Family Justice Council

Response of the Council to the Legal Services Commission Consultation Paper on Legal Aid in the light of Lord Carter's Report.

The Council wishes to respond under six main headings:

- General observations
- Proposals in relation to Family Law
- Responses to detailed proposals
- Specific answers to the questions posed (page 16 DCA/LSC Consultation Paper)
- The impact on BME firms and communities
- Potential implications for Family Justice

We also attach as Annex 1 a document showing responses that have been received from a number of Local Family Justice Councils around the country.

General observations

The Family Justice Council readily recognizes the Government's wish to contain and / or control the level of expenditure generally in criminal, family, civil and other litigation so that the system delivers "value for money" (Carter Executive summary para.3), alongside the laudable objectives of ensuring effective, efficient and simple justice systems where clients have access to good quality advice and representation.

Those objectives have, of course, to be balanced, with the need to ensure that cost control is not achieved at the expense of fair trial, proper and effective representation, and a sufficiently vital market place to ensure choice, and the preservation (if not the raising) of standards. We readily endorse the observation (Foreword to the DCA/LSC Consultation, para.1.1) that "Legal Aid practitioners play a crucial part in ensuring there is an effective justice system the public can trust".

We are in the circumstances concerned that in an effort to achieve a "wholesale move towards fixed pricing for work" rewarding "efficiency and suppliers who can deliver increased volumes of work" (Carter Report, Executive Summary, para.12) the unusually complex and infinitely varied nature of family work – particularly in the public law sphere – will not be recognized or properly remunerated. We fear that the relatively rigid fee structures proposed, and the fee levels, may drive many capable and experienced solicitors away from the market which the Government is hoping to sustain. This will have direct implications for the parties involved in family proceedings and for the system as a whole.

We are further concerned that in the drive to achieve "greater certainty over funding" and "greater efficiency in the market" (para.7.1 DCA/LSC Consultation) the proper, fair and just delivery of family justice may be compromised. Public law cases in particular are

"exceptionally important cases - cases…where invariably a decision is being taken as to the long-term/permanent removal of children from their natural parents. (What other area of forensic activity, since the abolition of the death penalty, empowers the state to intervene so drastically in the family life of the private individual?)" (Coleridge J 'Another Big Bang' [2003] Fam Law 799). We make this point to underline the critical nature of the work.

Our concern in this respect is fuelled by reports conveyed to us that many firms which undertake quality family publicly funded work will not be able to continue to offer this service after April 2007.

Moreover, and perhaps yet more significantly, we have concerns about:

(a) young qualified aspirants to the profession being deterred from taking up publicly funded family work; fee levels (coupled with low morale in the profession as a whole) will be potent disincentives to the next generation of would-be family lawyers;
(b) BME clients finding it harder to identify solicitors with whom they feel an affinity. We note concerns in some quarters that a disproportionately high number of BME owned law firms would be forced out of business, and that access to justice for BME clients may therefore be denied;
(c) The general availability of family solicitors to advise and represent clients – particularly in rural areas; in public law proceedings (necessarily multi-party) the element of choice may well be significantly diminished, if not eliminated altogether.

If it is the intention of the DCA / LSC proposals (arising from the report of Lord Carter) to rebalance the legal aid budget so that the "growth on criminal legal aid" is addressed and less "pressure" is therefore put "on vital services for vulnerable people provided by … family legal aid", then this is not, in our view, obviously demonstrated by the report and / or the Consultation paper (Foreword para.1.1).

We understand that in 2001 there were 4,600 family law contracts for solicitors; there are now only 2,600. On any analysis, solicitors are already facing difficulties in sustaining reasonable practices. We had understood that the purpose of the Carter review was to rebalance funds within the legal aid scheme but the present scheme proposed for family does not add any further funds. Without a further injection of funds we believe that the exodus from family law will continue apace; the structure of the present proposal is likely to make the exodus a rapid one.

Proposals in relation to Family Law

We very much regret that the Carter team did not respond to the request made by the FJC for a meeting. The proposals on family law appear as an afterthought following the detailed work on crime. There is no analysis of the particular needs of family law; no analysis of the supposed inefficiency nor how it might be remedied. There appears to be an assumption that expensive cases are done in an inefficient manner but there is no analysis of cost drivers. The experience of practitioners is that cases are expensive when there are complex and contentious issues; where there is a lack of court time causing delay and where there is no guiding intelligence in the local authority planning. It is a matter of grave concern that the

structure of the proposals suggests that no one with any experience of family law cases has been involved in its creation.

What is proposed is described as a graduated fee scheme. It is in fact a series of fixed fees. The escape proposals appear to be based on a basic rate of pay and thus not only will it take an extremely long time to reach the escape level at those rates (compared with comparable bills now), but it is not clear that once reached the rates will have uplifts in recognition of the experience of the fee earner and the complexity of the case. There seems to be no consideration of the effect of allowing a fee per client rather than per case. The effect of this will be to give a disproportionate but random incentive to the representation of children.

The sums for advocacy are too low to make them economical in any but the quickest and most straightforward of cases and thus there will be a high incentive to instruct counsel. This will not only lead to higher costs (counsels' costs are increasing at a higher rate than solicitors) but it will mean a loss of the benefit of continuity, particularly in the representation of children. Solicitors on the panel are committed to personal representation of children which has benefits for the organization of the case as a whole since at least one of the advocates will have knowledge of the day to day running of the case as well as appearing at the hearings.

Any scheme which does not reflect the length of the proceedings nor the number of hearing days in the fees will be too risky for solicitors to work with. There is no evidence that the length of proceedings is something which is under the control of the solicitors. The length of proceedings may be a necessary consequence of the case itself or there may be untoward delay because, for example, of lack of court time. It is difficult to see why solicitors should be paid less than counsel for the same work; the task of advocacy is distinct from day to day management of a case.

There is no explanation of why solicitors should be required to have Higher Rights of Audience to attract a 30% uplift in the High Court. Solicitors already have rights of audience in the High Court and advocate there. It is not clear why this additional requirement and expense should be imposed now, particularly at a time when it is suggested that there should be no financial recognition of panel membership – which does relate directly to skills in this area of work.

There is a reference to the stages of the Protocol without an apparent awareness that the majority of cases do not follow the precise sequence of the protocol. Generally speaking there are more hearings than anticipated in the protocol. The number of hearings has increased if anything since the introduction of the protocol (it is noted that an increase in the cost of cases coincides with the introduction of the protocol) perhaps as a consequence of the emphasis on judicial case management and the importance of bringing a case back to court if it is not progressing as envisaged. The protocol provides an overall structure into which the exigencies of each case are fitted.

From what we have been told we understand that Children representatives commonly incur costs in excess of £6000 and frequently within the band of £8000-£15000. The percentage reductions in fee-income in an area of already marginal profitability are self-evident. The proposed new regime will at best encourage corner-cutting and unsafe practice and at worst will lead to a lack of representation at all.

The treatment proposed for **private law family** matters (including all children cases – not least the often very challenging r 9.5 cases) is somewhat similar. The escape clause is again fixed at 4 times the fixed rate, again at a basic rate with no recognition of experience of the fee earner, nor of the complexity of the case. The uplifts which moved cases towards profitability will no longer be available. In spite of the Private Law Programme with its focus on early fact finding hearings, there is no recognition of this phase in the proposals. In all children cases there is a possibility of a contested interim hearing which may be the most significant hearing in the case. Cases often do not follow the suggested scheme moving steadily towards resolution or a contested final hearing.

Availability of competent solicitors: Information provided to us from a number of sources about these proposals reveal that the solicitors' profession is deeply unhappy about the proposals in a number of respects, notably the level / rate of fees proposed, the lack of graduation in the fees proposed and the lack of recognition of experience and of acknowledgement that more complex cases should be properly remunerated.

The consequence will be that, if there is legal representation at all, the cases will be conducted by junior (possibly unqualified) staff. Research shows that the most cost effective way for cases to be conducted is with experienced, skilled specialists taking a leading role. On the present proposals that will be lost.

The FJC is concerned that the proposals will provoke an exodus of able professionals away from the work. We are aware that this happened at the Bar upon the introduction of the FGFS in 2001; the later revision of the fee structure stemmed the flow to some extent.

It is likely that on the present figures the proposals in relation to the imposition of fixed fees will signal the end of reasonable legal aid provision for the most vulnerable and socially excluded. It is ironic that this should have happened just at the time at which the family courts were more open to public scrutiny.

Family / criminal schemes compared: Although we do not pretend to have the same familiarity with the criminal processes as we do with family law, we nonetheless observe that it would be difficult to apply the same model to public law family work as for criminal work. The cases themselves are not susceptible to standardisation in the same way.

Children panel membership: With regard to para.7.16 of the DCA/LSC Consultation we wish to signal our support for the Children Panel, and believe there should be re-consideration of an enhanced status / remuneration to Children Panel members to encourage wider membership of the panel (contrary to the proposals in para.7.19). Children Panel membership for solicitors is a valued and respected qualification. We are concerned that under the proposed scheme there will be no uplift for Children Panel members. The fees appear to have been calculated on a cost-neutral basis, which redistributes money from Panel Members to non-Panel Members. We do not believe that this is a constructive step.

FGFS for the Bar: We note, and support, the apparent proposal (para.7.1 of the Consultation paper) that the Family Graduated Fee Scheme (FGFS) for the Bar should remain unamended by the proposed changes (and see also para.7.42 and para.7.67 of the DCA/LSC Consultation in relation to public and private law proceedings respectively). However, it has been brought to our attention that the LSC does in fact propose a radical change to the FGFS (after April 2007) by requiring the payment of counsel in private law interim hearings to be made out of

the standard Level 3 fee paid to the solicitor, and that counsel's share will have to be agreed between the solicitor and counsel's clerk. As it is, and for the reasons outlined above, many solicitors will be disinclined to deal with publicly funded private law disputes altogether. If the proposals to pay counsel out of the Representation Certificate are implemented, we believe that there will be few members of the bar who are prepared to do the work for a share of the level 3 fee. This will have an obvious adverse effect on the continuity and quality of representation, and in particular on the likely delay in resolving these disputes.

Responses to detailed proposals

We recognise that it is for other interested bodies to put forward detailed submissions on the figures proposed. However, we make the following points:

RPI and the figures: Over the last decade the retail price index has risen some 42.6%. Legal aid remuneration for family law solicitors over the same period has, we believe, only risen some 3%. The cumulative effect of repeated cuts in the real value of legal aid remuneration already puts the future of family law legal aid provision in doubt.

Specific answers to the questions posed (page 16 DCA/LSC Consultation)

6.2 The decision to move from a tailored fixed fee to a fixed fee will reduce the income to some firms. We do not accept that the higher levels of fixed fee are associated with inefficiency. We think it likely they are associated with firms who take on more complex cases and offer a thorough service.

7.1 We agree that an additional level of legal help would be useful before proceedings are issued. We do not expect that there will be 100% uptake as is assumed. We doubt that many cases will be resolved at that stage, given the profile of care cases and outcomes. There has been an uneven provision of legal services to parents before care proceedings: the reason for this is that the rates of pay do not cover the cost of providing the work. The new scheme will make no difference since the rates continue to be very low.

7.2 We do not agree that a fixed fee scheme is appropriate for care cases as we have said above. We believe that at the least there should be a properly graduated scheme which reflects complexity and length.

7.3 We do not think it sensible to abandon an uplift for panel membership; there is general recognition of the advantages of experienced practitioners. The hourly rate without uplifts will not be sufficient to sustain the provision of the service.

The proposed payments for advocacy are so low as to give a strong financial incentive to instruct counsel in all but the most straightforward cases. The continuity offered by solicitor advocates, particularly for children, makes a major contribution to the organisation and resolution of the case and would be lost under the proposed regime. We do not agree that solicitors should be paid significantly less for advocacy and certainly not for any contested hearings. Where a case is contested, a solicitor must prepare the case in the same way as counsel and, although knowledge of the papers is helpful, the preparation is an entirely separate task.

There is no relationship between the payment for advocacy and the number of hearing days. The case management protocol has introduced some improvements to care proceedings but most cases have significantly more hearing dates than are envisaged. These arise either because of delay from lack of court hearing time for final hearings or because the needs of the case require additional days.

We do not agree that a 30% uplift should be provided for those who have Higher Rights of Audience. Solicitors have been always able to advocate in all family courts. Experience should be recognized through membership of the panel rather than Higher Rights of Audience which will add a further burden to practitioners.

The impact on BME firms and communities

For reasons set out by others, it is clear that BME firms will be disproportionately affected by these proposals. Many of these firms anticipate going out of business almost immediately if the proposals are implemented. The general observations and concerns raised by others in response to the consultation apply also to the availability of BME specialist family practitioners and firms. However, there are specific considerations which operate to compound these problems in respect of the BME communities.

The consequences of the anticipated mass exodus of BME practitioners from this field are important - and not just simply as to the issue of right to choice of representation. There may well be an increase in costs because the advantages of BME practitioners representing BME clients are often "hidden" and not empirically quantified.

BME clients often come from cultures and countries where state intervention in family life is not a familiar concept. They are often bewildered by the often sudden involvement of the number of agencies. They tend naturally to gravitate towards BME practitioners who have an understanding and affinity with their own ethnic/racial/religious origins. A significant number of BME children are the subject of care proceedings.

Close cultural affinity with the lay client means confidence is established very early on. This often means advice is more readily accepted and at an earlier stage. This then avoids the need for (often lengthy) contested hearings.

BME solicitors are more likely to be accessed by BME clients because of geographical proximity or by reputation within the community. A lack of familiarity with other practitioners and less direct means of access may result in delay in participation in proceedings which impacts upon delay in resolving such cases

BME solicitors regularly conduct appointments with clients, whether in person or on the telephone, without recourse to an interpreter. This is more efficient and represents a significant saving in terms of costs.

Many BME litigants come from countries/cultures unfamiliar with state intervention in family life. Research has shown that they are mistrustful of statutory agencies and authorities. BME solicitors, with their cultural understanding and the expertise they have built up through experience of representing BME clients, are familiar with potential difficulties and misunderstandings. This is then addressed at an early stage and explained to BME clients in a way they readily understand. Consequently the client is likely, at an earlier stage, to disclose important and relevant information, give clearer instructions, engage in the court process and also with any assessments. The alternative would be delay caused by people not accessing

legal representation at an early stage or not engaging sufficiently or appropriately in proceedings and assessments. This may well be to the detriment of children who may lose the opportunity of remaining within their families.

Owing to the needs of their client base, BME firms often undertake work in related fields such as immigration. Family cases involving BME clients rarely involve a single issue and access to these other areas of expertise provides a more efficient and cost-effective service.

Diversity within the profession

The Diversity of solicitors profession and that of the Bar is likely be affected by the proposals.

There is a concern that BME solicitors find it difficult to obtain employment in "white firms" and that career advancement for BME solicitors is easier to secure through joining/setting up BME firms.

This will inevitably have an impact upon the pool of potential BME candidates for appointment to the children panel and the judiciary at a time when many BME practitioners have struggled through the system (and historical disadvantage), and are only now in a position to apply and be appointed.

There is a significant number of BME Barristers practising family law. 10% of the membership of the Family Law Bar Association are from ethnic minorities. It may not be appreciated that many BME barristers, at the start of their careers at least, are reliant upon receiving instructions from BME solicitors because they still face discrimination from "white firms". A successful practice, built up in this way, often enables such practitioners to develop their practice and then join mainstream sets of chambers. A reduction in the numbers of BME solicitors will affect the ability of BME barristers to make progress and ultimately deter them coming into the profession. The same considerations apply with regard to future diversity of the judiciary as set out above in respect of solicitors.

Potential Implications for Family Justice

For **the Courts and the Judiciary** there are likely to be more litigants in person and litigants with inadequate representation. This will lead to a consequential reduction in settled cases, inadequate documentation and extended hearing times.

Many **solicitors** have made a conscious choice to undertake Care work despite the poor levels of remuneration when compared to privately paying work and civil litigation. If the proposals are adopted, many are unlikely to be able to sustain the sorts of losses which would be incurred. The LSC fixed fee structure relies upon large volumes for a "swings and roundabouts" philosophy to apply. Children representatives tend to have numerically few cases. The more experienced have the more complex cases – they are very unlikely indeed to have the very simple cases, which would be required to balance out the very many cases whose value would exceed the fixed fee. It is difficult to see how it will be possible to do a thorough job on the rates proposed. This will cause more practitioners to leave the field of work.

While **the Bar's** payment rates in some respects are untouched both by Carter and by the DCA / LSC consultations, the proposal to alter radically the fee arrangements for payment of counsel in private law disputes is likely to lead to the bar deserting this work. Moreover, there may be few or no solicitors left in public law (or private law) to instruct them.

For CAFCASS the tandem model could collapse, leaving Guardians not only without representation, but also without the enormous amount of consultation, advice and general support which goes on quietly behind the scenes.

And most importantly of all, clients, parents and children alike, will be at risk of being left unrepresented. The tandem model was enshrined in the Children Act to guard against the institutional neglect which led to the Tyra Henry, Maria Colwell and Jasmine Beckford tragedies. It will be increasingly difficult for clients to secure representation, whether as children's Guardians or as parents whose children are the subject of care proceedings or for private children work. There is also a significant risk of the victims of domestic violence being unable to secure representation – another irony in the light of the current Government's expressed commitment to supporting such victims.

RESPONSES FROM LOCAL FAMILY JUSTICE COUNCILS TO THE CONSULTATION PAPER: LEGAL AID A SUSTAINABLE FUTURE

GREATER MANCHESTER

This council is a body established by Government to highlight and address, on an interdisciplinary basis, issues relevant to the delivery of family justice in Greater Manchester

We have considered the proposal for the reform of Legal Aid in family cases with care. Our clear view is that if these proposals are implemented the consequences for the family justice system in this area and the children and families we all serve, will prove disastrous.

At the heart of the family justice system lie families and children. They are almost always acutely vulnerable. Many suffer from learning difficulties, mental health or psychological problems. The issues these families face are often profound. The court's decision may permanently and irrevocably separate child from parent. They cannot effectively participate in legal processes without skilled and efficient legal representation

The family justice system is unique in its reliance upon interdisciplinary cooperation, as reflected in the makeup of this council. Unless each participant fulfils their role effectively, the system as a whole fails. Legal representatives play a central role. If parents and children are not represented, or their representation is unskilled, the consequential impact on the whole of the process is considerable. Simple illustrations within our experience include:

- Unrepresented parents who, through no fault of their own but because they do not understand the process, causing cases to be repeatedly adjourned.
- Less competent solicitors failing to undertake important preparatory work, such as the drafting of statements, or the instruction of experts in a timely manner or at all.
- Less competent advisors finding it difficult to give realistic advice which might bring a case to a proper conclusion without the need for a contested hearing
- Less competent advocates finding it difficult to identify and focus upon the real issues in the case.

Such failings have an important impact not only upon the timescale for the children directly concerned but also, of course, on the many other cases waiting to be heard.

This council, as directed by the DCA, is working hard to try to promote the welfare of children and their families in a number of areas, many of them directly related to Governmental targets. By way of example

- the reduction of delay in care cases

- the monitoring of the public law protocol
- the implementation of the private law programme
- the protection of victims of domestic violence, both adult and child
- the introduction of reforms highlighted in the Child Care Review
- consideration of increased transparency within the court process

Effective progress upon each of these important issues depends critically upon the quality of specialist representation afforded to parents and children.

Hitherto, Greater Manchester has had the good fortune to be served by a group of highly competent solicitors and barristers. Most of them could certainly make a more lucrative living in other branches of their respective professions but continue with family work from a genuine sense of commitment. However, it is right to record that there were issues which concerned us even prior to the recent proposals. A significant number of barristers ceased to accept instructions in legally aided cases after the introduction of graduated fees and fewer young members of the Bar locally now see their long term future in family work. The age profile of local solicitors is worrying (many became members of the Children Panel around the introduction of the Children Act in 1991 so have now been practising in this field for 15 years or so) and, within the last 12 months, a number of firms of solicitors have begun to decline legally aided work.

We do not understand why, when spending on civil and family legal aid has actually been falling, there is any need for radical reform at a time when there are so much potential for real improvements within the family justice system... The point is all the more valid if these proposal are genuinely "cost neutral" as the consultation paper claims.

We are convinced that few firms of solicitors could afford to undertake family work, particularly care work, under the proposed regime. We believe that despite assurances to the contrary the impact on the Bar will also be considerable.

We have formed the view that any attempt to deal in detail with the questions raised within the consultation falls outside of our remit. Our point is a simple one. The proposals represent a wholly unsustainable future for legal aid in family cases and should be reconsidered urgently.

SUFFOLK

Soundings from our solicitors by our D.J. indicate only two firms will remain in "all family" work; an additional one will undertake care work only.

A number will remain willing to undertake privately funded ancillary relief but for children work the prospect for parents etc obtaining PF Representation after bringing in Carter look bleak.

In Suffolk, the consequences for families{many with considerable difficulties} in Care Proceedings, CG and the Court process are significant as
pointed out by HHJ Donald Hamilton and other DFJs

MERSEYSIDE

At a conference last Friday for professionals, all the delegates were expressing pessimism as to the future and how they could afford to operate under the new regime.

NORTHAMPTONSHIRE

I appreciate that my comments add nothing new, but the local concerns here in Northampton are just as stark and real as everywhere else. I cannot afford to lose the excellent Solicitors who do the care work. I consider that a lot of unnecessary money is spent on over expensive and long winded experts reports and that is where some genuine cuts could be made. But, of course, no one wants to lose the good experts either.

I am afraid that we have long since lost sight of the fact that a truly civilised society is prepared to spend money on providing justice to all parties regardless of their wealth or position in society.

WEST MIDLANDS

At a meeting in Coventry some 10 days ago on the proposals, some 20+ solicitors, all doing care case work and a few family law practitioners, attended. There was very considerable concern that the proposals are simply uneconomic for these practitioners. Some people may say "Lawyers always moan about changes in the public funding costs. Pay no attention. In practice they will moan and carry on doing the work". However these proposals may be a change which has greater consequences for family justice than anticipated. In the course of the meeting a member asked for a show of hands as to whether any solicitor present thought that they would be likely, if the proposals became reality, to be doing child care cases in 18 months time. Nobody put up their hands. The work is already seen as lowly rewarded. The child and care practitioners in Warwickshire/Coventry area are mature solicitors; only some 15% are under 30. It is not easy to recruit new, young solicitors to this publicly funded area of work even now. Many of the current group are highly dedicated to the work they do and the families that they represent. They are prepared to chase around South Warwickshire, sometimes, I suspect, lasso in hand, for it is a rural part, trying to find their client to get a statement signed in time for the court timetable. These are not "fat cat" lawyers; they are lawyers with a strong social conscience, with a real desire to help families. We need to keep them. I think that it also needs to be understood that the help and assistance given to families and children in care proceedings may prevent some of the children of today becoming the criminals of tomorrow. Cost efficiency, new delivery solutions are driven always under the banner of improving the delivery of services balanced against the need to control public expenditure. The latter objective always wins. The proposals run a high risk of alienating and losing a very valuable and experienced group of solicitors for families. The local authorities will be able to continue to employ solicitors and counsel. What happens to Article 6 fairness?

In Birmingham, there is a real prospect that every single solicitor currently on the children's panel will give up this work.

Perhaps the proposals will effect some reduction on the legal aid budget but the provision of incompetent or inexperienced legal representation, let alone an increase in the number of litigants in person, is likely to increase the number and length of court hearings. The most expensive resource in the system is the judge in court; there must be a real danger of wasting that and of adding to delay for children's cases generally.

KENT

Further to your various messages about the concern which has been expressed to the Family Justice Council about the proposed reforms set out in the LSC's consultation paper on the level of publicly funded fees in family work, I thought I should write to you and express my particular concerns about the probable impact of the proposed scheme on the delivery of legal services to children and families in Kent, where I am the Designated Family Judge for the county.

It probably should not have to be said that in public law cases in particular the mothers, fathers and children involved are amongst the most vulnerable and often the most intellectually and emotionally limited people. Working with them is extremely challenging, particularly when frequently they are under threat of losing their parents or child for ever. It is not work that can be or should be relegated to the inexperienced or less able.

In Kent we are singularly fortunate in having a group of Law Society Children's' Panel solicitors who are highly experienced, highly professional, and dedicated. They are also collegiate in their attitudes and work constructively and supportively together to ensure that care cases, in particular, are conducted efficiently and realistically. They demonstrate the highest standards of integrity. It is only when they are otherwise engaged that they use counsel, preferring to do their own advocacy, which they do to a high standard. I am entirely satisfied that their approach to their work and their relations with their clients' enables them to present their clients' cases effectively and expeditiously, whilst bringing about settlements and shortening the length of trials where possible.

Kent is a county with a population of 1.5 Million, but with only one major conurbation, around Medway. The county is some 80 miles from east to west and 40 miles from north to south. The Children's panel consists of some 25 active members. They appear before 3 Family Panels in 6 locations. There are 2 Care Centres and an average of 4 circuit judges sit every day on public law work. Additionally, the District Judges at the Care Centres hear interlocutory public law applications, including interim care order applications. In addition, domestic violence work, private law and ancillary relief work are heard at other courts throughout the county. It will be apparent that the members of the Children's Panel are hard pressed to provide a full service. To date in children's cases and urgent domestic violence cases they have done so, but other areas of family work have not faired so well, and there are considerable delays experienced in divorce related matters. The situation in those branches of work has gradually deteriorated as

more and more firms of solicitors have withdrawn from publicly funded work for economic reasons.

Because of the unique situation in Kent I was very concerned that the indications were that Lord Carter's report would be recommending reforms to the public funding of family work which were inimitable to the Kent model continuing. I asked if I might see a member of his team to satisfy myself that they understood the value of the régime in Kent and how fragile it was. In particular, I was concerned that it was fully appreciated that such a small pool of solicitors could not be reduced further, either by amalgamation or retirement, without making it impossible for the system to function properly. For example, with multi-handed cases and a limited number of available solicitors the risk of conflict of interest is high.

I was assured by the member of Lord Carter's team who I met that they understood the position in areas such as Kent and were not going to make blanket recommendations which would cause deterioration in services. Obviously, I was reassured by this and to a degree reassure by the recognition in Lord Carter's Report of "the need to retain sufficient numbers of suppliers in an area (given the multi-party nature of family work)…."

However, soon after the publication of the LSC/DCA consultation paper on "Legal Aid: a sustainable future" it became apparent that there were developing very serious concerns among the practitioners that the scheme as formulated would drive solicitors away from the work.

Today a representative group of Family Panel solicitors came to see me and told me of their concerns. They were senior and respected practitioners who had been consulting widely. Whilst I accept entirely Lord Carter's observations that the profession tends to be conservative and resistant to change, these were not Luddites, but concerned professionals, concerned not only for their own futures (which of course they were), but also for the future of family justice in Kent. They were convinced from their consultations that many of their colleagues would not be able to continue to practice family law if the current proposals are brought into effect.

I was told that already one of the most respected solicitors in the county (a former president of the Kent Law Society and a deputy district judge at the PRFD), has moved to close a substantial part of her family department and to announce that she would no longer be doing publicly funded private law work. Another well know firm has decided to abandon publicly funded work altogether. Unless they are reassured fairly promptly it seem very likely that they will be followed by significant numbers of others, perhaps not instantly but very soon, and they and their experience and ability will not be easily replaced.

The group who came to me was not basing its views on an impressionistic approach to the proposals, but a very carefully informed view, a number of them having attended various departmental "Road-shows", and meetings in the county.

For my part, I do not pretend to have a detailed knowledge of the impact of the proposals of the LSC/DCA, but I do know that the number of family solicitors doing publicly funded work in Kent has been declining. I have no reason to discount what I have been told universally by the remaining solicitors in the county and if it is correct, then I am very anxious for the future of the family justice system in the county. The FJC will be in a much better position to take an overview, but I would ask them to have in mind areas such as Kent and to make such representations they think appropriate to encourage the LSC/DCA to reconsider their statutory duty to ensure that adequate services are available in all areas and to understand that work of the gravity of public law work cannot be done effectively without specialist, experienced practitioners. Without them parents and children will not be adequately served and the courts will be overwhelmed.

CHESHIRE

1. Cheshire is a predominately rural county but with several major centres of population, e.g. Chester and Warrington.
2. Most of the barristers and solicitors who appear in public law children cases are well known to the local judiciary. All are hard working and dedicated to this particular field of professional practice.
3. Efficient and effective case management in the public law sphere not only requires strong judicial input but is also dependent upon the experience and expertise of those having conduct of the case..
4. The views of 7 solicitors, whose firms are concerned with the majority of public law children cases and whose practices spread across the whole county have been canvassed.
5. There is a depressing consistency of view. With the exception of one firm, none was prepared to commit to continue to undertake publicly funded public law work. The majority view was that "the present figures appear unworkable", and that the proposed fees would mean a reduction of fee income of between one-third and one-half. Such a reduction was regarded as uneconomical and unsustainable.
6. Several firms were prepared to give the new system a trial of, e.g., 6 months when they would review the situation but none of those firms were at all optimistic of continuing thereafter. All were hopeful that during this period it would be seen that

the present proposed fee levels were simply inadequate and would, therefore, be revised. This may be the triumph of optimism over experience.

7. One firm will continue but unless there is a radical change in the rates of remuneration will not bother to bid when competitive tendering comes into operation (2009/2010).
8. Although there was a difference in emphasis, it is clear that all are extremely concerned and if it were not for the fact that they are dedicated to this area of work, it seems likely that the vast majority would simply give up such work after next April. Two comments illustrate this: (a) "This is a nightmare for my practice", and (b) "I just don't see how we can continue". The solicitors want to carry on with the work, but their firms simply cannot absorb the loss of fee income.
9. In Cheshire it is a real risk that there will insufficient solicitors to go round. Further the efficient management of these complex and sensitive cases is likely to be compromised.

HAMPSHIRE AND ISLE OF WIGHT

In summary, the concerns are that there are few firms in Hampshire and on the Isle of Wight who will do such work now and the number is likely to reduce in the future because of the new fees' structure. The likelihood in their view is that experienced solicitors will no longer be able to take on this work so that cases will be in the hands of the newly qualified- both solicitors and barristers.
This means that the hope of effective case management by those representatives is much reduced and there is a concern that there will be an incentive to the less than scrupulous either to settle cases when they should not, or to spin them out in order to maximise the financial rewards. This will not be in the interests of either the children involved in these cases or their families.

THAMES VALLEY

The message from solicitors in my area is the same, and indeed one of the largest and most respected practices in Oxford, doing a major proportion of the publicly funded care work, has just given up any publicly funded family work. Furthermore, there is an allied aspect, which is the diversion of public funds from the court process, for the proposal is to ring fence some of the funding for pre-application work, namely solicitors attending LA meetings and thereby fulfilling the parents human rights for representation; this then to lead to the Local Authorities incurring responsibility for the assessments. I am not against more representation for parents, but in so far as it will reduce the money available for court based representation further, it in effect will add to the scale of the funding crisis.

Also, while the budget for criminal work may be in deficit, I understand that that for civil is in fact in surplus at the moment.

I have long believed that the reduction in scale of public law cases, which understandably concerns funding bodies, would be better assured by giving the courts a limited power of review after final order, so that there would not be so much of the work and time at the final hearing devoted to 'crossing every i…' before letting go of the case.

SOUTH WALES

It is not for Local Councils to argue the lawyers' case, only to anticipate the effect on the family justice system. I have been hearing public law cases for the past decade and I am pleased to say from a personal standpoint that the court and the parties have been well served by a cadre of experienced solicitors and barristers who have in the main devoted their professional careers to family work. I know that they work long hours, often anti-social ones, to respond to the demands of court timetables and there is always a willingness to cope with last minute changes and truncated deadlines. The overlisted system requires us as judges to rely on the family practitioners not only to cooperate by agreeing directions at the case management stages and to conduct professionals' meetings out of court to narrow the issues, but more importantly than that to help clients to understand the realities of their (sometimes untenable) positions and to persuade them to outcomes which may save days of court time. I am very concerned that fixed fees will have the effect of undermining the morale of these practitioners. They will surely resent the prospect of what I assume will be doing the same work for less money. The understandable response may be that there will be less willingness to do what is at present cheerfully undertaken 'above and beyond the call of duty'. That will result in more delays and longer hearings. Further, as others have pointed out, the more capable are likely to look for better remunerated work and we will be left with the less able and less experienced. That is likely to have the same effect. These proposals will not benefit either the court system or the public it serves.

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