

Timely Justice, from 55 Weeks to 26 Weeks in Public Law Care Proceedings

1. In November 2011, an independent Family Justice Review, chaired by Sir David Norgrove, published their final report. This made depressing reading for all those concerned about the family justice system in England and Wales. The Review found that the system was failing the vulnerable people it was supposed to be serving, was incoherent and lacking in leadership. It highlighted the huge delays, with the average care case in the county courts taking over 55 weeks: -“an age in the life of a child”. The report made 134 recommendations to improve the system in five broad categories:

- a system with children’s needs at its heart,
- changes to public law,
- changes to private law,
- developing the leadership of the family justice system, and
- the judiciary and other professionals involved in delivering family justice.

The Government committed itself to implementing most of the recommendations and produced a detailed action plan in June 2012.

2. On 22 April 2014 major family justice reforms were implemented in the Children and Families Act 2014. A new Family Court was established dealing with the vast majority of family work, in place of the Family Proceedings Courts, Magistrates Courts, County Court and most of the cases formerly heard in the Family Division of the High Court. The Family Court has a single point of entry in each area, with each case allocated to the most appropriate level of judge and to a suitable location, with a functioning hierarchy and lines of accountability through Family Division Liaison Judges and Designated Family Judges. All levels of judge, from lay magistrates to High Court Judges and above, can sit in the Family Court, and the court can sit anywhere in England and Wales, providing much greater flexibility.
3. In this short presentation, I want to look briefly at the changes as they affect cases involving compulsory state intervention in family life, cases where there are significant child protection concerns. We call these cases “public law” cases, contrasted with cases between private individuals, known as “private law”. The Children and Families Act 2014 introduced a statutory 26 weeks time limit for children’s cases requiring state intervention. The court has discretion to extend the proceedings beyond 26 weeks for 8 weeks at a time, should this be necessary to conclude proceedings justly.
4. To try to achieve such a marked reduction in the time scale of cases, effectively to halve their length, with no increase in resources of social workers, guardians or judges was an enormous challenge for all the players involved. Each aspect of the process was stripped down to see if it could be simplified and speeded up, without injustice. The Family Procedure Rule Committee, the Judicial Office, Cafcass, and the Association of Directors for Children’s Services worked together on a Revised Public Law Outline, a case management system designed to reduce delay in care proceedings. This pilot case management framework, was adopted, region by region, between July

and October 2013, to aid areas across the country in bringing down their case durations, month by month. All interested parties were cooperating in working on the multiple factors that were identified as causing delay, well before any legislation was introduced. In April 2014 the Public Law Outline (PLO) for care and supervision proceedings came into force. By that date, the average length of cases had already reduced to 38 weeks.

5. The main measures are to improve case management, with each case allocated to a named judge. There is a centralised case monitoring system able to breakdown caseloads and case lengths, by region and by allocated judge, and to look at reasons why cases are adjourned and when experts are ordered. This provides essential management information for reflective practice, in what had been an unmanaged environment. There is a prescribed template for all case management orders.
6. Other developments include frontloading the work undertaken by local authorities during the pre-proceedings stage. This includes the wider work of prevention and support, including with members of the extended family, ensuring that the cases that do come to court, are those that really need to do so. Good legal advice for parents at an early stage, is an essential part of this process.
7. There has been significant emphasis on the quality and format of the social work analysis, to reduce the need for expert reports or further assessments. This has involved a major exercise for all social work professionals involved child protection work. A huge task! The review had found that there was an excessive use of expert reports, causing unnecessary delay, with doubts about the value that they added in some cases. Primary legislation has now restricted the use of expert evidence save where it is necessary to resolve the case justly. In each case the court must consider the impact of the delay on the child, and whether it is possible to obtain the information from the parties already involved. Agreed standards for expert witnesses have been developed.
8. A consequence of this focus on a fixed timetable, has been the reduction in the time allowed for all assessments. Whereas the court had previously been dictated to by the availability of experts, guardians and local authority social workers, there is now much greater focus on the need for an assessment within, say 6-8 weeks, and ordering the local authority to commission it externally, if their in-house teams are not able to.
9. The Judicial College has provided compulsory training for all family judges on the new climate and culture change. The real discipline for the judge is to manage cases with parallel planning, rather than in a linear fashion. Whilst the parents are being fully assessed as carers, other family members must be put forward and concurrently assessed at an early stage. An independently convened family group conference is encouraged to identify any suitable alternative carers. Equally, if none of the family and friends carers are suitable, the local authority must have its default plan ready, to include options of last resort, such as a placement for adoption application.

10. Care cases are complex, and there are many factors which lead to delay, such as concurrent criminal proceedings, parties with significant mental and physical disabilities, children being born in the course of proceedings, imprisonment of a party, etc. Health professionals, the police and criminal justice system, and experts have all had to be brought onboard to embrace the changed culture. Other challenges include identifying cases with an international element at the first case management hearing, adjudicating on any habitual residence issues at an early stage. In many cases where a child is habitually resident in the UK, extended family potential carers may be in other EU jurisdictions, requiring international liaison. These cases are a significant challenge to a 26 week timetable.
11. There will need to be some robust research to ensure that the extensive pre-proceedings work now required by local authorities, does not lead to delay in decision making for children being eliminated in the court arena, only to be reintroduced earlier in the process.
12. The average length of public law proceedings has continued to reduce, but 26 weeks remains a challenging target. The figures for the year March to August 2014, the most recent for which I have statistics, show the average number of weeks to disposal, was 29.7 weeks. For cases concluded in the month of August 2014, 59% finished in 26 weeks. There is some way to go, and constant vigilance required to prevent slippage, whilst remaining mindful of the wise words of Pauffley J, in *Re NL (A Child)* (EWHC) 270 (Fam) para 40: “Justice must never be sacrificed on the altar of speed”.
13. So what were the major drivers of change? Top marks are awarded to the senior family judiciary, Ryder LJ, as the Judge in charge of family modernisation, and Munby LJ as the President of the family Division. They have demonstrated boundless energy and enthusiasm to implement the Norgrove recommendations. They have been assisted by the team of Family Division Liaison Judges and Designated Family Judges as encouragers and enforcers. Another key element has been the training of all judges, lawyers and other professionals in the culture change required, with constant re-emphasis through the professional organisations, journals and lectures. Thirdly, I would highlight the collection and distribution of statistical data, broken down into areas, enabling an individual judge to reflect upon why their cases take so much longer than judges in other parts of the country, and thus begin to develop more reflective practice.
14. The significance for the theme of this seminar is that timeliness does not just depend on having the right primary and secondary legislation in place. It is wholly dependent on securing the change of culture required, and the promulgation of a “can do” attitude, to shake us out of our comfortable cultural habits.