

Family Justice Review

Final Report

Executive Summary and Recommendations

November 2011

ii Executive Summary

1. We published our interim report in March. This is our final report, which reflects our conclusions following well over 600 responses to our consultation and input from meetings in many parts of the country. We have also had the benefit of the Justice Select Committee's report on the operation of the family courts, published in July.
2. This final report aims to be a free standing document but does not analyse the issues facing the family justice system in the detail of the interim report. It sets out our final recommendations for reform, highlighting where these have changed and where they have not. It also includes expanded sections on the involvement of children and on workforce development.

Why change is needed

3. The family justice system deals with the failure of families, of parenting and of relationships, often involving anger, violence, abuse, drugs and alcohol. The decisions taken by local authorities and courts have fundamental long term consequences for children, parents and for society generally.
4. There was general agreement that the legal framework is robust. We should be proud of this and in particular the core principle that the welfare of the child should be the paramount consideration in all decisions affecting them.
5. But the family justice system also faces immense stresses and difficulties. Some apply only in public law or private law but others are more systemic. Respondents to the consultation shared our deep concern about the way the system currently operates, and there was widespread agreement about our diagnosis.
 - Cases take far too long. With care and supervision cases now taking on average 56 weeks (61 weeks in care centres) the life chances of already damaged children are further undermined by the very system that is supposed to protect them. And in private law, an average of 32 weeks allows conflict to become further entrenched and temporary arrangements for the care of children to become the default.
 - The cost both to the taxpayer and often the individual is high. Many respondents saw a need for increased spending. But we are not convinced that current resources are spent in the most efficient and effective way.
 - Both children and adults are often confused about what is happening to them. The need to address this will rise with the likely increase in the number of people who represent themselves in private law cases.
 - Organisational structures are complicated and overlapping, with no clear sense of leadership or accountability. No one looks at the performance of the system as a whole.
 - Individuals and organisations across different parts of the family justice system too often do not trust each other.

- There is no set of shared objectives to bind agencies and professionals to a common goal and to support joint working and planning between them.
- Morale can be low and the status of those working in some parts of the system does not match the levels of skill and commitment.
- Information and IT are wholly inadequate to support effective management and processes.

The family justice system

6. These issues show a set of arrangements in a slow building crisis. Family justice does not operate as a coherent, managed system. In fact, in many ways, it is not a system at all. Our proposals aimed to address this and focus on:
 - ensuring the voices of children and young people are heard, and that they understand the decisions that affect them;
 - the creation of a dedicated, managed Family Justice Service;
 - the need for improved judicial leadership and a change in judicial culture;
 - improvements to case management;
 - ensuring the way in which the courts are organised is streamlined and more effective; and
 - ensuring there is a competent and capable workforce, through effective workforce development.
7. Our proposals are designed to work in tandem with the reforms to child protection practice recommended by Professor Eileen Munro and with the work of the Social Work Reform Board.

The child's voice

8. Children's interests are central to the operation of the family justice system. Decisions should take the wishes of children into account and children should know what is happening and why. People urged us to consider the need to take great care in consulting children, and for this to be handled sensitively and to take into account the child's age and understanding.
9. **Children and young people should be given age appropriate information to explain what is happening when they are involved in cases. They should as early as possible be supported 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.**
10. The work needs skilled professional support. **The Family Justice Service** (see paragraphs 13 to 25) **should take the lead in developing and disseminating national standards and guidelines on working with children and young people in the family justice system.**

11. We were also impressed by the work undertaken by the Cafcass Young People's Board. This work should be maintained through **a Young People's Board for the Family Justice Service**.
12. Recent developments in Wales to introduce the **Rights of Children and Young Persons Measure (Wales) 2011** should be closely monitored.

A Family Justice Service

13. The need for leadership and coordination of family justice was widely recognised by respondents to the consultation. The best way to achieve this has been debated since our interim report was published. To create a new organisation both to take over some existing functions and also to coordinate and influence others is complicated and affects established interests. There are financial issues. Some have raised concerns about a possible effect on judicial independence. We also accept that we were ambiguous in a number of areas in the interim report. So we have revisited the objectives and possible models for management of the system.
14. The core aim should be to support delivery of the best possible outcomes for children who come into contact with the family justice system, with a particular focus on reducing delay. Our intention is not to recommend structural change for the sake of it. The need is a central resource to identify, suggest and where appropriate deliver practical ways to improve the way the system works.
15. All options to achieve this need to be assessed against their ability to deliver a range of functions to:
 - provide appropriate leadership nationally and locally;
 - agree national standards against which those operating at national and local level are measured;
 - ensure clarity of accountability nationally and locally, and between individual agencies and services;
 - ensure incentives align with strategic priorities;
 - ensure there is capability and capacity nationally and locally to enable the system to operate effectively and efficiently, including the generation of management information and support for training within a responsibility for workforce strategy;
 - optimise the use of resources nationally and locally to secure value for money;
 - enable and drive continuous improvement; and
 - be able to respond to change.
16. A further key criterion is whether a new organisation would have the position (status, legal role, or budget) to be taken seriously even where it cannot give instructions.

17. There is a range of possible models. The government will need to give detailed consideration to the feasibility and implications of these options. Any structural change will require investment. We understand that no new money is available to fund change before 2014/15.
18. Our view is that **a Family Justice Service should be established, sponsored by the Ministry of Justice (MoJ), with strong ties at both Ministerial and official level with the Department for Education (DfE) and Welsh Government. As an initial step, an Interim Board should be established, which should be given a clear remit to plan for more radical change on a defined timescale towards a Family Justice Service.**¹
19. This would provide a focal point and leadership to address the issues the family justice system faces as a whole. The Family Justice Service would have responsibility for court social work services, provision of mediation and out of court resolution services. It would also have a role in setting quality standards and monitoring spend in relation to expert witnesses. There is potential in due course for the Service to manage more directly the supply of expert witnesses, as well as solicitors for children. To bring these services together would have benefits in itself and would ensure the Family Justice Service had a budget and hands on experience of delivery.
20. **The Family Justice Service should have strong central and local governance arrangements. The roles performed by the Family Justice Council will be needed in any new structure but they will need to be exercised in a way that fits with the final design of the Family Justice Service (and Interim Board).**
21. **The Family Justice Service should be responsible for the budgets for court social work services in England, mediation, out of court resolution services and, potentially over time, experts and solicitors for children.**
22. In our view the policy that public bodies should charge each other for the services they provide does not make sense in family justice: either they change behaviour, in which case they risk damage to children, or they do not, in which case they are pointless. **Charges to local authorities for public law applications and to local authorities and Cafcass for police checks in public and private law cases should be removed.**
23. To ensure the interests of children are central, **a duty should be placed on the Family Justice Service to safeguard and promote the welfare of children in performing its functions. An annual report should set out how this duty has been met.**
24. Current IT systems are wholly inadequate. **An integrated IT system should be developed for use in the Family Justice Service and wider family justice**

¹ In references to the Family Justice Service, we envisage these functions initially being performed by the Interim Board.

agencies. This will need investment. In the meanwhile there should be an urgent review of how better use could be made of existing systems.

25. The Family Justice Service will also have a role in promoting continuous improvements in practice amongst family justice professionals. **The Family Justice Service should develop and monitor national quality standards for system wide processes, based on local knowledge and the experiences of service users. There should be a coordinated and system wide approach to research and evaluation, supported by a dedicated research budget (amalgamated from the different bodies that currently commission research). The processes by which research is transmitted around the family justice system should also be reviewed and improved.**

Judicial leadership and culture

26. Our recommendations here are addressed mostly to the judiciary not to government.
27. Improvements to the family justice system cannot be achieved through organisation and governance alone. Changes to the way people do things are essential, and here the judiciary are key. Often simply their legal standing and presence in a case is the catalyst for parties to resolve their issues, change their behaviour or accept that a proposed action is in the best interests of their children. But changes are needed to address the variety in ways of working in different courts and areas of the country.
28. Stronger leadership and management arrangements for the judiciary should support consistency, improved performance and culture change. Some feared this might reduce judicial independence, but there are many, including some of the most senior judges, who share our view that management of judges by judges, supported by effective measurement and job descriptions, is entirely compatible with it.
29. **A Vice President of the Family Division should support the President of the Family Division in his leadership role, monitoring performance across the family judiciary. Family Division Liaison Judges should be renamed Family Presiding Judges, reporting to the Vice President of the Family Division on performance issues in their circuit.**
30. **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. Information on key indicators for courts and areas should be made available to the Family Justice Service. Information on key indicators for individual judges should be available to those judges as well as judges with leadership responsibilities. The judiciary should agree the key indicators.**
31. Some Designated Family Judges are unclear about whether their leadership responsibilities extend to Family Proceedings Courts. **Designated Family Judges should have leadership responsibility for all courts within their**

area. They will need to work closely with Justices' Clerks, family bench chairmen and judicial colleagues.

32. Nearly everyone has told us at every stage how important it is to have the same judge throughout a case. **The aim should be judicial continuity in all family cases.** We recognise that to achieve continuity will need changes to the work patterns of some judges. **A willingness to adapt work patterns to be able to offer continuity should be a condition for the ability to take family work.** If some courts can achieve continuity it should be possible in all.
33. There are practical barriers to immediate implementation in the High Court, but **the President of the Family Division should consider what steps should be taken to allow judicial continuity to be achieved in the High Court. In Family Proceedings Courts judicial continuity should if possible be provided by all members of the bench and a legal adviser. If this is not possible, the same bench chair, a bench member and a legal adviser should provide continuity.**
34. Those who spend a minority of their time on family matters lack the confidence for tight case management and will have difficulty in achieving judicial continuity. **Judges and magistrates should be enabled and encouraged to specialise in family matters. Appointment to the family judiciary should include consideration of a willingness to specialise in family matters.** We have heard representations from magistrates that the limitation on the number of days they may sit is unnecessary and prevents specialisation in family matters. **The restriction on magistrate sitting days should be reviewed.**
35. Stronger case management is the partner of judicial continuity. Everyone in the system must play his or her part to support effective case progression. Support to case progression is an essential part of the functions that Her Majesty's Courts and Tribunals Service (HMCTS) should provide to the judiciary. The judiciary also need to take an active role ensuring matters are followed up effectively when parties do not progress the case as expected. **HMCTS and the judiciary should review and plan how to deliver consistently effective case management in the courts.**

The courts

36. Recent years have seen closer working between the three different types of family court. But difficulties and inconsistencies remain, with wide variations nationally in how different cases are allocated to different courts. The current family court structure is also quite rigid. **A single family court, with a single point of entry, should replace the current three tiers of court. All levels of the family judiciary (including magistrates) should sit in the family court and work should be allocated according to case complexity.**
37. To remove the distinctions between different types of District Judge would enable greater flexibility in a single family court. **The roles of District Judges working in the family court should be aligned.** In addition to increased flexibility in how the judiciary are deployed, **there should be flexibility for legal advisers to conduct work to support judges across the family court.**

38. The position of the High Court should not be undermined in creating a single family court. **The Family Division of the High Court should remain, with exclusive jurisdiction over cases involving the inherent jurisdiction and international work that have been prescribed by the President of the Family Division as being reserved to it. All other matters should be heard in the single family court, with High Court judges sitting in that court to hear the most complex cases and issues.**
39. The provision of court facilities should also be more flexible. **Routine hearings should use telephone or video technology wherever appropriate. Hearings that do not need to take place in a court room should be held elsewhere. Court buildings should be as family friendly as possible** to overcome the common complaint that the courts are daunting and intimidating places for families.
40. Capital investment will be needed in the longer term if there are to be dedicated family court buildings. Even without this **HMCTS should review the estate for family courts 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.** The needs of London require particular attention. **The operation and arrangement of the family courts in London should be subject to further review by the judiciary and HMCTS.**

Workforce

41. The skills and attitudes of people are at least as important as legislation and process in supporting reform of the family justice system. Since our interim report was published we have met training bodies and sector skills councils, gathering among other things information on recruitment requirements, learning and development offers and performance management schemes, to compare provision and identify areas for improvement.
42. We have identified a lack of opportunity for people to learn together, to gain mutual clarity about roles and responsibilities and to work together to overcome problems. **The Family Justice Service should develop a workforce strategy along with an agreed set of core skills and knowledge. There should also be an inter-disciplinary induction course** for all those who come to work in the family justice system.
43. Continuing professional development (CPD) is clearly important to keep people up to date with changes in law, practice and the latest research. **Professional bodies should review CPD schemes to ensure their adequacy and suitability in relation to family justice.**
44. Although some joint training exists, its quantity and quality are variable. **The Family Justice Service should develop annual inter-disciplinary training priorities for the workforce to guide the content of inter-disciplinary training locally.**

45. Review after review of child protection has emphasised the importance of information sharing between agencies and practitioners. The same is true of family justice but progress is hampered by a lack of qualitative discussion and feedback to inform practice improvements. **A pilot should be established in which judges and magistrates would learn the outcomes for children and families on whom they have adjudicated. There should also be a system of case reviews of process to help establish reflective practice in the family justice system.**
46. We welcome the establishment of the Judicial College. At present it seems that each jurisdiction has separate training. It may be preferable to have a core set of training that is common to all areas and then separate modules for the different jurisdictions. **The Judicial College should review training delivery to determine the merits of providing a core judicial skills course for all new members of the judiciary. Training should also be developed to assist senior judges with carrying out their leadership responsibilities.**
47. Whatever the structure of training, **judicial training for family work should include greater emphasis on child development and case management.** The manner of training is also important. **Induction training for judges should include visits to relevant agencies involved in the system** to gain experience of other areas. **There should be an expectation that all members of the local judiciary, including the lay bench and legal advisers involved in family work, should join together in training activities.**
48. The judicial hierarchy is increasingly and rightly also becoming a management hierarchy. **The President's annual conference should be followed by circuit level meetings between the Family Presiding Judges and the senior judiciary in their areas to discuss the delivery of family business. Designated Family Judges should undertake regular meetings with the judges for whom they have leadership responsibility.**
49. We are aware that family work can create huge emotional strain, with damage to health and mental wellbeing. **Judges should be encouraged and given the skills to provide each other with greater peer support.**
50. We also recommend some changes to the training of family magistrates and their legal advisers even though training and management of magistrates is ahead of that of the judiciary, having as they do a regular appraisal and mentoring scheme. **Induction training for new family magistrates should include greater focus on case management, child development and visits to other agencies involved in the system. Legal advisers should also receive focused training on case management.**
51. Lawyers play an important role in ensuring the speedy resolution of cases, in supporting families to negotiate settlements and narrowing issues where matters are contested. We have however received evidence that the guidance in the Family Procedure Rules 2010 is not always followed when solicitors instruct expert witnesses. **Solicitors' professional bodies, working with representative**

groups for expert witnesses, should provide training opportunities for solicitors on how to draft effective instructions for expert evidence.

52. Social workers should be taught about relevant legal process and procedure and in particular what the court expects them to present and how to present it. **The College of Social Work and Care Council for Wales should consider issuing guidance to employers and higher education institutions on the teaching of court skills, including how to provide high quality assessments that set out a clear narrative of the child's story. They should also consider with employers whether initial social work and post qualifying training includes enough focus on child development, for those social workers who wish to go on to work with children.**
53. We know that some Directors of Children's Services in England may not themselves have practised as social workers. **The Children's Improvement Board should consider what training and work experience is appropriate for Directors of Children's Services who have not practised as social workers.**

Transparency and public confidence

54. We briefly discussed in the interim report the question of media access to family courts though this was not within our terms of reference. This is a complex area, which requires further consideration by government. We welcome the Justice Select Committee's recommendation that the scheme to increase media access to the courts contained in Part 2 of the Children, Schools and Families Act 2010 should not be implemented.

Public law

Why change is needed

55. Public law proceedings are the mechanism through which the state can intervene in family life to protect children. They can be complex and riven with acute conflict. The system is under great and increasing pressure – the number of applications has increased as has the time taken to dispose of them. An average case length of over a year is not acceptable.
56. Delay really matters and damages children. Delay in proceedings:
- may deny children a chance of a permanent home, particularly through adoption;
 - can have harmful long term effects on a child's development;
 - may expose children to more risk; and
 - causes already damaged children distress and anxiety.
57. The system struggles to cope with the weight of its responsibilities. Understandable sympathy for parents and an acute awareness of the enormity of the decisions encourages a wish to explore every avenue. The idea of a proportionate approach comes across as seeming to risk denial of the parent's

right to a fair hearing. We were told and we agree that the right of the parents to a fair hearing has come too often to override the paramount welfare of the child.

58. Our proposals aim to put the child's interests back at the heart of the process and to deliver a system which:
- is resolutely child focused;
 - refuses to accept delay as commonplace;
 - takes responsibility for the use of resources, to make best use of every pound;
 - operates in a collaborative way across agencies;
 - is consistent in its delivery; and
 - respects parents' rights, and offers them effective support.

The role of the court

59. We propose that **courts must continue to play a central role in public law in England and Wales**. The framework created by the Children Act 1989 is sound. This imposes different responsibilities on the courts and local authorities. It is for courts to decide who should exercise parental responsibility for a child. If that is to be the local authority then they should do so normally without further involvement of the court.
60. There is little doubt that since 1989 courts have progressively extended their scrutiny of the care plan proposed by the local authority. This causes duplication and delay.
61. We believe this court scrutiny goes beyond what is needed to determine whether a care order is in the best interests of a child. Care plans are likely to need to change over time. Courts are not well equipped to scrutinise care plans and their involvement is not a guarantee of success. We also need to set against the possible benefit the cost and time it takes.
62. So we recommend that **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. When determining whether a care order is in a child's best interests the court will not normally need to scrutinise the full detail of a local authority care plan for a child. Instead **the court should consider only the core or essential components of a child's plan. We propose that these are:**
- **planned return of the child to their family;**
 - **a plan to place (or explore placing) a child with family or friends;**
 - **alternative care arrangements; and**
 - **contact with birth family to the extent of deciding whether it should be regular, limited or none.**

63. The courts should have jurisdiction over contact issues and we believe there may be a case to extend the court's powers in respect of sibling contact. **We recommend that government consult on whether section 34 of the Children Act 1989 should be amended to promote reasonable contact with siblings, and to allow siblings to apply for contact orders without leave of the court.**
64. Nevertheless, court is not the best place for contact issues to be resolved and we would expect section 34 to be used only by exception.

Relationship between courts and local authorities

65. Responses to our consultation as well as recent research revealed a sometimes deep rooted distrust of local authorities and unbalanced criticism of public care. This needs to be addressed and courts and local authorities should work together to tackle their at times dysfunctional relationship. **There should be a dialogue both nationally and locally between the judiciary and local authorities. The Family Justice Service should facilitate this. Designated Family Judges and Directors of Children's Services / Directors for Social Services should meet regularly to discuss common issues.**
66. **Local authorities and the judiciary need to debate the variability of local authority practice in relation to threshold decisions and when they trigger care applications.** This again requires discussion at national and local level. **Government should support these discussions through a continuing programme of analysis and research.**
67. Evidence also suggests that local authorities can wait too long before they start proceedings and are not always sufficiently focused on children's timescales, underestimating the impact of long term neglect and emotional abuse. **The revised Working Together and relevant Welsh guidance should emphasise the importance of the child's timescales and the appropriate use of proceedings in planning for children and in structured child protection activity.**

Case management

68. Robust judicial case management is important to reduce delay. Case duration statistics and research show that case management across the country is not sufficiently robust or consistent. Reform to judicial training and development needs to emphasise understanding of child development and how it affects children's timescales and consequently case management decisions. Judges should receive regular information about the latest findings from research on these and other relevant issues. This training also needs to support judges in understanding the value (or not) of particular types of expert assessment.
69. The judiciary should be more consistent in their approach to case management. **Different courts take different approaches to case management in public law. These need corraling, researching and promulgating by the judiciary to share best practice and ensure consistency.**

70. This alone is not enough to tackle delay. Cases take far too long and previous attempts to tackle it have not succeeded. A firm approach is needed.
Government should legislate to provide a power to set a time limit on care proceedings. The limit should be specified in secondary legislation. The time limit for the completion of care and supervision proceedings should be set at six months. There should be transitional provisions.
71. We acknowledge that a time limit would not of itself guarantee success but it would give a strong focus to the wide ranging programme of fundamental reform that is required. It should in particular help to break what has been described as an accepted culture of delay.
72. It would be the responsibility of the trial judge to achieve the time limit. Extensions to the six month deadline would be allowed only by exception. A trial judge proposing to extend a case beyond six months would need to seek the agreement of the Designated Family Judge/Family Presiding Judge as appropriate.
73. **Judges must set firm timetables for cases. Timetabling and case management decisions must be child focused and made with explicit reference to the child's needs and timescales. There is a strong case for this responsibility to be recognised explicitly in primary legislation.**
74. Implementation of a statutory time limit would require thorough and extensive preparation, debate, and training. This would take time and there would be a need to trial and pilot new approaches. It could not happen in isolation. It would need successful delivery of the other changes we propose. Judicial continuity in particular is essential.
75. Delivery of time limited care cases would require significant improvement to process and procedure. **The Public Law Outline (PLO) provides a solid basis for child focused case management. Inconsistency in its implementation across courts is not acceptable and we encourage the senior judiciary to insist that all courts follow it.**
76. **The introduction of time limits and other changes described in this report would require the PLO to be remodelled. The judiciary should consult widely with all stakeholders to inform this remodelling. The changes give an opportunity to test new approaches, on the timing of the finding of threshold for example.**
77. **The requirement to renew Interim Care and Supervision Orders after eight weeks and then every four weeks should be amended. Judges should be allowed discretion to grant interim orders for the time they see fit subject to a maximum of six months and not beyond the time limit for the case. The court's power to renew should be tied to their power to extend proceedings beyond the time limit.**
78. Scrutiny by adoption panels of a permanence plan for the child duplicates work that will be done by the court. **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. We believe that the court's detailed scrutiny of these cases should be sufficient.

Local authority practice

79. Local authorities are critical to proceedings. A major change programme is now beginning in England and Wales to reduce bureaucracy and refocus social work practice onto direct work with families. The wider family justice system will need to keep pace with this reform through training for judges, lawyers and court social workers. Strong local partnerships need to be developed where practice can be discussed and learning shared. Local authority leaders need to take a direct and assertive approach to the oversight of local authority practice and performance with regard to public law cases.
80. One of the first priorities for local authorities and the judiciary is to address the reluctance of courts to rely on local authority assessments. Assessments and reports need to be appropriately detailed, evidence based and clear in their arguments. **We propose that the judiciary led by the President's office and local authorities via their representative bodies should urgently consider what standards should be set, and should circulate examples of best practice.**
81. Pre-proceedings work has value and **we encourage use of the 'Letter Before Proceedings'.** **We recommend that its operation be reviewed once research is available about its impact.**
82. The role of Independent Reviewing Officer (IRO) is important to local authorities and they would very likely recreate it were it removed from them. The priority should be to improve the quality of the function and ensure its effectiveness and visibility. **We recommend that local authorities should review the operation of their IRO service to ensure that it is effective. In particular they should ensure that they are adhering to guidance regarding case loads.**
83. **We recommend that the Directors of Children's Services / Directors for Social Services and Lead Member for Children receive regular reports from the IRO on the work undertaken and its outcomes. Local Safeguarding Children Boards should also consider such reports.**
84. **Courts would benefit from this information too alongside outcomes of care cases. The pilot recommended earlier (see paragraph 45) should include information from the IRO.**
85. **The courts and IROs need to develop more effective links. Guardians and IROs should strengthen their working relationship.**

Expert witnesses

86. Expert evidence is often necessary to a fair and complete court process. But growth in the use of experts is now a major contributor to unacceptable delay. The child's timescales must exert a greater influence over the decision to commission reports and judges must order only those reports strictly needed for

determination of the case. **We recommend that primary legislation should reinforce that in commissioning an expert's report regard must be had to the impact of delay on the welfare of the child. It should assert that expert testimony should be commissioned only where necessary to resolve the case. The Family Procedure Rules would need to be amended to reflect the primary legislation.**

87. **The court should seek material from an expert witness only when that information is not available, and cannot properly be made available, from parties already involved in proceedings. Independent social workers should be employed only exceptionally** as, when instructed, they are the *third* trained social worker to provide their input to the court.
88. We remain concerned about the value of residential assessments of parenting capacity, particularly when set against their cost and lack of clear evidence of their benefits. **Research should be commissioned to examine the value of residential assessments of parents.**
89. In line with our case management recommendations **judges must direct the process of agreeing and instructing expert witnesses as a fundamental part of their responsibility for case management.** This responsibility should not in effect be delegated to the representatives of the parties, as is often the case currently. More judicial control needs to be exercised over letters of instruction that are often too long and insufficiently focused on the determinative issues. **In the order giving permission for the commissioning of the expert witness the judge should set out the questions on which the expert should focus.** This will normally be done following discussions with parties.
90. Experts are too often not available in a timely way, and the quality of their work is variable. **The Family Justice Service should take responsibility and work with the Department of Health and others as necessary to improve the quality and supply of expert witness services.** There are a number of options to be considered and trialled.
91. The Legal Services Commission (LSC) knows little about the use and cost of the expert witnesses for whom it pays. **The LSC should routinely collate data on experts per case, type of expert, time taken, cost and any other relevant factor, by court and area.**
92. A recent Family Justice Council report examined a sample of expert psychological reports. It identified serious issues with their quality and the qualifications of those carrying them out. Further studies of this type are needed. **We recommend that the Family Justice Service commission studies of the expert witness reports supplied by various professions. Agreed quality standards for expert witnesses in the family courts should be developed.** Meeting the standards could be a requirement for payments to experts to be approved.
93. Multi-disciplinary teams have the potential to provide a better service of expert assessment to the courts but the original pilot did not provide a basis for full roll out. **A further pilot of multi-disciplinary expert witness teams should be**

taken forward, building on lessons from the original pilot. Successful engagement of the NHS is key.

94. There is discontent over the way experts are remunerated. The Family Justice Service **should review the mechanisms available to remunerate expert witnesses, and should in due course reconsider whether experts could be paid directly.** It is too early to conclude that the recent 10% reduction in expert witness rates will have an effect on the supply of experts, but the government should monitor this.

Representation of children

95. The tandem model provides children in proceedings with representation through both a solicitor and an experienced social worker (known as a guardian). This is widely supported. **The tandem model is an important safeguard and should be retained with resources carefully prioritised and allocated.** The independence of the guardian in the individual case must be maintained. It remains a requirement that the delivery of court social work services and guardians should be properly managed.
96. Other ways of working should be explored. **The merit of using guardians pre-proceedings and of an in-house tandem model need to be considered further. In relation to in-house solicitors the wider effects on the availability of solicitors in family work would be a particular factor to consider.**

Alternatives to conventional court proceedings

97. Alternative processes aimed at avoiding proceedings or resolving difficulties between local authorities and families outside the court room may reduce distress and promote better support to families. Their potential should be explored further but care must be taken that further delay is not the result.
98. **The benefits of Family Group Conferences should be more widely recognised and their use should be considered before proceedings. More research is needed on how they can best be used, their benefits and the costs.**
99. Mediation also has potential and **a pilot on the use of formal mediation approaches in public law proceedings should be established.**
100. **The Family Drug and Alcohol Court (FDAC) in Inner London Family Proceedings Court shows considerable promise. There should be further limited roll out to continue to develop the evidence base.** This should be supported by research on the overall costs to users and long term outcomes for children and families.
101. There is currently little support for parents after proceedings. **Proposals should be developed to pilot new approaches to supporting parents through and after proceedings.** Later distress, damage and expense could be mitigated with support from health professionals and others.

Private law

Why change is needed

102. The issues that arise when families separate are usually complex and emotionally charged. Those who use private law are struggling with all the turmoil of separation. The risk is that the legal process of separating can itself cause further harm. Arrangements imposed by court may be inflexible and may sooner or later fail.
103. Most separating couples make their own arrangements for the care of their children and division of their assets, without resort to court proceedings. Others need more support, whether from dispute resolution services or by judicial determination.
104. Generally it seems better that parents resolve things for themselves if they can. They are then more likely to come to an understanding that will allow arrangements to change as they and their children change. Most people could do with better information to help this happen. Others need to be helped to find routes to resolve their disputes short of court proceedings. There needs to be a high quality service that is also capable of dealing appropriately with any risks to them and their children. And if that fails they need access to court processes that they and their children can understand, and that resolve conflicts as fast as possible and without inflaming matters further.
105. Our current processes fall short in many ways.
 - Many parents do not know where to get the information and support they need to resolve their issues without recourse to court.
 - There is limited awareness of alternatives to court, and a good deal of misunderstanding.
 - Too many cases end up in court, and court determination is a blunt instrument.
 - The court system is hard to navigate, a problem that is likely to become even more important as proposed reductions in legal aid mean more people represent themselves.
 - There is a feeling (which may or may not be right) that lawyers generally take an adversarial approach that inflames rather than reduces conflict.
 - Cases are expensive and take a long time.
106. There are more fundamental issues that go beyond process.
 - Children say they do not understand what is going on and do not have enough opportunity to have their say.
 - There is a lack of understanding about parental responsibility, both legally and more generally: some mistakenly think the balance of parental responsibility shifts following separation, with one parent assuming full responsibility for their child.

- This goes with the difficulty for all involved in assuring that children retain a relationship with both parents, and others, including grandparents, after separation where this is safe. Some have a perception that the system favours mothers over fathers.

The way forward

107. Our recommendations aim to address these issues, to set out a clear process for separation that emphasises shared parental responsibility, provides information, manages expectations and helps people to understand the costs they face at each stage. The emphasis throughout is on enabling people to resolve their disputes safely outside court wherever possible.
108. The nature of parental responsibility needs to be better understood. More needs to be done generally to promote and support the concept and implications of parental responsibility. **Government should find means of strengthening the importance of a good understanding of parental responsibility in information it gives to parents.** One step could be giving parents a short leaflet when they register the birth of their child, to give them an introduction to the meaning and practical implications of parental responsibility. This is often a time when families receive a variety of information to support them in the upbringing of their children, for example *The Pregnancy Book* produced by the Department for Health; wherever possible these materials should also include information on parental responsibility.
109. The child's welfare should be the court's paramount consideration, as required by the Children Act 1989. No change should be made that might compromise this principle. Accordingly, **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.** For that reason and taking account of further evidence we also do not recommend a change canvassed in our interim report that legislation might state the importance to the child of a meaningful relationship with both parents after their separation where this is safe. While true, and indeed a principle that guides court decisions, we have concluded that this would do more harm than good.
110. **The need for grandparents to apply for leave of the court before making an application for contact should remain.** This prevents hopeless or vexatious applications that are not in the interests of the child. We note that it does not, contrary to some views, lead to a need to pay two sets of fees.
111. To support shared parental responsibility separating parents should be encouraged, in consultation with their children, to develop flexible agreements to fit their circumstances. **Parents should be encouraged to develop a Parenting Agreement to set out arrangements for the care of their children post separation. Government and the judiciary should consider how a signed Parenting Agreement could have evidential weight in any subsequent parental dispute.**

112. **We recommend government should develop a child arrangements order, which would set out arrangements for the upbringing of a child when court determination of disputes related to the care of children is required.** The new order would move away from loaded terms such as residence and contact which have themselves become a source of contention between parents, to bring greater focus on practical issues of the day to day care of the child. **Government should repeal the provision for residence and contact orders in the Children Act 1989. Prohibited steps orders should be retained to ensure a child's protection and welfare. Specific issues orders should be retained for discrete issues.**
113. **The new child arrangements order should be available to fathers without parental responsibility, as well as to those who already hold parental responsibility, and to wider family members with the permission of the court.**
- Where a father would require parental responsibility to fulfil the requirement of care as set out in the order, the court would also make an order of parental responsibility.
 - Where the order requires wider family members to be able to exercise parental responsibility, the court would make an order that that person should have parental responsibility for the duration of the order.
 - The facility to remove the child from the jurisdiction of England and Wales for up to 28 days without the agreement of all others with parental responsibility or a court order should remain.
 - The provision restricting those with parental responsibility from changing the child's surname without the agreement of all others with parental responsibility or a court order should also remain.
114. Turning to the process for separation, parents should have ready access to a wide range of information and direction to any further support they might need. **Government should establish an online information hub and helpline to give information and support for couples to help them resolve issues following divorce or separation outside court.** The information hub and helpline should bring together and expand other government websites directed to separating parents. The importance of shared parental responsibility should be emphasised.

115. It should become the norm that where parents need additional support to resolve disputes they would first attempt mediation or another dispute resolution service. To reinforce the primary nature of these services **'alternative dispute resolution' should be rebranded as 'Dispute Resolution Services', in order to minimise a deterrent to their use. Where intervention is necessary, separating parents should be expected 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.
116. These initial assessments are known as Mediation Information and Assessment Meetings (MIAMs).
117. **The mediator tasked with the initial assessment will need to be the key practitioner until an application to court is made.** This person would need to track progress to make sure that one party was not stringing things out for whatever reason. A certificate for court should be issued in that event. There would also need to be a range of exemptions for those for whom an application to court was urgent, or for whom dispute resolution services were clearly inappropriate at the outset. **The regime would allow for emergency applications to court and the exemptions should be as in the current Pre-Application Protocol.**
118. **Those parents who were still unable to agree should next attend a Separated Parent Information Programme (PIP) and thereafter if necessary mediation or other dispute resolution service.** PIPs are designed to help parents learn more about the challenges of post separation parenting, including the effects on children of continuing conflict.
119. Attendance at a MIAM and PIP should be required of anyone wishing to make a court application (subject to relevant exemptions). This cannot be required, but should be expected, of respondents. **Judges should retain the power to order parties to attend a mediation information session and a PIP and may make cost orders where it is felt that one party has behaved unreasonably.** Judges could help drive a general expectation that separating parents should attempt dispute resolution before applying to court.
120. We believe that many parents would benefit from attempting mediation. However we do not propose that this should be compulsory for either party. Parents who have attended a MIAM and PIP should be able to choose the service they think would be most helpful to them. **Where agreement could not be reached at this stage, having been given a certificate by the mediator, one or both the parties would be permitted to apply to court.**

121. All mediation should be centred on the best interests of the child. This and the other tasks of mediators are demanding. The assessment of risks to the parties in the MIAM is difficult and important. **Mediators should at least meet the current requirements set by the LSC. 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.**
122. **Government should closely watch and review the progress of the Family Mediation Council to assess its effectiveness in maintaining and reinforcing high standards. The FMC should if necessary be replaced by an independent regulator.**
123. Where a court application is made, **the Family Justice Service should ensure for cases involving children that safeguarding checks are completed at the point of entry into the court system. The First Hearing Dispute Resolution Appointment (FHDRA) should be retained. Parenting Agreements could also be helpful at this stage. HMCTS and the judiciary should establish a track system according to the complexity of the case. At the FHDRA, the judge should allocate the case to a simple or complex track. The simple track should determine narrow issues where tailored case management rules and principles would apply. As in other areas of family law, judicial continuity is essential. The judge who is allocated to hear the case after a FHDRA must remain the judge for that case.**
124. **Children and young people should be given the opportunity to have their voices heard in cases that are about them, where they wish it.** The key needs within the Family Justice Service and private law generally are to:
- give clarity to the child about the process, their options for involvement and the likelihood of their view being taken into account;
 - raise parental awareness, through education and support, of the effect disputes can have on their children;
 - support parents to communicate with their children; and
 - ensure consistency of approach and materials throughout the process – via the hub, mediators, legal practitioners, PIPs and in court.
125. **The government and the judiciary should actively consider how children and vulnerable witnesses may be protected when giving evidence in family proceedings.**
126. Swift enforcement is important where court orders are breached. This will help prevent an arrangement that has been determined to be in the child's best interests from being ignored and a less beneficial alternative becoming the norm. It will also enable adjustments to be made where necessary. It is essential that where a court order is breached the case quickly returns to court, to the same judge, to enforce the child's right to have a relationship with both their parents where this is safe.

127. **Where an order is breached within the first year, the case should go straight back to court to the same judge to resolve the matter swiftly. 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.**
128. However, where an order breaks down after 12 months, we think it would be right for parents to attempt first to resolve the issue independently. **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.**
129. Parents often make in their own minds a link between contact and maintenance (no contact so no maintenance, or no maintenance so no contact). We have concluded that to introduce any connection in law between the two, even at the discretion of a judge, would risk reinforcing this. The existence of a power could also undermine private arrangements and encourage litigation. The focus should be on the right of children to be supported by both their parents emotionally, financially and practically, and parents have a responsibility to provide this. **We recommend there should be no link of any kind between contact and maintenance.**
130. **People in dispute about money or property should be expected to access the information hub and should be required to be assessed for mediation.** Evidence we received in our call for evidence suggested that legislative change, to establish a codified framework, could reduce the need for judicial intervention. **Government should establish a separate review of financial orders to include examination of the law.**
131. **The process for initiating divorce should begin with the online hub and should be dealt with administratively by the court, unless the divorce is disputed.**
132. **Where possible all issues in dispute following separation should be considered together whether in all issues, mediation or consolidated court hearings. HMCTS and the judiciary should consider how this might be achieved in courts. Care should be taken to avoid extra delay particularly in relation to children.**
133. In principle we believe that fees in private law should reflect the cost of providing the service. But the panel had little evidence about the cost of private law proceedings, and we make no recommendations, recognising that we could not assess the likely level of the fees and their effect on families and children. Any fee increases would need careful consideration. Further, there should be a clear and transparent remissions policy to support those who need it.
134. We note with concern the potential impact of the proposed changes to legal aid. **The MOJ and the LSC should carefully monitor the impact of the reforms carefully. The supply of properly qualified family lawyers is vital to the protection of children.**

iii Family Justice Review – List of recommendations

The Family Justice System

Where we refer to the Family Justice Service, we envisage that these functions would be performed initially by an Interim Board (see discussion at paragraph 2.56).

The child's voice: pages 45-49

These recommendations aim to ensure that children's interests are truly central to the operation of the family justice system.

- Children and young people should be given age appropriate information to explain what is happening when they are involved in public and private law cases.
- 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.
- The Family Justice Service should take the lead in developing and disseminating national standards and guidelines on working with children and young people in the system. It should also:
 - ensure consistency of support services, of information for young people and of child-centred practice across the country; and
 - oversee the dissemination of up to date research and analysis of the needs, views and development of children.
- There should be a Young People's Board for the Family Justice Service, with a remit to consider issues in both public and private law and to report directly to the Service on areas of concern or interest.
- The UK Government should closely monitor the effect of the Rights of Children and Young Persons Measure (Wales) 2011.

Family Justice Service: pages 49 - 63

These recommendations outline the proposals connected to the creation of a Family Justice Service.

- A Family Justice Service should be established, sponsored by the Ministry of Justice, with strong ties at both Ministerial and official level with the Department for Education and Welsh Government. As an initial step, an Interim Board should be established, which should be given a clear remit to plan for more radical change on a defined timescale towards a Family Justice Service.
- The Family Justice Service should have strong central and local governance arrangements.
- The roles performed by the Family Justice Council will be needed in any new structure but government will need to consider how they can be exercised in a way that fits with the final design of the Family Justice Service (and Interim Board).

- The Family Justice Service should be responsible for the budgets for court social work services in England, mediation, out of court resolution services and, potentially over time, experts and solicitors for children.
- Charges to local authorities for public law applications and to local authorities and Cafcass for police checks in public and private law cases should be removed
- A duty should be placed on the Family Justice Service to safeguard and promote the welfare of children in performing its functions. An annual report should set out how this duty has been met.
- An integrated IT system should be developed for use in the Family Justice Service and wider family justice agencies. This will need investment. In the meanwhile government should conduct an urgent review of how better use could be made of existing systems.
- The Family Justice Service should develop and monitor national quality standards for system wide processes, based on local knowledge and the experiences of service users.
- The Family Justice Service should coordinate a system wide approach to research and evaluation, supported by a dedicated research budget (amalgamated from the different bodies that currently commission research).
- The Family Justice Service should review and consider how research should be transmitted around the family justice system.

Judicial leadership and culture: pages 63 - 70

These recommendations seek to ensure that there is robust judicial leadership to support the culture change amongst the family judiciary. They are made mostly to the judiciary themselves, not to government.

- A Vice President of the Family Division should support the President of the Family Division in his leadership role, monitoring performance across the family judiciary.
- Family Division Liaison Judges should be renamed Family Presiding Judges, reporting to the Vice President of the Family Division on performance issues in their circuit.
- 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.
- HMCTS should make information on key indicators for courts and areas available to the Family Justice Service. Information on key indicators for individual judges should be made available to those judges as well as judges with leadership responsibilities. The judiciary should agree key indicators.
- Designated Family Judges should have leadership responsibility for all courts within their area. They will need to work closely with Justices' Clerks, family bench chairmen and judicial colleagues.
- The judiciary should aim to ensure judicial continuity in all family cases.
- The judiciary should ensure a condition to undertake family work includes willingness to adapt work patterns to be able to offer continuity.

- The President of the Family Division should consider what steps should be taken to allow judicial continuity to be achieved in the High Court.
- In Family Proceedings Courts judicial continuity should if possible be provided by all members of the bench and the legal adviser. If this is not possible, the same bench chair, a bench member and a legal adviser should provide continuity.
- Judges and magistrates should be enabled and encouraged to specialise in family matters.
- The Judicial Appointments Commission should consider willingness to specialise in family matters in making appointments to the family judiciary.
- The Judicial Office should review the restriction on magistrate sitting days.

Case management: pages 71 - 72

- HMCTS and the judiciary should review and plan how to deliver consistently effective case management in the courts.

The courts: pages 72 - 79

These recommendations aim to ensure that the courts are as efficient and user friendly as possible.

- A single family court, with a single point of entry, should replace the current three tiers of court. All levels of family judiciary (including magistrates) should sit in the family court and work should be allocated according to case complexity.
- The roles of District Judges working in the family court should be aligned.
- There should be flexibility for legal advisers to conduct work to support judges across the family court.
- The Family Division of the High Court should remain, with exclusive jurisdiction over cases involving the inherent jurisdiction and international work that has been prescribed by the President of the Family Division as being reserved to it.
- All other matters should be heard in the single family court, with High Court judges sitting in that court to hear the most complex cases and issues.
- HMCTS and the judiciary should ensure routine hearings use telephone or video technology wherever appropriate.
- HMCTS and the judiciary should consider the use of alternative locations for hearings that do not need to take place in a court room.
- HMCTS should ensure court buildings are as family friendly as possible.
- HMCTS should review the estate for family courts 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.
- HMCTS and the judiciary should review the operation and arrangement of the family courts in London.

Workforce: pages 79 - 89

These recommendations aim to ensure that the people who work in the family justice system have the skills and knowledge they need.

- The Family Justice Service should develop a workforce strategy.
- The Family Justice Service should develop an agreed set of core skills and knowledge for family justice.
- The Family Justice Service should introduce an inter-disciplinary family justice induction course.
- Professional bodies should review continuing professional development schemes to ensure their adequacy and suitability in relation to family justice.
- The Family Justice Service should develop annual inter-disciplinary training priorities for the workforce to guide the content of inter-disciplinary training locally.
- The Family Justice Service should establish a pilot in which judges and magistrates would learn the outcomes for children and families on whom they have adjudicated.
- There should be a system of case reviews of process to help establish reflective practice in the family justice system.
- The Judicial College should review training delivery to determine the merits of providing a core judicial skills course for all new members of the judiciary.
- The Judicial College should develop training to assist senior judges with carrying out their leadership responsibilities.
- The Judicial College should ensure judicial training for family work includes greater emphasis on child development and case management.
- The Judicial College should ensure induction training for the family judiciary includes visits to relevant agencies involved in the system.
- There should be an expectation that all members of the local judiciary including the lay bench and legal advisers involved in family work should join together in training activities.
- The President's annual conference should be followed by circuit level meetings between Family Presiding Judges and the senior judiciary in their area to discuss the delivery of family business.
- Designated Family Judges should undertake regular meetings with the judges for whom they have leadership responsibility.
- Judges should be encouraged and given the skills to provide each other with greater peer support.
- The Judicial College should ensure induction training for new family magistrates includes greater focus on case management, child development and visits to other agencies involved in the system.
- The Judicial College should ensure legal advisers receive focused training on case management.

- Solicitors' professional bodies, working with representative groups for expert witnesses, should provide training opportunities for solicitors on how to draft effective instructions for expert evidence.
- The College of Social Work and Care Council for Wales should consider issuing guidance to employers and higher education institutions on the teaching of court skills, including how to provide high quality assessments, that set out a clear narrative of the child's story.
- The College of Social Work and Care Council for Wales should consider with employers whether initial social work and post qualifying training includes enough focus on child development, for those social workers who wish to go on to work with children.
- The Children's Improvement Board should consider what training and work experience is appropriate for Directors of Children's Services who have not practised as social workers.

Public law

The role of the court: pages 94 - 101

These recommendations seek to refocus the court on the core issues of the care plan.

- Courts must continue to play a central role in public law in England and Wales.
- 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.
- When determining whether a care order is in a child's best interests the court will not normally need to scrutinise the full detail of a local authority care plan for a child. Instead the court should consider only the core or essential components of a child's plan. We propose that these are:
 - planned return of the child to their family;
 - a plan to place (or explore placing) a child with family or friends;
 - alternative care arrangements; and
 - contact with birth family to the extent of deciding whether that should be regular, limited or none.
- Government should consult on whether section 34 of the Children Act 1989 should be amended to promote reasonable contact with siblings, and to allow siblings to apply for contact orders without leave of the court.

The relationship between courts and local authorities: pages 101 - 103

These recommendations are intended to improve the relationship between local authorities and courts so that the different components of the system operate better together.

- There should be a dialogue both nationally and locally between the judiciary and local authorities. The Family Justice Service should facilitate this. Designated Family Judges and the Director of Children's Services / Director of Social Services should meet regularly to discuss issues.

- Local authorities and the judiciary need to debate the variability of local authority practice in relation to threshold decisions and when they trigger care applications. This again requires discussion at national and local level. Government should support these discussions through a continuing programme of analysis and research.
- The revised Working Together and relevant Welsh guidance should emphasise the importance of the child's timescales and the appropriate use of proceedings in planning for children and in structured child protection activity.

Case management: pages 103 - 112

These recommendations seek to promote and improve robust judicial case management. They are intended to tackle delay by time limiting cases and reforming process.

- Different courts take different approaches to case management in public law. These need corraling, researching and promulgating by the judiciary to share best practice and ensure consistency.
- Government should legislate to provide a power to set a time limit on care proceedings. The limit should be specified in secondary legislation to provide flexibility. There should be transitional provisions.
- The time limit for the completion of care and supervision proceedings should be set at six months.
- To achieve the time limit would be the responsibility of the trial judge. Extensions to the six month time limit will be allowed only by exception. A trial judge proposing to extend a case beyond six months would need to seek the agreement of the Designated Family Judge / Family Presiding Judge as appropriate.
- Judges must set firm timetables for cases. Timetabling and case management decisions must be child focused and made with explicit reference to the child's needs and timescales. There is a strong case for this responsibility to be recognised explicitly in primary legislation.
- The Public Law Outline provides a solid basis for child focused case management. Inconsistency in its implementation across courts is not acceptable and we encourage the senior judiciary to insist that all courts follow it.
- The Public Law Outline will need to be remodelled to accommodate the implementation of time limits in cases. The judiciary should consult widely with all stakeholders to inform this remodelling. New approaches should be tested as part of this process.
- The requirement to renew interim care orders after eight weeks and then every four weeks should be amended. Judges should be allowed discretion to grant interim orders for the time they see fit subject to a maximum of six months and not beyond the time limit for the case. The court's power to renew should be tied to their power to extend proceedings beyond the time limit.
- 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.

Local authority practice: pages 112 - 117

These recommendations focus on improving the quality of local authority social services and their engagement in proceedings.

- The judiciary led by the President's office and local authorities via their representative bodies should urgently consider what standards should be set for court documentation, and should circulate examples of best practice.
- We encourage use of the Letter Before Proceedings. We recommend that its operation be reviewed once full research is available about its impact.
- Local authorities should review the operation of their Independent Reviewing Officer service to ensure that it is effective. In particular they should ensure that they are adhering to guidance regarding case loads.
- The Director of Children's Services / Director of Social Services and Lead Member for Children should receive regular reports from the Independent Reviewing Officer on the work undertaken and its outcomes. Local Safeguarding Children Boards should consider such reports.
- There need to be effective links between the courts and Independent Reviewing Officer and the working relationship between the guardian and the Independent Reviewing Officer needs to be stronger.

Expert witnesses: pages 117 - 126

These recommendations intend to reduce the reliance on expert witnesses and improve their supply and quality.

- Primary legislation should reinforce that in commissioning an expert's report regard must be had to the impact of delay on the welfare of the child. It should also assert that expert testimony should be commissioned only where necessary to resolve the case. The Family Procedure Rules would need to be amended to reflect the primary legislation.
- The court should seek material from an expert witness only when that information is not available, and cannot properly be made available, from parties already involved. Independent social workers should be employed only exceptionally.
- Research should be commissioned to examine the value of residential assessments of parents.
- Judges should direct the process of agreeing and instructing expert witnesses as a fundamental part of their responsibility for case management. Judges should set out in the order giving permission for the commissioning of the expert witness the questions on which the expert witness should focus.
- The Family Justice Service should take responsibility for work with the Department for Health and others as necessary to improve the quality and supply of expert witness services. This will involve piloting new ideas, sharing best practice and reviewing quality.

- The Legal Services Commission should routinely collate data on experts per case, type of expert, time taken, cost and any other relevant factor. This should be gathered by court and area.
- We recommend that studies of the expert witness reports supplied by various professions be commissioned by the Family Justice Service.
- Agreed quality standards for expert witnesses in the family courts should be developed by the Family Justice Service.
- A further pilot of multi-disciplinary expert witness teams should be taken forward, building on lessons from the original pilot.
- The Family Justice Service should review the mechanisms available to remunerate expert witnesses, and should in due course reconsider whether experts could be paid directly.

Representation of children: pages 126 - 129

These recommendations are intended to promote the value and effective operation of the tandem model of children's representation.

- The tandem model should be retained with resources carefully prioritised and allocated.
- The merit of using guardians pre-proceedings needs to be considered further.
- The merit of developing an in-house tandem model needs to be considered further. The effects on the availability of solicitors locally to represent parents should be a particular factor.

Alternatives to conventional court proceedings: pages 129 - 132

These recommendations encourage the development of approaches and programmes that better support families while avoiding or reducing the need for distressing and costly court cases.

- The benefits of Family Group Conferences should be more widely recognised and their use should be considered before proceedings. More research is needed on how they can best be used, their benefits and the cost.
- A pilot on the use of formal mediation approaches in public law proceedings should be established.
- The Family Drug and Alcohol Court in Inner London Family Proceedings Court shows considerable promise. There should be further limited roll out to continue to develop the evidence base.
- Proposals should be developed to pilot new approaches to supporting parents through and after proceedings.

Private law

Making parental responsibility work: pages 134 - 150

These recommendations are intended to enable parents to reach agreements following separation, while ensuring that the child's welfare remains paramount.

- Government should find means of strengthening the importance of a good understanding of parental responsibility in information it gives to parents.
- 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.
- The need for grandparents to apply for leave of the court before making an application for contact should remain.
- Parents should be encouraged to develop a Parenting Agreement to set out arrangements for the care of their children post separation.
- Government and the judiciary should consider how a signed Parenting Agreement could have evidential weight in any subsequent parental dispute.
- Government should develop a child arrangements order, which would set out arrangements for the upbringing of a child when court determination of disputes related to the care of children is required.
- Government should repeal the provision for residence and contact orders in the Children Act 1989.
- Prohibited steps orders and specific issue orders should be retained for discrete issues where a child arrangements order is not appropriate.
- The new child arrangements order should be available to fathers without parental responsibility, as well as those who already hold parental responsibility, and to wider family members with the permission of the court.
- Where a father would require parental responsibility to fulfil the requirement of care as set out in the order, the court would also make a parental responsibility order.
- Where the order requires wider family members to be able to exercise parental responsibility, the court would make an order that that person should have parental responsibility for the duration of the order.
- The facility to remove the child from the jurisdiction of England and Wales for up to 28 days without the agreement of all others with parental responsibility or a court order should remain.
- The provision restricting those with parental responsibility from changing the child's surname without the agreement of all others with parental responsibility or a court order should remain.

A coherent process for dispute resolution: pages 150 - 172

These recommendations are intended to enable people to resolve their disputes safely outside of court, wherever possible.

- Government should establish an online information hub and helpline to give information and support for couples to help them resolve issues following divorce or separation outside court.
- 'Alternative dispute resolution' should be rebranded as 'Dispute Resolution Services', in order to minimise a deterrent to its use.
- Where intervention is necessary, separating parents should be expected 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.
- The mediator tasked with the initial assessment (Mediation Information and Assessment Meeting) would need to be the key practitioner until an application to court is made.
- The regime would allow for emergency applications to court and the exemptions should be as in the Pre-Application Protocol.
- Those parents who were still unable to agree should next attend a Separated Parents Information Programme and thereafter if necessary mediation or other dispute resolution service.
- Attendance at a Mediation Information and Assessment Meeting and Separated Parent Information Programme should be required of anyone wishing to make a court application. This cannot be required, but should be expected, of respondents.
- Judges should retain the power to order parties to attend a mediation information session and Separated Parents Information Programmes, and may make cost orders where it is felt that one party has behaved unreasonably.
- Where agreement could not be reached, having been given a certificate by the mediator, one or both of the parties would be able to apply to court.
- 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.
- Government should closely watch and review the progress of the Family Mediation Council to assess its effectiveness in maintaining and reinforcing high standards. The Family Mediation Council should if necessary be replaced by an independent regulator.
- The Family Justice Service should ensure for cases involving children that safeguarding checks are completed at the point of entry into the court system.

- HMCTS and the judiciary should establish a track system according to the complexity of the case. The simple track should determine narrow issues where tailored case management rules and principles would apply.
- The First Hearing Dispute Resolution Appointment should be retained. Parenting Agreements could also be helpful at this stage. Where further court involvement is required after this, the judge should allocate the case to either the simple or complex track according to complexity.
- The judge who is allocated to hear the case after a First Hearing Dispute Resolution Appointment must remain the judge for that case.
- Children and young people should be given the opportunity to have their voices heard in cases that are about them, where they wish it.
- The government and the judiciary should actively consider how children and vulnerable witnesses may be protected when giving evidence in family proceedings.
- Where an order is breached within the first year, the case should go straight back to court to the same judge to resolve the matter swiftly. 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.
- There should be no link of any kind between contact and maintenance.

Divorce and financial arrangements: pages 172 - 178

These recommendations are intended to enable divorcing couples to dissolve their marriage efficiently and, wherever possible, to reach an agreement on financial arrangements without using the court.

- The process for initiating divorce should begin with the online hub and should be dealt with administratively by the courts, unless the divorce is disputed.
- People in dispute about money or property should be expected to access the information hub and should be required to be assessed for mediation.
- Where possible all issues in dispute following separation should be considered together whether in all issues mediation or consolidated court hearings. HMCTS and the judiciary should consider how this might be achieved in courts. Care should be taken to avoid extra delay particularly in relation to children.
- Government should establish a separate review of financial orders to include examination of the law.
- The Ministry of Justice and the Legal Services Commission should carefully monitor the impact of legal aid reforms. The supply of properly qualified family lawyers is vital to the protection of children.

Further information available by emailing familyjusticereview@justice.gsi.gov.uk

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