



JUDICIARY OF
ENGLAND AND WALES

THE RT. HON. SIR MARK POTTER

PRESIDENT OF THE FAMILY DIVISION

CARE PROCEEDINGS - A NEW APPROACH

**MEETING OF STAKEHOLDERS, CHURCH HOUSE WESTMINSTER
11 JULY 2007**

I am very grateful to Bridget Prentice for introducing this important event with such enthusiasm. I also welcome this opportunity to speak to an audience of all those whose various inputs are critical to the successful conduct of care proceedings.

When I was appointed as President of the Family Division in April 2005, concerns regarding the delays and developing complexity of in care proceedings and their impact on the legal aid fund were beginning to gather the momentum which led to the Child Care Proceedings Review when I had only been a few months into the job.

When I attended the Stakeholder Update in October 2005, the Government had done a lot of initial work with what many practitioners felt to be insufficient consultation with the people on the ground who played vital roles in care proceedings.

I am delighted therefore to be able to agree with the Minister today when she says that the proposals which are being presented to you have been shaped following extensive and detailed cooperation and consultation between the key agencies.

We have to recognise that the number and complexity of child care cases are increasing in a way that is straining resources to the limit. The new guidance for local authorities and the Public Law Outline have been designed to complement each other to make the best use of resources.

Bruce Clark will speak to you in more detail about the Local Authority Guidance, and Ernest Ryder and Paul Coleridge will explain the mechanics of what started, prior to the CCPR, as an independent judicial exercise to revise the Protocol for Judicial Case management in Public Law Children Act Cases and has now become the Public Law Outline, with which we are concerned today

Most present will know that as the Head of Family Justice responsible for the judicial management of all Family Judges and Family Magistrates, I am currently working to establish what I have called the "Framework for a Family Court," approved by the LCJ and the Lord Chancellor. That framework is directed to the following areas.

1. The practical arrangements for judicial management of a unified family court - comprising judges of the High Court, Circuit and District Judges, and magistrates of the family proceedings court.
2. Allocation criteria for the categorisation and distribution of family proceedings as between those groups of judges. A draft has already been circulated.
3. A public law case management practice direction applicable to all levels of court i.e. the Public Law Outline.

4. Gatekeeper and listing guidance covering the issue and allocation of proceedings, and the administrative support necessary in that respect which will be produced as the last element in place once the initiatives mentioned by Bridget Prentice are complete.
5. A private law case management practice direction (i.e. the revised Private Law Programme) yet to be completed and incorporated into the final element-
6. New Family Procedure Rules (currently being drafted by the Family Procedure Rule Committee) along the lines of the CPR and accommodating the new arrangements due to be completed in 2008.

This framework is designed to make the best use of existing resources across the Family Justice System: The allocations guidance, for example, will assist the decision makers, or gate-keepers, to list cases in the appropriate level of court and to make the best use of family magistrates who are currently under used. The new rules will ensure greater consistency of practice between the levels of family court and lead to greater retention of less complex care proceedings in the FPCs.

The Framework is underpinned by the work of HMCS, both through the Unified Family Service project, which is bringing together the administration of the different tiers of court as far as possible, and through its commitment to provide the magistrates and judges with sufficient support staff and, in particular, case progression officers in the County Court and specialist legal advisers in the FPCs, both of whom will play key roles in progressing cases within the timetables set by the judiciary.

None of the elements of my Framework could be effective without the support and co-operation of the key family justice agencies; the DCA (now MOJ)/HMCS Family Policy Unit, CAFCASS and the former DfES (New name Department for Children Schools and Families) in respect of local authority practice. This co-operation has been brokered by my formation of the President's Combined Development Board which meets monthly, and the wider Ministerial Strategic Group described by Bridget Prentice earlier this morning. Our work together to date makes me confident that these groups, and those supporting them, will ensure proper co-ordination and the development of an overall approach to family justice within the Framework.

One of its key elements is the work which has been done on the Public Law Outline by my Judicial Review Team: Munby J, Coleridge J and Ryder J who have taken up the work of the Child Care Proceedings Review from the perspective of the judiciary and refined and simplified the court process to concentrate it on the essential issues.

In addition, they enlisted the help of HHJ Donald Cryan to consider how the court paperwork supporting the Protocol could be reduced and simplified.

There was an early recognition by all agencies involved that a key factor in delay in care proceedings was insufficiencies in the pre-proceedings work of the Local Authorities. While this is inevitable in emergency cases, in many cases, initial social work assessments had not been completed before proceedings were issued, and in others insufficient enquiry had been made with regard to problem –solving within the family, which meant that much which could have been explored, or assessments which could have been made pre-proceedings, required exploration within the proceedings, with consequent delays and expense to the legal aid fund.

DfES took this criticism on board and, following a huge amount of work, DCSF is now consulting on proposals for revising the statutory guidance to local authorities on care proceedings, to which Bruce Clark will speak.

I have to accept on the part of the judiciary that in some cases, judges have failed to get a sufficient "grip" on the proceedings at an early stage, isolating the essential issues and making and enforcing the necessary directions. This is addressed in the Public Law Outline and I am emphasising the need for judicial continuity in its operation. Training in this respect is to be delivered to judges and magistrates under the auspices of the Judicial Studies Board between now and April 2008, the date set for nationwide implementation.

The Steering Group mentioned earlier by the Minister, which is chaired by Anthony Douglas, Chief Executive of CAFCASS (who will also speak later) is working closely with the Judicial Studies Board to make sure that the necessary multi-disciplinary training is delivered in good time for implementation.

CAFCASS is of course a key partner in care proceedings. Anthony Douglas has developed new National Standards for CAFCASS practitioners, being phased in from June this year. I have seen and endorsed these Standards. The emphasis of the work of the Children's Guardians in public law cases will change to the extent that they will not only be appointed earlier, but they will also be required to provide analysis of the local authority work and plans, for consideration by the advocates and the court at crucial stages in the proceedings, setting out any additional steps or action they consider to be needed.

The Minister has mentioned the initiative areas which have begun to operate, or are now setting up their systems to pilot the Public Law Outline. I recognise that differing local areas will have different factors to take into account in implementing the Outline. At this stage, I am directing them to make the best possible use of the new case management forms which, when they get used to them, should make things quicker and simpler in the courtroom.

In particular, I am quite clear that they should stick to the four key steps in the Outline.

Ernie Ryder and Paul Coleridge will be talking you through the Outline later. At this point it is sufficient for me to say this:

The first stage is the issue of proceedings and first appointment, and the last stage is the final hearing. The bulk of case management will take place at steps 2 and 3; the Case Management Conference (CMC) and the Issues Resolution Hearing (IRH).

Ernie Ryder and Paul Coleridge will talk you through the process later, but very baldly stated, courts will be required at the CMC to identify and isolate the essential issues in the case and to make directions to ensure the relevant evidence is available to determine them.

At the IRH, the court will look at that evidence, encourage resolution of the issues (which by then should have narrowed or be capable of being resolved) and fix the final hearing, having defined the relevant questions still to be decided by the court. It is anticipated that, if the advocates and the court have done their job, in a substantial number of cases the matter may never require a final hearing.

Each of stages 2 and 3 will be preceded by an essential and detailed advocates' discussion. The courts will be heavily reliant on the work done by advocates at this stage. The lawyers will be required to thrash out the issues, to explore the question of settlement and produce agreed documentation as a basis for the court to make directions at the CMC and IRH. If these advocates' discussions are to be effective, they cannot be held at the door of the court and the lawyers must devote proper time to them.

In this respect, whilst it is not the concern of this meeting, I feel I should emphasise the necessity for the Legal Services Commission to appreciate that when providing its new model for advocates remuneration it will be essential:

- a. to gear payment for advocacy services to the four stages of the Outline and in particular
- b. properly to recognise and remunerate not only the CMC and IRH hearings but also the earlier advocates' meetings, the proper and careful conduct of which will be vital to the successful operation of the Outline.

That is all I wish to say, save to wish the meeting well and to look forward to a constructive outcome.

Please note that speeches published on this website reflect the individual judicial office-holder's personal views, unless otherwise stated. If you have any queries please contact the Judicial Communications Office.
