

## **Evidence submitted by The Association of District Judges**

1. The Association of District Judges represents all 414 district judges of the county courts of England and Wales. Prior to their appointment as district judges, many would have had lengthy and successful practices as lawyers in the family law field either as solicitors or as members of the Bar. Included within the Association's membership, but not formally represented by the Association, are some of the district judges of the Principal Registry of the Family Division. The Association does not represent the District Judges (Magistrates Courts).

2. The district bench exercises a wide jurisdiction in the family justice system. In the area of private family law district judges can hear all disputes relating to contact and residence. District judges deal with all undefended divorces, give directions in those few which are defended, and in all divorces deal with the division of the parties' capital and income, save for matters reserved by statute to the Child Support Agency. In the public law area of care work, specially trained district judges, known as Nominated Care District Judges, act in teams with the family care judge and case manage to trial those care cases being heard in the county court.

3. District Judge Walker has been the Hon Secretary of the Association since April 2000. He sits at Wandsworth County Court which, as a Family Hearing Centre in London, has a private law, but not care/public law, jurisdiction.

4. "A Vision for the Future" is a paper which the Association wrote in the summer of 2004, before the present inquiry was commenced, to help inform a debate which Dame Elizabeth Butler-Sloss P had already initiated into proposals for change in the family justice system. A copy of the paper is annexed as Appendix A (not printed); annotations below indicated as "Vision" are references to it.

5. "Parental Separation: Children's Needs and Parents' Responsibilities" was a paper from HM Government welcomed by the Association whose response is to be found at Appendix B (not printed). References in the text below are indicated as "Response"

6. Is the present system working well? The Ministerial Foreword to the present consultation paper suggests that the present system is not working well. The Association does not necessarily agree. The vast majority of separating parents (90%) are able to make satisfactory arrangements for their children without the need for intervention by the courts and the paper records a high level of satisfaction with those arrangements by the parents who are able to reach agreement. Much credit must go to those couples experiencing a separation or divorce who are yet able to remember that they both remain parents of their children and are able to communicate with each other as such. The immense amount of work offered by solicitors in resolving, amicably and quickly, potential contact disputes must equally be acknowledged. The courts are therefore concerned with only the remaining 10% of parents who are unable to reach agreement.

7. Within those 10%, it has to be accepted that there are parents who will place considerable difficulties in the way of meaningful contact; there are others who will fail to enjoy the contact which it has been ordered should take place. The courts cannot prevent family and social discord; they can only deal with it when it happens. Often in that minority of cases the relationships within the family are complex and there are no quick and easy solutions. Trust between warring parents is lost very easily but takes a long time to restore. Resolving these problems can be immensely difficult. Courts constantly emphasise to the

parents the benefits of reaching a mutually acceptable solution. Where issues remain unresolved it is vitally important that the case is dealt with as expeditiously as possible in order to minimise the harm to the children and their parents of a prolonged dispute. This calls for the best and most effective use of available resources (Vision para 74). Families and their children are the most important resource that any country has; they are its future.

8. A Unified Administration will be introduced into the court system on 1 April 2005. It will bring together under the umbrella of HM Court Service what previously has been the Court Service, providing the administration for the High Court, Crown Court and county courts, and 42 independent Magistrates Courts Committees. By creating one Unified Administration there is for the first time the ability to look at the court estate as a whole and to contemplate the creation of the very long-awaited integrated family justice system. In other words, for the first time there is the ability to introduce a Family Court.

9. Flexibility, however, within any family justice system is essential if a unified system is to perform effectively and efficiently (Vision para 45). The range of problems with which the courts are presented is vast (Response paras 3-5) and the system must be able to deal most appropriately with each one. There is no "one size fits all" solution. Neither is it appropriate necessarily to start from a belief that children should spend an equal amount of time with each parent (Response para 6) because of the myriad of school, work, home and childcare arrangements. The welfare of the child and not the needs and wishes of the parents must continue to be the paramount consideration; a child is not a commodity to be apportioned between its parents. Judges require a much wider range of powers than that which they presently possess both to enable solutions to be found in what at the moment are often seen as intractable stalemates between two parents wholly unable to communicate with, or understand, each other and to enable court orders, where necessary, to be enforced.

10. Nominated Care District Judges. One illustration of how increased flexibility could work is in the public law care area where, at the moment, final care or supervision orders may only be made either in the Family Proceedings Courts or by circuit judges sitting as care judges in the county courts. The district judges are not able to make final orders even though Nominated Care District Judges have a pivotal role in the case management of such cases. The number of care cases to be brought before the courts is predicted to increase significantly; that will impose strains on an already stretched system. A partial answer would be for some, but not necessarily all, NCDJs to be able to hear some of the simpler care cases by sitting in the Family Proceedings Courts for that purpose; this could be achieved by making NCDJs also Deputy District Judges (Magistrates Courts) (Vision paras 104-107).

11. Out-of-court settlement. It is a truism that any agreement reached by the parents is more likely to be successful than arrangements ordered by a judge with which at least one, and sometimes both, parent would not agree. Greater access to information and advice is therefore always to be encouraged (Response para 10), as is more out-of-court mediation (Vision para 43). Courts themselves often adjourn cases for mediation to be undertaken but it is not always the appropriate course, for instance in cases of domestic violence. Compulsory mediation in all cases would not be an effective remedy: for some families who see the breakdown of a relationship as an opportunity to rehearse past wrongs and resentments this will present a considerable challenge.

12. Reforms. Access to information, advice and assistance from the professions, the availability of mediation and conciliation schemes all have their place but it is becoming

increasingly recognised that they are in themselves inadequate. It is also a matter of concern that parents are increasingly unable either to find a legal aid solicitor, if they qualify for such assistance, or to afford to instruct a solicitor, if they do not. Parenting plans may well be a useful additional tool, requiring as they would both parents to discuss and agree the future arrangements for their children (Vision para 63). District Judges could be required to adopt a more active role in the settlement of disputes in relation to children prior to the finalisation of divorces (Vision paras 62 and 66); the parents themselves could be further encouraged to reach agreement before a decree nisi of divorce were pronounced (Vision para 64). And the Association await with interest the evaluation of the current Family Resolution Pilot Projects being undertaken in central London and elsewhere.

13. Framework for Private Law. The President announced, simultaneously with the launch of the Consultation Paper, a Private Law Programme that it is hoped will improve the resolution of residence and contact disputes. Every such case would be listed before a district judge for a first hearing within four to six weeks of the issue of the application.

14. Interventionist role. By virtue of being a tribunal of one, the judge is able to adopt an interventionist role, urging the parties, and with the support of a CAFCASS officer also in court, towards a settlement. This happens already in most courts; in-court conciliation is already routine (Response para 8, Vision para 75) although the detail of such schemes often differ. The district judge can almost invariably give an early and neutral indication of the level of contact which would be appropriate and encourage the parties to agree to a particular level of contact or a phased programme of contact which will either render further litigation unnecessary or at the very least ensure that progress is made (Vision para 76). The settlement rate on the day is often considerably in excess of 50%.

15. CAFCASS reports. At present reports from CAFCASS are ordered in many of the cases which remain unresolved despite the interventionist approach of the district judge. This is especially so if residence is in dispute or if there is an objection to any form of contact taking place. The reports themselves are often lengthy. The President's proposals, which are wholeheartedly supported by the Association, envisage instead that the district judge will have identified in the order s/he makes the areas of disagreement between the parties; CAFCASS would then provide much shorter and more focussed reports. The hope is that they would also be provided more quickly which would enable the final hearing to take place within a shorter timeframe than is presently occurring.

16. A review by CAFCASS and by the courts. It is not unknown for contact arrangements to break down within a very short while of their being agreed or ordered. It has therefore been agreed between the President and CAFCASS that, once individual courts implement the new Private Law Programme, CAFCASS officer will be under an obligation to check soon after the relevant court hearing that the contact arrangements are working satisfactorily. If not, the CAFCASS officer will notify the court. The Association has agreed with the President that in such instances the contact application will be relisted for a review hearing within no more than two weeks of the court hearing from CAFCASS. At that hearing it would be intended to resolve whatever difficulties might have arisen.

17. Gatekeeper role. Whilst in some Family Proceedings Courts there are suitable and trained legal advisers who might be able to take on the interventionist role at a first hearing, the Association believes that the district judges should assume the gate-keeping role in the majority of cases and that therefore all private law residence and/or contact disputes should commence in the county court (Vision paras 53-58 and 74-76). Where an

application does not settle at the first hearing, the district judge should consider whether it is suitable for transfer across to the Family Proceedings Court having regard to clearly defined criteria (Vision paras 85-91). There are in the family jurisdiction four levels of judiciary—High Court judges, circuit judges, district judges and the lay magistracy—and to ensure the maximum use of judicial resources and to achieve the speediest possible resolutions it is essential that the gatekeeper transfers across to the Family Proceedings Court those cases which properly belong there. Ideally, all levels of judiciary would be under the one roof, as they now are in Birmingham, but this is not necessary; co-operation between courts and the sharing of diary information can overcome many of the deficiencies in the Court Service estate (Vision paras 120-123).

18. Local Plans. Since November 2002, with the introduction of the Protocol for the Case Management of Public Law cases, there have been local plans agreed between each county court care centre and the family proceedings courts within its area. The plans set out the arrangements for the disposal locally of the public law work. The Association believes that it would now be appropriate for a Private Law Protocol and Local Plans to be introduced in respect of section 8 residence/contact work, and would hope to play a full part in helping to draft such a Protocol and the Local Plans (Vision paras 83 and 92).

19. Judicial Continuity. This is absolutely essential to any successful system for conflict resolution in the family arena. *Bracewell J in V v V [2004] EWHC 1215 (Fam)* referred to the existence of 17 court orders made by 16 different judges. Her Ladyship echoed sentiments expressed by *Munby J in Re D [2004] EWHC 727 (Fam)*. The Association believes that most, if not all, family cases, irrespective of their precise nature, benefit from judicial continuity and that such continuity has considerable resource benefits. The parties benefit from knowing that the facts of their case will be well known to the judge to whom the case is allocated. They should also benefit from consistency of approach. Since cases seldom consist of only one element that judge will be able to take a holistic view of the case and, where necessary ensure that all elements of the case are progressing together so that a final hearing of any financial dispute is not delayed by slow progress within the main suit or that where the future residence of any children is in dispute that dispute is resolved prior to any final financial hearing (Vision paras 46-50). Judicial continuity is likely to be more difficult, but not insuperable, to achieve in the Family Proceedings Courts where, by their very nature, lay magistrates are not members of the permanent judiciary and do not sit alone.

20. Contact centres have a crucial role to play in cases where contact, for whatever reason, needs either to be "supported" for a short while, or "supervised" for perhaps longer. However, pressures on their resources often mean that the most contact they are able to offer is for a limited period of two hours once every two week. This is often considered unsatisfactory. Their number, and level of support offered, need to be increased (Response para 16) by central planning and by the allocation of resources.

21. Family Assistance Orders. The Association welcomes the proposed extension of Family Assistance Orders as set out in paragraph 81 of the consultation paper "Parental Separation". Many FAOs could—but are not—ordered by judges at the moment because of their limited time span and the delays in the allocation of such orders by CAFCASS or by local authorities. Instead, a very similar effect is often achieved by ordering a review of an order in (say) six months and asking for a short addendum report by the CAFCASS officer. The principal value of the report is often in the continued involvement of the CAFCASS officer as much as in the text of the report itself (Response para 14)

22. Enforcement. Unfortunately, however, some cases defy all attempts at resolution; court orders presently go unenforced. The frustrations of those not able to enjoy contact with their children are understood. As Bracewell J said in *V v V*, there are only four options at the moment and all can be unsatisfactory: imprisonment (suspended or otherwise), the imposition of a fine, the transfer of residence to the other parent and "to give up". Legislation is required to introduce, in appropriate cases, the ability for the judge to refer parents to mediation. Family assistance orders merit reform. Judges should be able to refer a defaulting party to information meetings or parenting classes (*V v V* para 12), or even if appropriate to a psychiatrist or psychologist; one or both parents might benefit from an anger management course. Either parent might need to be subjected to a community punishment order, or even ordered to pay compensation when his/her actions have caused the other parent to suffer a financial loss (*V v V* and also *Vision* 95-98). Such interventions will, however, have cost and other resource implications (*Response* para 17), and may not always be appropriate.

23. In conclusion, the Association has welcomed the opportunity to participate in the inquiry being conducted by the Constitutional Affairs Committee. The district bench is proud of its role in the family justice system but equally is all too well aware of the present problems which HM Government's consultation paper seeks to address.

District Judge Michael J Walker

Hon Secretary

Association of District Judges

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