

Evidence submitted by The Law Society

In 1969 the Law Commission defined the purpose of family law as "to dispose of dead marriages in a manner that encourages and affords spouses the best possible opportunity to make rationalised and conciliatory arrangements for their own and their children's future". We consider that this still holds true, not just for divorce but in all family cases where parties are separating. Achieving that should be the purpose of any changes to the system.

Judicial systems cannot force members of a family to display appropriate conduct towards one another. However, the methods used by the courts to recognise the termination of relationships can help educate and encouraged the parties to consider the results of their actions and to take responsibility for organising their own affairs. The legal system and the parties' representatives can assist the parties to work towards this by offering mediation and other forms of ADR, collaborative law, in-court conciliation and other court and non-court based interventions. Many cases settle through these methods and we think that initiatives to extend their use will be helpful in family justice systems.

There are, however, some cases that will not be solved by these approaches, for various reasons, both emotional and practical. Many of these cases might be described as containing an imbalance of power between the parties.

In a few cases, the parties may simply prefer to be told what course of action would be best—feeling unable to decide for themselves on a course of action and wanting a person "in authority" to decide for them.

Individuals and their partners in those circumstances are most likely to use the courts to determine how their money and parenting should be divided after separation. It is not surprising, therefore, that many of them will be dissatisfied with the result that they receive, perhaps because of unrealistic expectations or because dissatisfaction with their situation generally becomes projected on to the court system.

Family law attempts to reflect social trends in a society which is changing rapidly. Courts (or any other similar tribunal) will always lag behind in their reflection of societal change.

Nevertheless, we believe that there are ways in which courts could be improved which would offer greater satisfaction to their users. Our proposals relating to private children law procedures are contained in our response to the current consultation paper on parental separation. A copy of this response is being provided to this Committee, as an annex to this paper, so we have not covered these issues in this paper.

There are currently pilot schemes being tried in relation to private children law cases and a pilot integrated domestic violence court in Croydon. It would be valuable to have the results of empirical studies of these pilots before significant proposals for changes to the system are considered.

1. UNIFIED COURT

A unified court dealing with family law and criminal law could offer real savings in terms of estate and administration costs and efficient use of judicial time. For example, listing could be administered in one central office; files could not be "lost" between courts. It would also mean that staff working in the family court would have the opportunity to develop even

greater expertise than currently.

Savings made by establishing a unified court might also allow the appointment of more family judges, thus helping to tackle delays.

Plans are currently being discussed to develop a unified civil court which will impact on family cases heard in the county court. This might be a good time to also consider a unified family court.

2. SPECIALIST TRAINING AND ASSESSMENT OF JUDGES

Specialist training would ensure that judges develop the right approach to family law, as well as the requisite statutory knowledge. Family law requires a special understanding of people and their relationships and how to craft orders so that they look to the future and not just the past. Law in this area is complex and changes rapidly. Ideally we would like to see judges specialising either in children law or in ancillary relief cases.

3. CONTINUITY OF JUDGES IN CASES

At present a case can be transferred to any judge with an appropriate "ticket". This often means that the previous history of a case is unknown to a new judge and that judge has no time to read what are often lengthy files. Litigants are either frustrated by that lack of knowledge or they use the situation as an opportunity to replay the history of the action. If a case were to be reserved to a specific judge who was aware of its history he or she would not need to spend time reading papers to acquaint themselves with facts already known to their predecessor.

Where this is not possible, it is even more important that judges should be allowed the time to read papers before a case commences, thereby reducing court time. It is disruptive to a case for it to stop while a judge reads papers. It gives an impression to parties that the documentation they produce is ignored and that they have wasted their time and energy in producing it. Reading the documents before the hearing would cut down the time required to open cases.

This might lead to less delay in hearing cases. We are told by members that delays in excess of six months for a hearing at the Principal Registry of the Family Division are not uncommon. The delay leads to parties' attitudes becoming entrenched (so that cases are even more difficult to settle) and statements and reports becoming outdated so that extra costs are incurred in redrafting or recommissioning them.

4. COURT VENUE

If local courts are closed judges should be allowed to sit in local venues in other buildings, so that litigants are able to reach the court building without incurring large costs for transport and child minding.

5. ANCILLARY RELIEF

We urge the adoption of guidance as to how s 25 of the Matrimonial Causes Act is to be applied, as we proposed in our paper "Financial Provision on Divorce: Clarity and Fairness". We think this would offer parties clearer understanding of how the law works and so encourage settlement. At present most litigants have very little idea of the rationale

by which money is divided between parties on divorce. They are often misled by reports in the press, which do not explain legal principles. If they understood the process by which money was divided, they would be more inclined to settle their disputes without a court hearing.

We also support the proposals by PARAG to unify enforcement proceedings. We consider that the current system of enforcement by which only one asset at a time can be attached is wasteful of courts' and litigants' time and resources.

We have put forward proposals in "Financial Provision on Divorce: Clarity and Fairness" for changes to forms and procedure in ancillary relief cases. We think that these would make the court process more open and comprehensible to litigants. We believe that if they understood the process better, many parties would be more inclined to consider settlement.

6. DOMESTIC VIOLENCE

At the time of writing this paper the Domestic Violence Crime and Victims Bill has not yet become law. We applaud the ends which the Bill seeks to attain but we have already expressed our concerns about the viability of some of the means proposed to attain them. We will not comment further until after we have seen the effect of the Bill in practice.

Although we appreciate that cost is a factor, it would considerably increase litigants' confidence that they were in a safe environment if separate waiting rooms for applicants and respondents were introduced.

Shona Ferrier

Parliamentary Advisor

The Law Society

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