

Evidence submitted by The Magistrates' Association—Family Proceedings Committee

The Magistrates' Association welcomes the opportunity of submitting this paper, which supports our response to the consultation document Parental Separation: Children's Needs and Parents' Responsibilities, and is focussed mostly on private law proceedings under the Children Act 1989 as we understand this to be the principle concern of the Committee's inquiry. We have made observations about family proceedings courts' (FPCs) public law jurisdiction under the Children Act 1989 where we believe them to be vital to understanding their overall workload. It is made with the support and concurrence of the Justices' Clerks Society.

In summary, FPCs are made up of experienced, knowledgeable, enthusiastic magistrates who have the capacity to deal with significantly more work thus reducing delay in the family justice system whilst giving a better return on public resources.

Is the family court system being run effectively?

There is significant capacity in FPCs to do more work. Historically, FPCs completed two thirds of all public law Children Act cases, and one third of all private law work. A variety of pressures has caused these proportions to fall. Less than half, and still falling, of public law now stays in FPCs; only 15% of private law applications are made in FPCs. We believe that the introduction of the public law protocol has caused more cases to be transferred to care centres. There is no evidence that cases in general have suddenly become more complex because of the introduction of the protocol and we believe that many of the transferred cases could be successfully completed more swiftly by remaining in FPCs.

Two principal factors appear to be causing the downturn in private law work:

— Cases start in either the FPC or county court at the preference of the applicant. The Framework for Private Law, launched last summer, provides for increasing in-court mediation services in county courts—without any concomitant increase in FPCs. This will only increase the trend for more work to be handled in county courts even though cases can generally be heard much more rapidly in FPCs.

— Fees for publicly funded applicants are higher in county courts than in FPCs. We understand that this was designed to reflect the greater complexity of cases being heard in the former. As the applicant chooses the venue, the Legal Services Commission rarely challenges it, and almost no judge transfers to the FPC matters that have started in the county court, we find it difficult to understand the continuation of this differential. It does not appear to contribute to either the economy or effectiveness of justice.

The Association believes that all private law matters should be started in the FPC (save only where there are pressing reasons such as a live divorce case) as public law ones do now, with allocation criteria for transfer. There is absolutely no credible evidence of concern about the justice being delivered by the lay magistracy in family proceedings; contact and residence applications should be treated in the same way as care proceedings.

Members of the government and the senior judiciary make many positive and complimentary comments about the role of the lay judiciary in family justice. Those comments must be supported by immediate action to shore up FPCs so that they can

make a full contribution to the effectiveness of the family courts. There is no need to consider alternative and almost certainly more expensive approaches to tackle delay until action has been taken, and demonstrably failed, to utilise the full capacity of FPCs. Failure to address what is happening will cause further erosion in workload, confidence, and then willingness of magistrates to continue to do the work.

Do family court judges have sufficient powers?

FPCs should be given the same enforcement powers as county courts; it is illogical for it to be otherwise. This lack provides one more justification for parties to use county courts when in all other regards FPCs could do the job.

Family magistrates do, however, have extensive powers, backed by significant experience, expertise and training but they are underutilised. For instance, magistrates were given powers to make non-molestation orders and received expensive and time-consuming training, but then the work went elsewhere. This is ineffective use of resources.

What issues are there about delays caused by the current system?

The paucity of reliable data ahead of the introduction of the public law protocol makes it impossible to draw objective conclusions about its impact on delay. Six major obstacles were identified by the advisory committee in its report; all remain and each is the source of significant ongoing delay. However, what is abundantly clear is that there is significant underutilised capacity in FPCs which could and should be used to address the delays being encountered in private and public law work in both county courts and care centres. It is ironic that at this time there is an increasing drift of work out of FPCs.

The Association is concerned that the increasing focus on public law is causing private law timescales to lose attention. There will no longer be a PSA target in the private law arena. Much is said, and rightly so, about the need to get contact cases into court (where that is the appropriate venue) quickly. When one or both parties are publicly funded delay has obvious consequences for the public purse. In all cases it has an effect on children and their relationships with their parents. More use of FPCs could have a positive impact on resolution timetables.

In order for any reversal of the current drift of work to county courts to be effective, the expertise, enthusiasm and commitment of highly trained—and available—lay magistrates which already exists must be backed by competent legal advice. The work of the FPC creates a unique relationship between magistrates and legal advisor. Just as magistrates need to be willing and interested in family work—and be allowed sufficient time to develop and maintain expertise—so must legal advisors.

Are people using the family courts getting the service they deserve?

There is a real opportunity, with the arrival of HMCS, to create an integrated family court. For this to become a reality there needs to be clear evidence that all of the elements are joined up and with the mandate to be a service based on demonstrable expertise: administrative staff, IT, hearing centres and judiciary (part-time, full-time and legal advisors).

It is not clear that there is a common understanding of what users deserve from family courts. Indeed, as current events demonstrate, there is a real need for a public debate

about the purpose of the family justice system. As our response to the government's consultation makes clear, we are supportive of programmes to divert people away from the courts where possible. We therefore take the Committee's last question as referring to situations where, for whatever reason, court is where they have finally ended up.

We would say that, as an irreducible core, users deserve affordable local access to a fair, impartial determination of their case from an experienced judiciary in a timescale that meets their needs and those of their family. That determination should be informed by timely expert advice (focussed on locally available interventions) whenever required, and the judgement communicated in a way that all the users understand. Any orders should be underpinned by resources to ensure their implementation. All this should continue to be built on the principle of the paramountcy of the best interests of the children.

Against that background we believe that the principal challenges lie in the:

- Accessibility of the service (local hearing centres).
- Timeliness (access to hearings, availability of welfare reports).
- Universal provision of support services either before an order is made or to support one (mediation, contact centres, family assistance orders for example).
- Fully-funded enforcement provisions (CAFCASS follow-up, parenting programmes, behaviour modification programmes, community-based orders).

Family proceedings courts have the potential to be a vital part of the resolution of these challenges—but only if urgent action is taken to reverse the downturn in their workload.

The Magistrates' Association

Family Proceedings Committee

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