Family Justice Review

Interim Report

Executive Summary and Recommendations

March 2011

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The family justice system

1. Every year 500,000 children and adults are involved in the family justice system. They turn to it at times of great stress and conflict. The issues faced by the system are hugely difficult, emotional and important. It deals with the failure of families, of parenting and of relationships. It cannot heal those failures. But it must ensure it promotes the most positive or the least detrimental outcomes possible for all the children and families who need to use it, because the repercussions can have wide-ranging and continuing effects not just for them, but for society more generally.

2. The legal framework, contained largely in the Children Act 1989, sets out how public and private law cases should be resolved. The core principle is that the welfare of the child should be the paramount consideration in making decisions. The evidence we have received has overwhelmingly endorsed the continuing strength of the legal framework, and we share that view.

3. Public law decisions – often to remove a child or children from the care of their parents and place them in the care of local authorities – are rightly acknowledged as some of the toughest that can be made in any form of court, with heart-wrenching consequences for the children and the parents. Disputes within families – known as private law cases – are often driven by resentment and bitterness, with parties not speaking to each other and refusing to co-operate. In a significant number of these cases, serious child welfare and safeguarding concerns are raised, to a level that may well trigger investigation by local authorities. Without scrutiny, it is possible that these concerns may never have come to light.

4. In all cases, the rights of children need to be considered and upheld. These are defined and made explicit by the United Nations Convention on the Rights of the Child. Article 12 of the Convention makes it clear that children have the right to have their voices heard in decisions that affect their lives.

5. An effective family justice system is needed to support the making of these complex and important decisions. It must be one that:

   - provides children, as well as adults, with an opportunity to have their voices heard in the decisions that will be made;
   - provides proper safeguards to ensure vulnerable children and families are protected;
   - enables and encourages out of court resolution, when this is appropriate; and
   - ensures there is proportionate and skilfully managed court involvement.

6. We intend now to consult widely about the recommendations in this report ahead of our final report in the autumn. We are grateful for the support and advice we have received and continue to receive.

A system under strain

7. We have been impressed by the dedication and capability of those who work in the family justice system. Their work is hugely demanding and often highly stressful. Good working relationships in many areas have led to the development of innovative practice designed to improve the way the system operates. There is a strong legislative framework.

8. But, despite that dedication and capability, the system is not working. Cases now take a length of time that is little short of scandalous, some cases should not be in court at all and the costs are huge.

9. Delay really matters. All our understanding of child development shows the critical importance of a stable environment and of children's needs to develop firm attachments to caring adults. Yet our court processes lead to children living with uncertainty for months and years, with foster parents, in children's homes, or with one parent in unresolved conflict with the other. A baby can spend their first year or much longer living with foster parents, being shipped around town for contact with their parent or parents, while courts resolve their future. This represents a shocking failure, with damaging consequences for children and for society that will last for decades.

10. The number of children involved is rising rapidly. In public law, some 20,000 children were involved in applications in 2006 and almost 26,000 in 2009. In 1989 the average case was expected to take 12 weeks. The average case took 53 weeks in 2010 and, on current trends, the case length time is likely to rise significantly.[1] Increasing delays are not solely a matter of rising caseloads. The number of hearings is increasing, caseloads in Cafcass have increased to the point where it is hard for them to carry out work on all cases, and ever more expert assessments are being ordered.

11. In private law, many fail to resolve conflict independently and turn to court for judicial determination. Unfortunately, this often starts off a lengthy adversarial process with conflict potentially becoming more entrenched. Evidence shows such combative processes harm the children involved and may deepen the rifts that already exist between parents. The number of applications to court has increased steadily in recent years. In 2006 there were over 111,000 children involved in applications for private law orders. In 2009 this had increased to over 137,000. These figures point to an increasing reliance on court processes in the resolution of disputes between couples.

12. The family justice system is also expensive, both for individuals and the state. We have no accurate figures for this, as for so much else about family justice, but we have estimated the cost to government alone (excluding the no doubt significant private costs) as £1.5 billion in 2009-10, of which roughly £0.95 billion

[1] These data come from an internal case management system and do not form part of the national statistics produced by the Ministry of Justice, which can be found here: www.justice.gov.uk/publications/statistics.htm. As such this data set is not subject to the same levels of quality assurance.

is for public law and £0.55 billion for private. To put this into perspective, the total annual local authority spend on looked after children (including spend on children in need in Wales) in England and Wales is around £3.4 billion.

13. There is a wide range of issues to address.

- Children and families do not understand what is happening to them. They can also feel that they are not listened to.
- There are complicated and overlapping organisational structures, with a lack of clarity over who is responsible for what. There is no clear sense of leadership or accountability for issues resolution and improving performance.
- Increasing pressure on processes and the people who work in the system, driven by increasing caseloads, has inflamed tensions and a lack of trust between individuals and organisations.
- There is a lack of shared objectives and control. Decisions are taken in isolation, with insufficient regard to the impact they might have on others.
- Morale amongst the workforce is often low. There are limited opportunities to engage in mutual learning, development and feedback. Much of the work is demanding and requires high levels of skill and commitment, but the status of some parts of the workforce may be an impediment to recruitment and retention.
- There is an almost unbelievable lack of management information at a system-wide level, with little data on performance, flows, costs or efficiency available to support the operation of the system.

14. These are the symptoms of a situation that simply cannot be allowed to continue.

15. There have been at least seven reviews of family justice since 1989, with countless other piecemeal changes. Improvements have been made, yet we have identified much the same problems as those earlier reviews. The chief explanation, in our view, is that family justice does not operate as a coherent, managed system. In fact, in many ways, it is not a system at all.

16. The number of organisations and individuals involved in family justice is large. This makes the task more difficult but the need for effective and coherent working all the greater.

17. More money would not be the answer, even if it were available. Major reform is needed to ensure better outcomes, and make better use of the available resources. In this report we make recommendations for improvements to both public and private law processes. But these will not deliver or be sustained unless, crucially, the family justice system first of all becomes a coherent system.

A Family Justice Service

18. System management can seem remote from the very human issues of family justice but the development of a coherent, clearly articulated system, with a clear system owner, is fundamental.

19. There should be **a Family Justice Service**. The judiciary and the Service together will need to ensure that:

- the interests of children and young people are at its heart and that it provides them, as well as adults, with an opportunity to have their voices heard in decision-making;
- children and families understand what their options are, who is involved and what is happening;
- the service is appropriately transparent and assures public confidence;
- proper safeguards are provided to protect vulnerable children and families;
- out of court resolution is enabled and encouraged, where this is appropriate;
- there is proportionate and skilfully managed court involvement; and
- resources are effectively allocated and managed across the system.

The child's voice

20. At its heart, the Family Justice Service needs to ensure the interests of children and young people are a determining factor in its operation. Children and young people must be given age appropriate information which explains what is happening.

21. The Family Justice Service should also have a role in ensuring the voice of children and young people is heard. **Children and young people should as early as possible in a case be offered a menu of options, to lay out the ways in which they could – if they wish – make their views known**.

System structure

22. **The Ministry of Justice should sponsor the Family Justice Service.** There will need to be close links at both Ministerial and official level to the Department for Education and the Welsh Assembly Government to reflect their wider roles and shared accountabilities in relation to children.

23. Family justice has been treated as the poor relation of criminal justice and is combined with civil justice in management structures. To the users of the system and arguably to society more widely it is more important than either of these. We will examine the types of safeguards necessary to **ensure the interests of the child are given priority in guiding the work of the Service.**

Leadership and management

24. The Family Justice Service will require strong management and governance through a **Family Justice Board**. This should include a balanced group of qualified people with, among others:

    - representation of the interests of children;
    - the President of the Family Division;
    - the interests of appropriate government departments, including the Welsh Assembly Government; and
    - local authorities.

25. **The Family Justice Service should be led by a Chief Executive** with the skills and stature to lead a complex change programme, and to command respect among Ministers, judges, lawyers, local authority managers and social workers, as well as the Service's own staff. He or she should also sit on the Board.

26. While recognising the valuable work that has been done, **the current structure of overlapping bodies should be simplified.** This will include subsuming the work of the Family Justice Council, Local Family Justice Councils, Family Court Business Committees, the National Performance Partnership, Local Performance Improvement Groups and the President's Combined Development Board. **Local Family Justice Boards should also be established**, with consistent terms of reference and membership, at a sensible area-based working level. **They should work closely with local authorities and Local Safeguarding Children Boards.**

27. The judiciary, including magistrates, will be key partners in the operation of the Family Justice Service. Within the judiciary there also needs to be **a clearer structure for management of the family judiciary, by the judiciary**. This is essential to support consistency, improved performance and culture change. There should be **a dedicated post – a Senior Family Presiding Judge – to report to the President of the Family Division on the effectiveness of family work amongst the judiciary. Family Division Liaison Judges should be renamed Family Presiding Judges, working alongside Presiding Judges, reporting to the President of the Family Division and the Senior Family Presiding Judge on performance issues in their circuit**.

28. Those judges with leadership responsibilities should have **clearer management responsibilities. There should be stronger job descriptions, detailing clear expectations of those with leadership roles in respect of management responsibilities and expectations about inter-agency working**. Information on key indicators such as case numbers per judge, court and area; case lengths; numbers of adjournments and numbers of experts should support this approach to judicial management.

29. We have been told consistently about the importance of **judicial continuity**. We agree. If, as a child, you face the prospect of being removed from your home or, as a parent, risk your children being taken away from you, how can it be right that each time you go to court you appear before a different judge? Continuity

will also increase speed and efficiency, both by making sure that the judge knows he or she will take the consequences of earlier case management decisions and by giving familiarity with the case and confidence to the families.

30. We have seen courts where judicial continuity is achieved. If it is possible to achieve this in some courts, we must ensure it is possible in them all. The High Court will be an exception because of the difficulty in ensuring judicial availability in different areas of the country, but this should be limited as far as possible. Where judicial continuity could not be achieved, we would question the capacity of that court to hear family cases. This recommendation applies also to legal advisers and benches of magistrates. The result may be that more public law cases move over time to professional judges. This would in our view be entirely appropriate – the need for judicial continuity outweighs other considerations.

31. Judicial continuity will also promote the much **firmer case management** that is needed. Robust case management, by the judiciary, should be supported with consistent case progression support. **Legislation should also be considered, providing for stronger case management in respect of the conduct of both public and private law proceedings.**

Role of the Family Justice Service

32. The Family Justice Service is not the same thing as a family court service. The Service needs to deliver a proportionate and appropriate response to issues resolution. Where people can resolve their disputes without involving the court, the Family Justice Service should provide them with the information and tools to enable them to do so. The Service should also facilitate court involvement, which must be proportionate to the needs of the children and families involved.

33. The Family Justice Service should, as part of its responsibility for performance and delivery, agree priorities in consultation with its partners. Specifically, the Service should:

- manage the budget of the consolidated functions (see paragraph 34), including monitoring their use of resources during the year and over time;
- provide court social work functions;
- ensure the child's voice is adequately heard;
- procure publicly funded mediation and court ordered contact services in private law cases;
- co-ordinate the professional relationships and workforce development needs between the key stakeholders;
- co-ordinate learning, feedback and research across the system;
- ensure there is robust, accurate, adequately comprehensive and reliable management information; and
- manage a coherent estates strategy, in conjunction with key stakeholders.

34. **Budgets, including family legal aid, should, over time, be consolidated into the Family Justice Service**. **Decisions on spending should be taken at the most local level possible.** In time, this may include pooling as part of Community Budgets.

35. **Criteria should be established for the allocation of resources to the family judiciary and budgets should be set in terms of money, not in sitting days.**

36. It is government policy that public bodies should charge each other for the services they provide. In our view these charges do not make sense in family justice and might influence behaviour in a way that is detrimental to children's interests. They also waste money. **Charges to local authorities for public law applications and to Cafcass for police checks should be removed.**

37. Where disputes require the involvement of the court, the safety and welfare of children in the case is paramount, and Cafcass and Cafcass Cymru play a central role. Local agreements with the courts have promoted closer working relationships. To cement these, to recognise Cafcass' role as adviser to the court, and to ensure children's interests are consistently prioritised, **court social work services should form part of the Family Justice Service, subsuming the role currently performed by Cafcass**.

38. In Wales, these functions are a devolved responsibility of Welsh Ministers, performed by Cafcass Cymru. As a result, court social work services would not be absorbed into the service in Wales. However, the user should still experience the same level of service. This will rely upon **Cafcass Cymru working closely with the Family Justice Service**, the relationship being underpinned by service level agreements.

39. **The Family Justice Service should also be responsible for the provision of publicly funded mediation and support for contact**, which is currently split between Departments.

40. The system will only deliver change if there is **a competent and capable workforce**. During the next stage of our work we shall look in more detail at:

    - workforce recruitment and supply;
    - the core skills all those in the system should have when initially trained; and
    - continuing professional development.

41. Specialisation amongst the judiciary and magistrates also has a clear part to play. We have been told that the practicality and the strain of family work make it wrong to insist on complete specialism. Nevertheless it is our view that both **judges and magistrates should be enabled and encouraged to specialise in family matters**. Careful thought needs to be given to the recruitment criteria for family judges and magistrates. Building on this, **the requirement to hear other types of work before being allowed to sit on family matters should be abolished**. **A requirement for appointment to the family judiciary should, in future, include willingness to specialise.**

42. We commend the work being done, by Professor Eileen Munro's Review and the Social Work Reform Board, to improve the quality of social work across England, and similar efforts through the Social Work Task Group in Wales.

43. There needs to be greater mutual awareness and recognition of the skills required in all the disciplines involved. There should be **inter-disciplinary induction for all those working in the system and a clearer framework for inter-disciplinary working for all those engaged in it**. **The Family Justice Service should co-ordinate the professional relationships and workforce development needs between key stakeholders**. This would ensure that an appropriate inter-disciplinary focus was developed and maintained. The changes we propose in this report will also need significant culture change to be effective.

44. Everyone in the system, including the judiciary, should **share lessons with a view to collective improvement in performance**. The Service should ensure there is a **focus on continuous learning** amongst the professionals involved in family justice, and that practice is able to adapt to changes in social trends, messages from research, demands on its services and user expectations. There should be **consistent quality standards for practice that build on local knowledge, are evidence based and replicable**. Compliance with practice guidelines should be reviewed regularly. There also needs to be a more **co-ordinated system-wide approach to research and evaluation**.

45. Adequately comprehensive and reliable management information is critical. Currently almost nothing is confidently known about performance, cost or efficiency. Paper to and within the courts flows in a way that barely reflects even the invention of computers. Individual IT systems in different agencies have different definitions (what constitutes a case for example) and do not talk to each other. **An IT system, with the ability to support the management of cases**, should be developed. In the short term, the current unsatisfactory IT systems should be adapted in a cost effective manner to get as much information as possible out of them. Robust performance information will need to be fed into the national and local boards, and the judiciary.

46. The court structure should be simplified. **A single family court** should be created, with a single point of entry, in place of the current three tiers of court. All levels of family judiciary (including magistrates) would sit in the family court and work would be allocated depending upon case complexity.

47. The Family Division of the High Court has an increasing number of cases with an international dimension. These cases may arise from the international movement of family members who are the subject of, or parties to, proceedings about children or money; some, however, arise because one or both parties choose to litigate their matrimonial dispute in the High Court of England and Wales. The panel has heard, and accepts, that where proceedings have an international element there is a continuing need for any resulting order to be seen by foreign jurisdictions to come from 'The High Court' rather than the new 'Family Court'. This is particularly so in relation to cases of international child abduction.

48. The **provision of facilities should also be more flexible, and include the use of modern technology and settings outside of the court estate for family hearings.** This should ensure that where cases do require judicial involvement the experience will be as family friendly as possible. **Hearings should be organised in the most appropriate location, routine hearings should use telephone or video technology and hearings that do not need to take place in a court room should be held in rooms that are family friendly,** as far as possible and appropriate.

49. **The establishment of the Family Justice Service also offers the opportunity to review the court estate to create, as far as possible, dedicated family court buildings.** This is likely to result in fewer buildings in fewer locations in major cities (the needs of rural areas may be different) but the greater scale would give advantages in terms of judicial continuity and speed, outweighing the disadvantages of longer travel times.

Public law

What do public law cases involve?

50. Our attention here is focused on applications made to take a child into care. These account for the majority of public law work and involve perhaps the most challenging issues that any part of the justice system has to tackle.

51. By the time that children become the subject of a care order application, they may already have experienced some of the most unacceptable kinds of human behaviour. They may have been subject to violence or sexual abuse, or have lived with people who abuse alcohol, or drugs, or both. They may be suffering from neglect, and emotionally and physically distressed. Their parents may well have faced many of these same things themselves as children. They may now be dealing with severe mental health problems and have significant physical and emotional needs. Relationships within the family may be complex, with a number of different parental figures. Violence or the threat of violence may be part of their daily lives. The problems they face will often be exacerbated by poverty, poor education, poor health and disability.

52. This is a relatively small group of people.

- There were just over 10 million children in England and Wales in 2009.
- Some 394,000 children were classified as ‘in need’ as at 31 March 2010.
- Around 70,000 children were looked after as at 31 March 2010.

53. Local authorities are under duties to put in place, where appropriate, support to safeguard and promote the wellbeing of children. Where the child is at or is likely to be at risk of significant harm there is a clear requirement to act promptly to keep the child safe. When a child is entrusted to the care of the local authority they must provide high quality care. A complex and extensive framework of duties, regulations and indicators govern their actions. They are also subject to extensive internal and external scrutiny.

54. In certain circumstances the proposed actions of the local authority require court scrutiny and authorisation. Essentially these involve the entrusting of primary responsibility for the care of a child to someone other than their birth parents. This may be the local authority (through the means of residential or foster care), care by friends or family, or by way of adoption or special guardianship. The parents do not usually consent to the proposed course of action.

55. Where a child is found to be suffering or likely to suffer significant harm the court may entrust that child's care to another. The court has to be satisfied that this action is in the child's best interests. The court will not reach that decision until it has considered the local authority's care plan for the child.

56. One of the defining characteristics of the public care system in England and Wales (in contrast to most jurisdictions overseas) is the emphasis it places on securing permanence for the child in its legal status, including permanently severing the link between child and birth family through adoption in cases where there is no parental consent. This emphasis on permanence is intended to secure stability and security for children, which is beneficial to them over the longer term. This approach has far reaching consequences for our system: it is clearly right that the courts, in making a care order, should give close scrutiny to a decision that might separate a child from his or her parents permanently.

57. The Children Act 1989 establishes mechanisms to strike a balance between the family's autonomy and the state's role in protecting children. Wherever possible and appropriate, children should be brought up by their own families. Care proceedings are to be brought only when necessary.

58. Clearly it is right that we should try to maintain the integrity of a birth family wherever possible. However, we also know that this is not always possible or in the best interests of children. Local authority care can and does provide a vital safety net for vulnerable children.

The delivery of the public law system

59. The public law system is under severe strain, as noted earlier. The time taken on average to resolve a public law case is now over a year. This figure is likely to rise in the near future.

60. Our starting point is that delay harms children. Long proceedings mean children are likely to spend longer in temporary care, are more likely to suffer placement disruption, and may miss opportunities for permanency. The longer they spend in temporary care, particularly at a young age, the more difficult it becomes to secure them a permanent and stable home. Long proceedings may mean children are subject to unsatisfactory arrangements for contact with their families. They may also delay the implementation of therapeutic and other support intended to address the harm they have suffered.

61. Not all cases can be resolved quickly. Some do need a long time to resolve the issues to reach a just solution in the best interests of the child. But these should be the exception and deliberate, not the norm and happenstance.

62. Delay has no single cause. These are very difficult cases and the stakes are high: the choice may be to remove children from their families or leave them in a home that may be unsafe. All parties involved want to make the right decision and to be confident that this has been done fairly.

63. We now have a culture, created by pressures from parents combined with decisions from the Court of Appeal (and perhaps part of a national trend), where the need for additional assessments and the use of multiple experts is routinely accepted. The increasing numbers of these coupled with the time taken to secure them – partly from the nature of the assessments and partly from a shortage of qualified experts – contributes to delay.

64. Judges have a natural tendency to look for certainty and support in making these difficult and emotionally demanding judgments, perhaps through a human desire to have the decision made unavoidable. This has been exacerbated by lack of trust in the judgement of local authority social workers, driven by concerns over the poor presentation of some assessments coming from often under-pressure staff. This increases the tendency to commission more reports and delay decisions. There is a hope that the combination of time and more expert advice will reconcile parents to accept a decision or at least to go along with it.

65. Cases involve dealing with a complex and shifting picture, in highly conflicted and fraught circumstances. Successful resolution requires strong judicial case management. This has not yet been achieved across the piece.

66. One significant result has been the ever longer and more detailed scrutiny of care plans. This, along with the numerous additional assessments, substitutes itself for, or duplicates, work which should have or has been carried out by local authorities. The consequence is a vicious circle both of mistrust and, now, of some work not being done by local authorities before a case comes to court because they know the court will order the work to be repeated.

67. This occurs in an environment where both resources and relationships are under pressure. Factors such as shortage of court capacity, delays in appointing guardians and the need to meet the various demands of both local authority and court processes create inefficiency. This is further exacerbated by wider failings in the system noted elsewhere.

68. The framework of the Children Act is still highly respected, but there is widespread lack of confidence in the way public law proceedings work. In our view respect for the paramountcy of the welfare of the child is being compromised.

The way forward

69. There is, nevertheless, much to be proud of in our system.

- The decisions to take children into care are not made lightly or arbitrarily. They are carefully considered and are subject to independent and rigorous scrutiny.

- The protection of parents' rights and interests is a clear priority. They have access to significant support particularly from their legal representatives. Legal aid is and should continue to be available to them.

- Although there are concerns about the way the child's voice is heard, their interests and rights are carefully protected through guardians and legal representation. This should continue to be available.
- We seek decisive answers and the decisions of our courts are intended to offer children a sense of permanency that some in other jurisdictions envy.
- There are strict and clear requirements on local authorities when children are in their care. Authorities are held to account for their delivery of or failure to deliver this care, through a variety of mechanisms.

- Caring for children who have experienced or are likely to suffer significant harm is a complex task and local authorities do not always get it right. But for many local authority care can and does offer a safe environment that provides them with better life chances than if they were left in the harmful care of their birth families.

70. Yet it is clear that our systems need significant change. The panel has considered whether the courts should remain the central body for taking all care decisions, and in particular, whether a local panel system sharing responsibility with the courts as in Scotland, for example, might deliver speedier and more flexible justice. We have concluded that the courts in England and Wales should retain their current central role. However, delay must be tackled and responsibilities and processes need to change. This will in turn involve both cultural and system change.

71. Courts have to balance the rights of parents and the interests of children. Too often we believe adult rights are being asserted at the expense of children's best interests. We need to redress this. Secondly judges and the representatives of both adults and children need to recognise the limitations of the law.

72. Too much time is being spent trying to predict the child's future welfare needs through the examination of the detail of the care plan. Yet circumstances change over time and so do children, in ways that often cannot be foreseen when care order decisions are being made. Courts should focus on the fundamental question whether a care order is in the child's best interests. Other means are in place to assure the welfare needs of children who cannot live with their birth families once a care order is made.

73. We need to remove unnecessary duplication. This should release resource and reduce delay. There should be clear expectations within the law and within the system as to how long cases should take.

74. The judiciary remain central to the successful management of cases. We need to equip them to take firm control of a case and manage it efficiently, enabling them to take difficult decisions in challenging circumstances.

75. Change to the courts and judiciary alone will not be sufficient. We also need to improve the control and the quality of the advice and support offered to the court by local authorities, court welfare services and independent experts.

76. Processes need to be stripped back and made sufficiently flexible to bend to the needs of the particular case. These processes need to take account of and support the wider system of which they are part.

The role of courts

77. **Courts should refocus on the core issues of whether the child or children can safely remain with, or return to, the parents or, if not, to the care of family or friends**, as intended at the time of the Children Act 1989. In determining whether a care order is in the best interests of the child the court should substantially reduce its scrutiny of the detail of the care plan. Broadly speaking we would expect the court to be satisfied that the local authority is clear in its intent whether the care plan for the child is:

- planned return of the child to their family;
- plan to place (or explore placing) a child with family or friends as carers; or
- permanent alternative care arrangements, including adoption.

78. The court should not examine detail such as:

- whether residential or foster care is planned;
- plans for sibling placements;
- the therapeutic support for the child;
- health and educational provision for the child; and
- contingency planning.

79. There should be less court focus on quality assuring the detail of the local authority's plans for the child if and when the child is given into their care. This should remove unnecessary debate from the court process, shortening cases and eliminating duplication. We make this recommendation in light of the efforts now underway, through Professor Eileen Munro's Review, the Social Work Reform Board and the work of the Welsh Assembly Government to improve social work practice across England and Wales. Local authorities will of course continue to be expected to develop and implement high quality care plans for children.

Timetabling of cases

80. First, **we seek views on whether a time limit for the completion of care proceedings within six months should be provided for in legislation**. The length of time cases now take is at a level that is simply unacceptable. While there would be a small number of cases where exemptions would need to apply, it may be valuable to state clearly in law our expectations on the time cases should take.

81. Second, within this overall time limit, **cases must be managed strictly in accordance with the 'Timetable for the Child'** so that it draws on a full set of relevant issues including particularly the age of the child. We propose to redefine the concept and strengthen its position in law.

Case management

82. Further, **we need to enable effective and robust case control by the judiciary, supported by the Family Justice Service.** We propose measures intended to:

- confirm the central role of the judge as case manager;
- simplify processes;
- develop wider system reform that will facilitate effective case management; and
- develop the skills and knowledge of judges so they will be better case managers.

83. Achievement of these aims will be supported by reforms suggested elsewhere in our report, in particular by measures to deliver judicial continuity and greater judicial specialisation, as well as improved IT and case management systems.

84. Judicial case management also needs support from court services through wider use of case progression activities. We intend also in the next stage to look at the implications of our recommendations for the Public Law Outline and we will consider how court processes can be made more flexible to reflect the needs of different types of cases.

85. To simplify care proceedings **the requirement to renew interim care orders after eight weeks and then every four weeks should be removed**. In its place we propose that the length and renewal requirements be at judicial discretion, perhaps subject to a six month maximum length before renewal is required. This would be subject to a right to apply to discharge the order in the event that circumstances change.

86. There is unnecessary duplication in the scrutiny of applications for placement orders without parental consent. **The requirement that local authority adoption panels should consider the suitability for adoption of a child whose case is to be before a court should be removed.**[2] The court already fulfils this function and to retain dual scrutiny simply hinders a child's route to a secure, loving and stable home.

Local authority contribution to the court process

87. In her final report, to be published in May, Professor Munro will set out more specific proposals intended to support local authority preparation for court.

[2] We assume that the responsibilities of the panel to approve prospective adopters and match children to adopters will remain.

These will look at the nature and type of assessments to improve the quality, particularly the analysis of the issues, presented to court. The consequence should be a reduced need to commission additional reports from others, and to give judges greater confidence in the decisions they make.

88. We have also heard positive reports of the success in some cases of the 'letter before proceedings' introduced by the Public Law Outline. However, research is needed properly to understand its effectiveness.

Use of experts

89. We need to reduce reliance on expert reports. **The criteria against which it is considered necessary for a judge to order expert reports should be made more explicit and strict.** We seek views during the consultation period on what the criteria should be and how they might be expressed.

90. **Independent Social Workers should only be employed to provide new information to the court that cannot otherwise be provided by the local authority or guardian**. **We also recommend that research be commissioned to examine the evidence base for residential parenting assessments** to help identify the circumstances in which such an assessment would be helpful, and where it would not.

91. These recommendations should help cut out unnecessary assessments. Furthermore, we believe that **the development of multi-disciplinary teams to provide expert reports to the courts has merit.** We seek views on this issue. **Judges should be responsible for instructing experts** as a fundamental part of their case management duties. **The Family Justice Service should oversee monitoring and ensuring the quality of experts**.

92. We shall explore at the next stage different approaches to court scrutiny of expert evidence that have been suggested to us.

Reform of the tandem model

93. A cornerstone of the public law system in England and Wales is the provision of a guardian and legal representative for the child in the court process, known as the tandem model. This is generally held in high regard. It is, however, under severe pressure due to rising workloads and ever longer cases. Some have challenged whether it can be sustained.

94. **The tandem model should be retained but a more proportionate approach is needed.** The core role of the guardian should be to represent and act as the child's voice in support of the court's welfare decision on whether a care order is in the child's best interests. There should be less focus on quality assuring the local authority's plans. The guardian should assist active judicial case management to deepen the court's understanding of how best to help a child within the shortest possible timescale. The core role of the solicitor should be to act as advocate for the child in court and to advise the court on legal matters. With the solicitor taking the lead in court hearings, a guardian need not always be present at court.

95. There may be a case for **the guardian to be involved pre-proceedings.** A pilot project, involving Cafcass and two local authorities, is underway. We will be monitoring the progress of this pilot before making final recommendations in this area.

96. We are also interested to explore the idea of **an 'in-house' tandem model** – where guardian and child's solicitor have the same employer – to facilitate more proportionate working between the children's guardian and child's solicitor.

97. We have found that the IRO has low visibility in the court process. **There need to be effective links between the courts and IROs if judges are to be reassured that there will be continuing scrutiny of the child's care plan. The working relationship between the guardian and the IRO also needs to be stronger.**

Alternative approaches to dispute resolution

98. Our proposals are centred on a belief that court scrutiny of decisions to remove children from their parents is vital, albeit this needs significant improvement. However, the addressing of what are often difficult welfare decisions will always pose challenges within a legal environment. **There is scope further to develop and extend the use of alternatives to court in public law.** Family Group Conferences have a role to play and **the use of mediation in child protection issues should be explored**. A review is in progress of the Family Drug and Alcohol Court in the Inner London Family Proceedings Court, in which a judge leads a rehabilitation programme for substance abusers in care cases. **This model is showing considerable promise and potentially justifies a further roll out**.

Private law

What is private family law?

99. Where marriage has irrevocably broken down, couples seek to divorce and also need to resolve any outstanding financial issues. Where a separation involves children, arrangements need to be made for their care and decisions must be reached about parenting post-separation. These are difficult, emotive issues for anyone to resolve and often bring high tension and distress. The family justice system cannot be expected to fix all of these difficulties. Instead, for those unable to resolve an issue by any other means, it must focus on ensuring the process achieves the best outcomes possible, or the least detrimental, for those involved, especially children.

100. At the same time the state must ensure, when people seek assistance to resolve disputes around separation, that there are sufficient means to identify and protect those who are at risk. The issues in private law disputes – parents raise serious welfare concerns in over half of all contact cases – can mean that the threshold for public law intervention is met, or that immediate action must be taken to safeguard the child.

Issues with the current system

101. Parents can agree arrangements for children following separation with minimal involvement from the court – in fact a study has found the great majority (around 90%) do not go to court. For the other 10% court can become the arena for drawn out intractable disputes over contact and residency of children. Parental conflict damages children. Although courts focus on encouraging parties to reach agreement, parents' perceptions of 'having their day in court' and the adversarial system can exacerbate this conflict. Furthermore, we have heard concerns from both parents and others – such as grandparents – that the length of the case means that existing arrangements become entrenched and they lose all chance of meaningful contact with a child.

102. Using the system is complicated and costly, both emotionally and financially. People enter the system because they are either forced to or are unaware of other ways of finding a resolution.

103. We need to be realistic about the limitations of the state in dealing with these cases. Judges can provide resolution of issues, by virtue of a court order, and judicial determination in family relations is unavoidable in the most difficult cases, but it is a blunt instrument. The very process of achieving a determination may itself cause further harm to the individuals involved and the arrangements may not be successful in the long term.

104. There has been a move within the current private law system to recognise that cases can and often should be diverted away from the courts where it is safe to do so. The range of support available to allow separating families to resolve disputes outside court has developed over the years to include mediation, collaborative law and Separating Parents Information Programmes. These services can support parties to resolve issues themselves through discussion and negotiation that may be more sustainable and at lower cost than going to court. At present, though, many people are made aware of these alternatives only after they have entered the court system, by which time attitudes and behaviours may be entrenched and significant cost has already been incurred.

The way forward

105. The state cannot fix fractured relationships or create a balanced, inclusive family life after separation where this was not the case before separation. Court is generally not the best place to resolve these disputes. Where possible, disputes should be resolved independently or using dispute resolution services such as mediation, when it is safe to do so. Parents who choose to use the court system must understand it will not be a panacea. Courts will only make an order where this is in the best interests of a child. Further, where the court does make an order, this may well not be in line with one or both parents' expectations or wishes. People need to expect that court should be a last resort, not a first port of call.

106. Serious child protection concerns are raised or come to light in a significant proportion of private law cases. Where there are concerns for the child's safety or for a vulnerable adult, swift and decisive action must be taken to protect them.

We intend in the coming months to investigate further this overlap between public and private law.

Principles and process

Parental responsibility

107. First and foremost, there are responsibilities that come with being a parent – to ensure that a child has the emotional, financial and practical support to thrive. These rights, duties, powers and responsibilities are recognised in the Children Act 1989 as parental responsibility (PR). PR does not disappear upon divorce or separation. The question arises, however, whether more should be said in legislation to strengthen the rights of children to a continuing relationship with both parents (and others, for example grandparents) after separation. We heard considerable evidence on this issue. On one side we heard the real distress of parents, usually fathers, who were now unable to see their children. On the other we heard from children's groups and took evidence in Sweden and Australia about the significant damage done to children when legislation creates expectations about a substantial sharing of time against the wishes of the parent with whom the child mostly lives.

108. This is a particularly emotive issue. If parents share parental care fully before separation they are more likely to do so successfully after separation. But, where the converse applies, legislation cannot change that fact. Achieving shared parenting in those cases where it is safe to do so is a matter of raising parental awareness at the earliest opportunity. The welfare of children must always come before the rights of parents. **No legislation should be introduced that creates or risks creating the perception that there is an assumed parental right to substantially shared or equal time for both parents**. But we do recommend that **there should be a statement in legislation to reinforce the importance of the child continuing to have a meaningful relationship with both parents, alongside the need to protect the child from harm.**

109. We have heard representations that **the requirement for grandparents to seek leave of the court** before making an application for contact should be removed but have concluded this **should remain**. But the importance of these and other relationships must be emphasised throughout the process of reaching Parenting Agreements (see paragraph 111 below).

110. From the outset of parenting, there needs to be a greater focus on, and awareness of, the importance of raising a child in a co-operative manner. We see value in **parents being given a short leaflet when they register the birth of their child, providing an introduction to the meaning of PR and what this means in practice**.

Parenting Agreements

111. Parents should be enabled and supported to come to a resolution and to construct a **Parenting Agreement**. This agreement would set out arrangements for the care of children post-separation, covering aspects such as education, health, finance and the arrangements for how the child is to spend time with

each parent. This is a difficult and potentially traumatising time for the children. There should be an expectation that children (having regard to their age and understanding) would participate directly in the formation of the agreement by having their views heard in a meaningful way. Children should feel consulted on decisions that will affect them, and be informed of the outcomes - especially where these are not in line with their wishes. Overall the aim of encouraging Parenting Agreements is to increase confidence and trust by focusing the parents on how their parental responsibility is to be discharged following separation, in their child's best interests, narrowing the scope of any dispute.

Changes to terms

112. **Residence and contact orders should no longer be available to parents who have PR for their child, but disputes over the division of a child's time between parents should instead be resolved by a specific issue order**. This is intended to reduce both the likelihood of long and unfocused hearings, and to move from a sense of a 'winner' in terms of 'awarding' residence and contact.

113. We plan to give further thought to how disputes should be resolved where fathers do not have PR. Our expectation is that a **father without PR who wishes the court to consider the child living with him (currently a residence order) should first apply for PR, and then negotiate for this to be included in the Parenting Agreement, or apply for a specific issue order. The full range of the four orders under section 8 of the Children Act 1989 should remain open to a father who does not have PR or to other non-parental relatives**.

The private law process

114. **An online information hub and helpline should be established** to offer support and advice in a single, easy-to-access point of reference at the beginning of the process of separation or divorce. This will help people to make informed decisions regarding how best to resolve the issues they face as part of their separation. The hub will also contain information to ensure that those who feel they are at risk can swiftly alert support services. It would collate:

- clear guidance about parents' responsibilities towards their children whether separated or not, including their roles and responsibilities as set out in legislation;
- information and advice about services available to support families, whether separated or not;
- information and advice to resolve family conflicts, including fact-sheets, case studies, peer experiences, DVD clips, modelling and interactive templates to help with Parenting Agreements;
- advice about options for supported dispute resolution, which would highlight the benefits of alternative forms of dispute resolution, including mediation, and Separated Parents Information Programmes (PIPs);
- information about court resolution, should alternative dispute resolution not be suitable, and costs of applications;

- support for couples to agree child maintenance arrangements;
- guidance on the division of assets; and
- what to do when there are serious child welfare concerns.

115. Where individuals feel, after they have accessed the hub, that they do need further help or the service of the court to resolve any outstanding issues, **it should be compulsory that they meet a mediator**, trained and accredited to a high professional standard, **who should**:
    - assess the most appropriate intervention, including mediation and collaborative law, or whether the risks of domestic violence, imbalance between the parties or child protection issues require immediate referral to the family court; and
    - provide information on local dispute resolution services and how they could support parties to resolve disputes.

116. The process will allow for emergency applications to court but exemptions should be narrow.

117. Experience in Connecticut and Australia shows the importance and difficulty of this stage in assessing the risks of for example domestic violence. It is important at this point to be aware of the potential for risk, even when parties are seemingly in agreement, and to deal with safeguarding concerns appropriately.

118. Having been assessed, **parents should be required then to attend a Separated Parents Information Programme**, which should include a description of the relevant law, the court process and its likely costs. Experience shows that the programme can deter parents from court and bring them to agreement when they realise the effects on their children, the cost, and the fact that the judge will not necessarily condemn their former partner.

119. **Parents should thereafter, if necessary, attend mediation or another form of accredited dispute resolution**, for example collaborative law. The focus will be on providing support for the development of a Parenting Agreement. We would anticipate that only those cases where an exemption is raised by a professional based, for example, on welfare concerns, would proceed directly to the court process. Attendance at dispute resolution cannot be compulsory, unlike the assessment and the PIP, but the aim must be that this becomes normality. The mediator will need to be the case manager until it goes to court, if that turns out to be necessary.

120. **Mediators should at least meet the current requirements set by the Legal Services Commission. These standards should themselves be reviewed in the light of the new responsibilities being laid on mediators. Mediators who do not currently meet the LSC standards should be given a specified period in which to achieve them.**

121. Only in cases where parents are unable to agree about a specific aspect of a Parenting Agreement, or in those cases where an exemption is raised by a trained professional, will one or both of the parties be able to apply to court for a

determination on a **specific issue**. **Safeguarding checks should be completed at the point of entry into the court system**. At present they are completed by Cafcass post-receipt of information from HMCS. This should be a function of the Family Justice Service in future. These checks help to identify serious welfare concerns which should, as now, be referred to the local authority.

122. The panel has received universally positive accounts of the operation of the President's Private Law Programme, with its emphasis upon the First Hearing Dispute Resolution Appointment (FHDRA) at which the judge and a Cafcass officer intervene in order to resolve issues at that early stage. **We do not recommend any alterations in the FHDRA process**.

123. Where further court involvement is required after the FHDRA, **a 'track' system ('simple' or 'complex') to match the level of complexity of the case will apply**. The court will allocate the case to the 'simple' or 'complex' track and will also confirm the level of judiciary at which the case should proceed. With an appropriate track identified, the focus should then be on the resolution of, or determination of, the specific issue.

124. Where cases are on the complex track, we recommend that the judge who is allocated to hear the case at that second hearing be the judge for that case throughout.

125. Judges will retain the power to order parties to attend a mediation information session and **may make cost orders where it is felt that one party has behaved unreasonably**.

126. **Where an order is breached, the case should go straight back to the court, to the same judge. It should be heard within a fixed number of days, with the dispute resolved at a single hearing. If an order is breached after 12 months, the parties should be expected to return to Dispute Resolution Services before returning to court to seek enforcement.**

127. The panel was asked to consider a further issue, touched on in the recent DWP Green Paper, *Strengthening families, promoting parental responsibility: the future of child maintenance,* whether contact and maintenance should be linked. This is an emotive issue and we are grateful to those who have provided us with excellent submissions in a short time. We firmly believe, in the interests of the child, that there should be no automatic link between contact and maintenance. However, when contact is continually frustrated and it is in the child's best interests, we think there is a case for providing **an additional enforcement mechanism for the courts to alter or suspend the payment of maintenance via the Child Maintenance Enforcement Commission**.

Ancillary relief

128. Those in dispute about money or property **should access the information hub and be assessed for mediation** in the same way as set out above.

129. Changes to the substance of the law in relation to ancillary relief are outside the scope of this Review. But the panel heard suggestions that legislative change to

establish a codified framework could reduce the need for judicial determination. **The panel believes government should explore this further**.

Divorce processes

130. **The process for initiating divorce will begin with the hub and should be dealt with administratively in the Family Justice Service, unless the divorce is disputed**.

131. **The panel proposes removing the current two-stage process of decree nisi and decree absolute, replacing this with a single notice of divorce.**

Fees

132. **Fees in private law should in principle reflect the full cost of services**. However, this will depend on achieving a better understanding of costs, affordability and an appropriate remissions policy.

Financial Implications

133. It is not possible to cost our proposals in the absence of information about the costs of the current system, but we believe that by removing duplication, refocusing the court's attention and encouraging other methods of dispute resolution costs will be reduced. We will continue to work on this in the coming months.

Implementation

134. These recommendations have the potential for fundamental change to the family justice system in England and Wales. They are not straightforward. Time and effective planning will be needed to ensure successful implementation. Some recommendations will need primary legislation; others can be implemented quite quickly. A phased approach within a timetable for change will be important, as will clear direction and leadership, mirroring that required in the Family Justice Service, and recognising the fragility of the current system, the pressures on it, and the scale of change that needs to be achieved.

iii Family Justice Review – List of recommendations

- We strongly endorse the continuing value of the framework and core principles of the Children Act 1989. (Paragraph 2.21)

A Family Justice Service

- There should be a Family Justice Service. (Paragraph 3.2)
- The Family Justice Service should ensure that the interests of children and young people are at the heart of its operation. (Paragraph 3.4)
- Children and young people should be given age appropriate information which explains what is happening when they are included in disputes being dealt with by the Family Justice Service. (Paragraph 3.7)
- Children and young people should as early as possible in a case be supported to be able to make their views known and older children should be offered a menu of options, to lay out the ways in which they could – if they wish – do this. (Paragraph 3.12)
- The Ministry of Justice should sponsor the Family Justice Service. There will need to be close links at both Ministerial and official level with the Department for Education and Welsh Assembly Government. (Paragraph 3.27)
- Safeguards should be built in to ensure the interests of the child are given priority in guiding the work of the Family Justice Service. (Paragraph 3.28)
- The Service should be led through a Family Justice Board and a Chief Executive. (Paragraph 3.36)
- The current range of groups and meeting arrangements should be streamlined through the creation of the Family Justice Service to subsume the work currently performed by the Family Justice Council, Local Family Justice Councils, Family Court Business Committees, the National Performance Partnership, Local Performance Improvement Groups and the President's Combined Development Board. (Paragraph 3.43)
- Local Family Justice Boards should be established, with consistent terms of reference and membership. They should work closely with Local Safeguarding Children Boards. (Paragraph 3.43)
- A dedicated post – a Senior Family Presiding Judge – should report to the President of the Family Division and the Senior Presiding Judge on the effectiveness of family work amongst the judiciary. (Paragraph 3.53)
- Family Division Liaison Judges should be renamed Family Presiding Judges, reporting to the Senior Family Presiding Judge on performance issues in their circuit. (Paragraph 3.53)
- Judges with leadership responsibilities should have clearer management responsibilities. There should be stronger job descriptions, detailing clear expectations of management responsibilities and inter-agency working. (Paragraph 3.54)

- Information on key indicators such as case numbers per judge, court and area, case lengths, numbers of adjournments and number of experts should support this approach to judicial case management. (Paragraph 3.55)
- There should be judicial continuity in all family cases. The High Court will be an exception but this should be limited as far as possible. This recommendation applies also to legal advisers and benches of magistrates. (Paragraph 3.60)
- Robust case management by the judiciary should be supported with consistent case progression resource. (Paragraph 3.63)
- Legislation should be considered to provide for stronger case management provision in respect of the conduct of both public and private law proceedings. (Paragraph 3.65)
- Criteria should be established for the allocation of resource to the family judiciary and budgets should be set in terms of money, not in sitting days. (Paragraph 3.75)
- Budgets, including family legal aid, should, over time, be consolidated into the Family Justice Service. Decisions on spending should also be taken at the most local level possible. (Paragraph 3.76)
- Charges to local authorities for public law applications and to Cafcass for police checks should be removed. (Paragraph 3.86)
- Court social work services should form part of the Family Justice Service, subsuming the role currently performed by Cafcass. These functions will continue to be a devolved responsibility of the Welsh Assembly Government, performed by Cafcass Cymru. But there should be a close working relationship between Cafcass Cymru and the Family Justice Service, underpinned by service level agreements. (Paragraphs 3.104, 3.105)
- The Family Justice Service should be responsible for procuring publicly funded mediation and support for contact. (Paragraphs 3.106, 3.107)
- Judges and magistrates should be enabled and encouraged to specialise in family matters. (Paragraph 3.113)
- The requirement to hear other types of work before being allowed to sit on family matters should be abolished. A requirement for appointment to the family judiciary should, in future, include a willingness to specialise. (Paragraph 3.113)
- There should be inter-disciplinary induction for all those working in the system and a clear framework for inter-disciplinary working for all those engaged in it. The Family Justice Service should co-ordinate the professional relationships and workforce development needs between key stakeholders. (Paragraph 3.118)
- There should be quality standards for system-wide processes that build on local knowledge, are evidence-based and replicable. Compliance with practice guidelines should be reviewed regularly and this should include the role and performance of local authorities and wider users. There also needs to be a more co-ordinated and system-wide approach to research and evaluation. (Paragraphs 3.127, 3.128)
- An integrated IT system, with the ability to support management of cases, should be developed. In the short term, current IT systems should be adapted in a cost effective manner. (Paragraph 3.142)

- Robust performance information should be fed into the national and local boards, and the judiciary. (Paragraph 3.142)
- A single family court should be created, with a single point of entry, in place of the current three tiers of court. All levels of family judiciary (including magistrates) should sit in the family court and work would be allocated depending upon case complexity. (Paragraph 3.151)
- Some cases, particularly those with an international element or where, under the High Court's inherent jurisdiction, life and death decisions are made, should be described as being determined in the High Court, Family Division rather than in the single Family Court. (Paragraph 3.152)
- Court hearings should be organised in the most appropriate location. Routine hearings should use telephone or video technology wherever possible, and hearings that do not need to take place in a court room should be held in rooms that are family friendly as far as possible and appropriate. (Paragraph 3.159)
- The estate for family courts should be reviewed to reduce the number of buildings in which cases are heard, to promote efficiency, judicial continuity and specialisation. Exceptions should be made for rural areas where transport is poor. (Paragraph 3.161)

Public law

- Courts must continue to play a central role in public law in England and Wales. But this role should be refocused, with changes in the ways of working that will affect the family justice system more widely. (Paragraph 4.144)
- Courts should refocus on the core issues of whether the child is to live with parents, other family or friends, or be removed to the care of the local authority. Other aspects and the detail of the care plan should be the responsibility of the local authority. (Paragraph 4.160)
- A time limit for the completion of care and supervision proceedings within six months should be put into legislation. (Paragraph 4.176)
- Cases must be managed and timetabled strictly in accordance with the ‘Timetable for the Child’. This concept needs to be redefined and given greater legal force. (Paragraph 4.185)
- The Family Justice Service should manage the task of developing and maintaining the detailed criteria that will support judges in drawing up the Timetable. (Paragraph 4.192)
- We propose a package of measures intended to enable effective and robust case control by the judiciary in public law cases:
    - courts should strengthen the use of the case progression function; (Paragraph 4.206)
    - courts must continue to work to apply the PLO. We intend at the next stage to consider the implications of our proposals for the PLO; (Paragraph 4.208)
    - the requirement to renew Interim Care Orders after eight weeks and then every four weeks should be removed. Judges should be allowed discretion to grant

interim orders for the time they see fit subject to a maximum of six months. The courts' power to renew should be tied to their power to extend proceedings beyond six months; (Paragraph 4.210) and

- we need to develop the skills and knowledge of judges so they will be better case managers. We shall consider this in public law, in the context of wider workforce skills, in the coming months. (Paragraph 4.214)

- The requirement that local authority adoption panels should consider the suitability for adoption of a child whose case is before the court should be removed. (Paragraph 4.212)
- We support Professor Eileen Munro's recommendations in *'The Child's Journey'* about how local authorities can contribute to reducing delays in care proceedings. (Paragraph 4.220)
- We encourage use of the 'letter before proceedings'. We recommend research be undertaken about its impact. (Paragraph 4.226)
- We recommend that judges should be given clearer powers to enable them to refuse expert assessments and the relevant legislative provisions revised accordingly. (Paragraph 4.227)
- Independent Social Workers should only be employed to provide new information to the court, not as a way of replacing the assessments that should have been submitted by the social worker or the guardian. The relevant rules should reflect this. (Paragraph 4.228)
- Research should be commissioned to examine the value of residential assessments of parents. (Paragraph 4.230)
- The development of multi-disciplinary teams to provide expert reports to the courts has merit. (Paragraph 4.233)
- The judge should be responsible for instructing experts as a fundamental part of case management. (Paragraph 4.239)
- The Family Justice Service should be responsible for identifying and commissioning experts, working closely with local judges to ensure a focus on quality, timeliness and value for money. Multi-disciplinary teams may well have value. (Paragraph 4.240)
- The tandem model should be retained but it needs to be used in a more proportionate way. (Paragraph 4.247)
- The merit of using guardians pre-proceedings needs to be considered further. (Paragraph 4.260)
- The merit of developing an 'in-house' tandem model needs to be considered further. (Paragraph 4.261)
- There need to be effective links between the courts and IROs and the working relationship between the guardian and the IRO needs to be stronger. (Paragraph 4.269)
- There should also be more formal arrangements within local authorities to ensure that the most senior levels, including the Director for Children's Services and the

Lead Member, keep fully in touch with how care plans are being implemented. The IRO has a potential role to play here. (Paragraph 4.270)

- Alternatives to some current court processes should be developed and extended:
  - Family Group Conferences can be useful although their effectiveness needs more research; (Paragraph 4.279)
  - formal mediation approaches in public law proceedings may have potential; (Paragraph 4.285) and
  - the Family Drug and Alcohol Court in the Inner London Family Proceedings Court shows considerable promise. (Paragraph 4.290)

Private law

- No legislation should be introduced that creates or risks creating the perception that there is a parental right to substantially shared or equal time for both parents. (Paragraph 5.76)
- A statement should be inserted into legislation to reinforce the importance of the child continuing to have a meaningful relationship with both parents, alongside the need to protect the child from harm. (Paragraph 5.77)
- The need for grandparents to apply for leave of the court before making an application for contact should remain. (Paragraph 5.82)
- Parents should be given a short leaflet when they register the birth of their child, providing an introduction to the meaning and practical implications of parental responsibility (PR). (Paragraph 5.86)
- Parents should be encouraged to develop a Parenting Agreement to set out arrangements for the care of their children post-separation. (Paragraph 5.90)
- Residence and contact orders should no longer be available to parents who hold PR, but disputes over the division of a child's time between parents should instead be resolved by a specific issue order. (Paragraph 5.95)
- The terms, forms and evidence required by the court should also be reviewed to reduce their contribution to conflict. (Paragraph 5.95)
- A father without PR who wishes the court to consider the child living with him (currently a residence order) should first apply for PR, and then negotiate for this to be included in the Parenting Agreement or apply for a specific issue order. If a father does not wish to seek PR he is still able to make a contact application. (Paragraph 5.97)
- The full range of the four orders under Children Act 1989, section 8 should remain available to non-parental relatives. (Paragraph 5.99)
- An online information hub and helpline should be established to give information and support for couples to resolve issues following divorce or separation outside court. (Paragraph 5.114)
- Provision should be made to ensure that a signed Parenting Agreement has weight as evidence in any subsequent parental dispute. (Paragraph 5.118)
- 'Alternative dispute resolution' should be rebranded as 'Dispute Resolution Services', in order to minimise a deterrent to their use. (Paragraph 5.123)

- Where intervention is necessary it should be compulsory for the parties to attend a session with a mediator, trained and accredited to a high professional standard, who should:
  - assess the most appropriate intervention, including mediation and collaborative law, or whether the risks of domestic violence, imbalance between the parties or child protection issues require immediate referral to the family court; and
  - provide information on local Dispute Resolution Services and how they could support parties to resolve disputes. (Paragraph 5.125)
- Judges will retain the power to order parties to attend a mediation information session and may make cost orders where it is felt that one party has behaved unreasonably. (Paragraph 5.125)
- The mediator tasked with the initial assessment will need to be the case manager until an application to court is made. (Paragraph 5.127)
- The assessment will allow for emergency applications to court but the exemptions should be narrow. (Paragraph 5.129)
- Those parents who are still unable to agree should next attend a Separating Parent Information Programme and thereafter if necessary mediation or other dispute resolution service. (Paragraph 5.131)
- Mediators should at least meet the current requirements set by the Legal Services Commission. These standards should themselves be reviewed in the light of the new responsibilities being laid on mediators. Mediators who do not currently meet those standards should be given a specified period in which to achieve them. (Paragraph 5.135)
- Where agreement cannot be reached, having been given a certificate by the mediator, one or both of the parties will be able to apply to court for determination on a specific issue. (Paragraph 5.139)
- Safeguarding checks should be completed at the point of entry into the court system for cases involving children. (Paragraph 5.142)
- The First Hearing Dispute Resolution Appointment (FHDRA) should be retained. Where further court involvement is required after this, the case will be allocated to a track system according to complexity. (Paragraph 5.146)
- Where cases are on a complex track, the judge who is allocated to hear the case after a First Hearing Dispute Resolution Appointment must remain the judge for that case. (Paragraph 5.148)
- Where an order is breached, a party should have access to immediate support to resolve the matter swiftly and the current enforcement powers should be available. The case should be heard within a fixed number of days, with the dispute resolved at a single hearing. If an order is breached after 12 months, the parties should be expected to return to Dispute Resolution Services before returning to court to seek enforcement. (Paragraphs 5.159, 5.160)
- There should be no automatic link between contact and maintenance. When contact is continually frustrated and it is in the child's best interests, the courts should have an additional enforcement mechanism available to enable them to alter or suspend the payment of maintenance. (Paragraph 5.166)

- People in dispute about money or property should be expected to access the information hub and should be required to be assessed for mediation. (Paragraph 5.169)
- Ancillary relief should be separately reviewed. (Paragraph 5.172)
- The process for initiating divorce should begin with the online hub and should be dealt with administratively in the Family Justice Service, unless the divorce is disputed. (Paragraph 5.175)
- The current two-stage process of decree nisi/decree absolute should be replaced by a single notice of divorce. (Paragraph 5.176)
- Fees in private law should in principle reflect the full cost of services. However, this will depend on achieving a better understanding of costs, affordability and an appropriate remissions policy. (Paragraph 5.178)