business Authority' was sent out to all the Designated Family Judges in May 2013, together with an accompanying 'Template' to be completed setting out the jointly proposed plan for implementing the Family Court in their area. We have now received the responses. Much thoughtful work has gone into planning the local arrangements for the Family Court. I am very grateful to all concerned. A few local issues have been identified that will require further thought, but it is clear that, overall, the planning for the Family Court is progressing with great enthusiasm and remarkably smoothly.

The single Family Court – London

Inevitably, the task of planning for the single Family Court in London is much more complex than elsewhere. I gave a preliminary outline in 'Failure is not an option',

[2013] Fam Law 401. Further details were set out in ‘The Single Family Court in London: A Joint Statement by the President of the Family Division and HMCTS London Region’ issued in April 2013: [2013] Fam Law 740.

Since then, further work has been going on in relation to what may be called the ‘geography’ of the new Family Court in London. The Family Court in Docklands is to be at Exchange Tower. There is to be a Family Court in the west of London. The precise arrangements for the allocation of local authorities to the various Designated Family Centres in London are being considered in the light of various important and very welcome developments being undertaken on the initiative of the local authorities. The future of the Principal Registry of the Family Division, as an entity distinct from the Family Court at First Avenue House, requires careful thought. I hope to be able to return to all these issues in my next ‘View from the President’s Chambers’.

The PLO

I dealt with the revised PLO in some detail in my second ‘View’, [2013] Fam Law 680, and explained my thinking in relation to expert evidence in my third ‘View’, [2013] Fam Law 816. The key documents – PD36C and the revised PLO itself, PD12A – were published in June 2013: [2013] Fam Law 866, 872. The revised PLO came into force on 1 July 2013. Local implementation is being spread over a short period, with local commencement dates ranging from 1 July 2013 to 7 October 2013.

The remaining documents necessary to implement the revised PLO were published in June 2013. They are available on-line at <http://www.judiciary.gov.uk/publications-and-reports/FamilyCourtGuide>. There is a new Form C110A. There are three President’s Guidance documents, on

- Allocation and Gatekeeping
- Continuity and Deployment
- Use of Prescribed Documents.

There are three prescribed documents:

- The Allocation Proposal Form
- The form of Order for Directions on Issue

- The form of Case Management Order.

I stress the vital importance of using the two forms of prescribed Order. The use and correct completion in every PLO case of the Case Management Order is essential, not least because its correct completion is a necessary pre-requisite to the accurate logging of data on the court's new electronic Care Monitoring System. Its use at the Case Management Hearing, any Further Case Management Hearing and at the Issues Resolution Hearing is mandatory. Suitably adapted it should be used at all other PLO hearings.

The PLO – Allocation

I need to refer to the guidance on allocation and gatekeeping. The details are set out in the Schedule to the President's Guidance on Allocation and Gatekeeping (Annexe A below). The starting point is that, subject to the Schedule, all care proceedings may be heard by any judge or magistrate who has been authorised or nominated to conduct care proceedings (Guidance, para (18)). Proceedings described in the Schedule are not to be allocated to magistrates unless specifically approved by the Justices' Clerk in consultation with the Designated Family Judge (Guidance, para (19)).

The Schedule is divided into Part 1 and Part 2. Proceedings described in Part 1 of the Schedule may be allocated to a District Judge of the County Court, a District Judge (Magistrates' Court) or a Recorder (Guidance, para (20)). Proceedings described in Part 2 of the Schedule are to be allocated to a Circuit Judge or Recorder or to a Judge sitting in the High Court and are not to be allocated to a District Judge of the County Court or a District Judge (Magistrates' Court) unless specifically released by the Designated Family Judge or one of his nominated deputies (Guidance, para (21)). Proceedings described in paragraph H of Part 2 of the Schedule are to be transferred and allocated to a Judge of the Family Division of the High Court (Guidance, para (22)).

The PLO – CAFCASS

In June 2013, Anthony Douglas, the Chief Executive of Cafcass, issued ‘The Revised PLO – Guidance for Cafcass’ and an accompanying Template. They are published below with an Introduction by him (page xxx). I commend this invaluable initiative. The documents Cafcass has produced are, if I may say so, really excellent. I look forward to similar initiatives elsewhere.

The PLO – local authorities

I referred above to the initiatives being undertaken by local authorities in London. A vast amount of work is being done around the country by local authorities: their social workers and legal departments are reacting with great enthusiasm and energy to the challenges presented by the revised PLO. Much of what is happening, if not as yet very visible, is truly transformative.

Early in July a Template for use by local authorities in care applications under the revised PLO – the social work model for the PLO – was launched at the ADCS conference in Manchester. The Template is an ADCS document. It will be a matter for individual local authorities to decide whether to use it. Many will. Others will continue to use their own documents. There has been considerable interest in the Template as it has been developed. I envisage that a growing number of local authorities will in time want to adopt it.

The PLO – further work

Other initiatives are well under way, designed to overcome what are widely recognised as potential obstacles to the speedy resolution of care cases. What is needed is a system of *national* Protocols.

A ‘Protocol on communications between judges of the Family Court and Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal’ is in an advanced stage of preparation. I anticipate that the Senior President of Tribunals and I will have issued it by the end of July 2013. It will operate alongside the Guidance I reissued in March 2013, ‘Communicating with the Home Office in Family Proceedings’, [2013] Fam Law 762. In this context I take the opportunity of

reminding practitioners of what I said in *Re M and N (Parallel Family and Immigration Proceedings)* [2008] EWHC 2281, [2008] 2 FLR 2030. This now has the imprimatur of the Court of Appeal: *Re C (A Child)* [2013] EWCA Civ 431, para [26].

Work on a Protocol relating to the disclosure of information between – to and from – the criminal justice system and the family justice system is also at an advanced stage. I have been working closely with the Crown Prosecution Service and other agencies. The Director of Public Prosecutions has taken a personal interest in this vitally important initiative. I anticipate that it will be issued in the near future.

A similar Protocol relating to disclosure between National Health Service agencies – hospitals and GPs – and the family justice system is also in preparation.

In March 2013 the Official Solicitor issued ‘Practice Note: The Official Solicitor to the Senior Courts: Appointment in Family Proceedings and Proceedings under the Inherent Jurisdiction in Relation to Adults’, [2013] Fam Law 744. It explains the Official Solicitor’s practice when invited to act as litigation friend for an adult who lacks capacity, including in proceedings to which the revised PLO applies. Further work is under way with a view to streamlining and speeding up the process. It must always be borne in mind, however, that strict compliance by the courts and the professions with the arrangements set up by the Official Solicitor is essential if avoidable delay is to be prevented.

Transparency

I am, as you will know, very concerned about this. I repeat what I said earlier this year, [2012] Fam Law 548:

“I am determined to take steps to improve access to and reporting of family proceedings. I am determined that the new Family Court should not be saddled, as the family courts are at present, with the charge that we are a system of secret and unaccountable justice. Work, commenced by my predecessor, is well underway. I hope to be in a position to make important announcements in the near future.”

The law is highly technical and far too complex. The need for reform has been recognised for at least 20 years. Too little has been done. My views on the subject are no secret: see, for example, ‘Access to and Reporting of Family Proceedings’, [2005] Fam Law 945, and ‘Lost opportunities: law reform and transparency in the family courts’, [2010] CFLQ 273. I propose to adopt an incremental approach. I propose initially to issue Guidance on the Publication of Judgments. As a first step I have published a *draft* of the proposed Guidance for comment and discussion (Annex B below). I shall welcome and value your views. They should be forwarded to my Legal Secretary, Penelope Langdon (penelope.langdon@judiciary.gsi.gov.uk).

Family Orders

Inordinate amounts of time and money are spent – wasted – in the process of drafting orders that could, and therefore should, be standardised. I have appointed a small drafting group under the determined leadership of Mostyn J to provide us with a comprehensive set of orders the use of which will in due course become mandatory in the Family Court and the Family Division.

Work has begun and is well advanced. Various drafts have already been put into use. Examples are the Order for Directions on Issue and the Case Management Order referred to above and the forms of Freezing Order and Search Order appended by Mostyn J to his recent judgment in *UL v BK* [2013] EWHC 1735 (Fam) and promulgated by him with my authority. As part of this work, Mostyn J has formulated a set of ‘House Rules’ (Annex C below) which are to apply to every order. They are not yet in final form and are published for comment and discussion. We shall welcome and value your views. They should be forwarded to my Legal Secretary (as above).

Bundles

The Practice Direction on Bundles – PD27A – requires amendment, in part to accommodate the changes brought about by the new Family Court. It needs to apply to hearings before Magistrates, as it already does for the purposes of the revised PLO

pilot. And it requires revision to reduce the unnecessarily bloated size of far too many bundles at present.

We shall need in future to distinguish more clearly between documents that are filed, documents that are served but not filed, documents that are listed but not served or filed, and documents that are included in the bundle.

Steps have already been taken in the revised PLO to limit the documents that are filed at court. I am inclined to think that, at least in care cases, where there is always professional representation of the main parties, much more could be done to limit the filing of documents at court. What is the need to file copies of such things as witness statements and expert reports? It is, after all, not the file but the bundle that is used at hearings. Local initiatives are already in place preventing the filing of such documents unless specifically ordered by the judge. They seem to be working well. The savings in time and money, both to the court and to the parties – in truth, of course, to the public purse – are substantial. Potentially, the savings and the consequential improvements in efficiency are immense.

Not every document that has been served or filed needs to be included in the bundle. Many do not. Surely, for the future, bundles should contain only those documents that the court needs to read or which will actually be referred to during the hearing. Everything else should be omitted. I suspect that a single lever-arch file will suffice for the majority of care cases. I shall return to this important topic as soon as there is more to report.

Annex A: Schedule to the President's Guidance on Allocation and Gatekeeping

Annex B: Draft Guidance on the Publication of Judgments

Annex C: Draft House Rules for the drafting of Orders