



JUDICIARY OF
ENGLAND AND WALES

The Family Justice Modernisation Programme

Implementation Update Number One

**December
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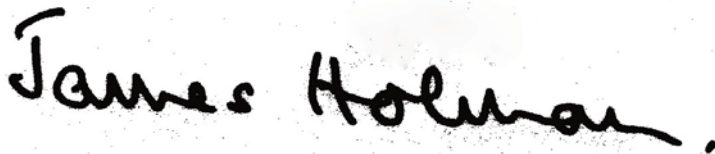
Introduction

By Mr Justice Holman, Acting President of the Family Division

This is a time of ferment and great change in our whole system of family justice. During the past year Mr Justice Ryder published a series of bulletins describing the progress of his work on modernisation. They culminated in his report, which was launched by the Lord Chief Justice in July, upon Judicial Proposals for the Modernisation of Family Justice. The present bulletin may look similar, but it is significantly different. It is not just another in the previous series. It is the first of a completely new series of Implementation Updates. This marks, therefore, the transition from enquiry, consultation and report, to action, implementation and outcomes.

In my time as Acting President I have been deeply struck and impressed by the sheer scale of current activity throughout the country to implement change: legislative activity in Parliament and by rule makers; activity on many fronts by the government and administrators; activity by judges, magistrates and the Court Service; activity by Cafcass, local authorities and many other bodies; and activity by the legal professions. The purpose of this short update is to give a snap-shot of some of this activity and the progress which is being made.

It is a hugely challenging time for all who work in the family justice system. Many people are working tirelessly, whether in the course of their jobs or voluntarily, to contribute to change. I sincerely thank them all.



James Holman.

Update

Mr. Justice Ryder was appointed by the Lord Chief Justice in November 2011 as the Judge in charge of the Modernisation of Family Justice and tasked with the presentation of a report from the judicial perspective by the end of July 2012. It has been agreed that, subject to the overall direction of the Acting President, Ryder J will continue to lead the modernisation programme, until a new President of the Family Division is in office.

The President has established a board (the President's Implementation Board) to act as the judiciary's programme board for the implementation of the family modernisation programme. It is chaired by the President and its membership is drawn from leadership judges and officials from the Judicial Office and HMCTS. MoJ, DfE, Cafcass and the Association of Directors of Children's Services attend as observers.

The Single Family Court (SFC)

The primary legislation to create the SFC is currently proceeding through Parliament (the Crime and Courts Bill). It is hoped that the Bill will receive Royal Assent in April 2013, coming into force in April 2014. The new legislation will be supported by a large body of secondary materials including up to 16 Statutory Instruments, amendments to the Family Procedure Rules 2010 and accompanying forms and Practice Directions. A year long programme of detailed consideration of these materials by the Family Procedure Rule Committee will begin this month.

The Family Business Authority (FBA) which was formed at the end of November 2011 has a membership drawn from the family judiciary, Her Majesty's Courts and Tribunals Service (HMCTS) and the Judicial Office. It is responsible to the HMCTS Board for the development and operation of the SFC. A blueprint for the SFC is being developed by the HMCTS Family Operations Team under the direction of the FBA.

A National Judicial Advisory Group has been formed to ensure that detailed information about the development of the SFC and the progress of the modernisation programme is shared with all judges, magistrates and legal advisers and that feedback and questions can be aired with the President. Chaired by the President, the members of the Advisory Group include representatives from each of the judicial associations representing all of the family judiciary and magistracy. The group meets once a term to discuss issues that are important to them and which they consider may impinge on their work. This will inform discussion at the President's Implementation Board and other bodies. Designated Family Judges (DFJs) are being encouraged to establish similar local bodies where they do not already exist.

The Law Society has agreed to continue to sponsor and administer the Faster Family Justice Group which has become a national family court users group. This is a discussion group which includes representatives of professional associations and associated organisations who wish to be kept closely informed of the ongoing work. The group is developing a lawyers' sub-group to continue detailed discussions with the judiciary about good practice. Where similar local bodies do not already exist DFJs are being encouraged to establish them.

The Children and Families Bill

Pre legislative scrutiny of what will become the Children and Families Bill is presently taking place in Parliament. The Government has published the proposed clauses which include the 26-week period for care and supervision proceedings, and shared parenting.

The family judiciary have given evidence to two Select Committees who are considering the proposed legislation. Their evidence can be found online.

Judicial Training

Training for the judiciary will begin in December 2012 with leadership and management training for all Family Division Liaison Judges and DFJs. Between April and July 2013 skills training, focussing on the core skills of effective judicial control and management of public law cases, will take place for 600 judges with public family law authorisations and the key legal advisers who train magistrates. Cascaded training for all legal advisers and magistrates will follow during 2013.

It is hoped that this will be followed by multi disciplinary road shows for all family law practitioners using the same training materials to ensure consistency. The interdisciplinary training committees of the Local Family Justice Boards will be asked to assist with this training.

Family Justice Board

The Government has established a Family Justice Board whose overall aim is to drive significant improvements in the performance of the family justice system. Performance is defined in terms of how effective (and efficient) the system is in supporting the delivery of the best possible outcomes for children who come into contact with it. The Board has an independent chairman, David Norgrove, and the judiciary are observers in accordance with terms of reference and a memorandum of understanding agreed with Ministers to protect judicial independence.

At a local level Local Family Justice Boards (LFJBs) have been set up to bring together the functions previously carried out by Local Family Justice Councils and Local Performance Improvement Groups. The judiciary are observers on these groups but this should not prevent them from playing a full and active part. Observer status is not intended to marginalise the judicial contribution to these boards. Designated Family Judges (DFJs) are still, for the most part, chairing the local interdisciplinary training committees which are subgroups of the LFJBs. It is not appropriate for DFJs to chair LFJBs because the boards are responsible to Ministers for performance. There is no objection to DFJs chairing the interdisciplinary training committees where the constitutional issues do not arise.

In Wales the Family Justice Network for Wales has been established to bring together the key players within the family justice system at an all-Wales level. The Judiciary are observers on this group.

Experts in the family courts

The Family Procedure Rules Committee has completed its work on new rules and Practice Directions in Part 25 concerning the instruction of experts in the family courts. The changes are expected to come into force in January 2013. Expert evidence will be restricted to that which in the opinion of the court is necessary to assist the court to

resolve the proceedings, rather than to that which is reasonably required to resolve the proceedings. The Case Management Rule, rule 1.4 has also been amended to put more emphasis on setting timetables and controlling experts.

The Family Court Guide

This will be a framework of good practice which will sign post published and peer reviewed research and good practice by reference to the rules and practice directions. These materials have been commissioned from a number of sources with the intention that they are published before April 2013.

Presidential guidance for judges and magistrates in relation to case management of private and public law proceedings will then be published in the form of pathways.

Expectations documents, setting out what the court expects of agencies and other participants in the proceedings are being drafted by those responsible for their content, to ensure they meet any rules or regulations, service level agreements and codes of practice, which govern their own processes as well as meeting the requirements of the family court. Relationships developed during the information-gathering leading to Ryder J's July 2012 report continue to be vital and discussions are being held with colleagues across the family justice system to develop these documents. They will include:

- Local Authority social work evidence
- Cafcass analyses
- Experts' standards (this document will be published by MoJ for consultation)
- Public Funding by the Legal Services Commission
- Representation of incapacitated adults by the Official Solicitor
- Lawyers' materials including threshold documents and case summaries
- Third Party Disclosure
- Special Measures to assist witnesses

Removal of legal aid in private law children cases.

The Implementation of the Legal Aid Sentencing and Punishment of Offenders Act in April 2013 will see many private law children cases taken out of the scope of public funding. The anticipated effect of this change is a subject of major concern to the family judiciary and others. Hickinbottom J is leading a cross-jurisdictional working party for the judiciary on the issue of self-represented litigants (SRLs)

The MoJ is working with the Family Justice Council on guidance for SRLs in both children and financial remedy cases. The Law Society and Resolution have published detailed materials for lawyers working with SRLs.

The revised Private Law Programme was designed over a period of two years by a group of judges, Cafcass and government officials. Although very successful, it will need to be reviewed to take account of the changing circumstances in which private law cases are to be heard and a working party has already made detailed recommendations to the President which will lead to proposals and guidance in the near future.

Discussions are continuing to try and identify how to fund DNA and drugs and alcohol testing in private law children cases.