

CHILDREN AND FAMILIES ACT 2014 - FAMILY LAW REFORMS

Contact Officer: Raj Alagh, Borough Solicitor
Telephone: 01895 250617

REASON FOR ITEM

To enable Members to better understand the implications of the recent legislative changes and identify areas for possible improvement.

OPTIONS AVAILABLE TO THE COMMITTEE

Members are able to question the witnesses using the suggested questions/key lines of enquiry and ask additional questions as required. Members may make recommendations to address any issues arising from discussions at the meeting which will then be included in a report submitted for Cabinet consideration.

As the issue of family law is cross-cutting, the Chairman and Labour Lead from the Children, Young People and Learning Policy Overview Committee have been asked to join the External Services Scrutiny Committee Members in this single meeting review.

INFORMATION

"We stand on the cusp of history. 22 April 2014 saw the formal implementation of the largest reform of the family justice system any of us have seen or will see in our professional lifetimes. On 22 April 2014 almost all the relevant provisions of the Crime and Courts Act 2013 and the Children and Families Act 2014 came into force. On 22 April 2014 the Family Court came into existence and the Family Proceedings Court passed into history. On 22 April 2014 we saw the implementation of the final version of the revised Public Law Outline in public law children cases and the implementation in private law children cases of the Child Arrangements Programme.

Taken as a whole, these reforms amount to a revolution. Central to this revolution has been – has had to be – a fundamental change in the cultures of the family courts. This is truly a cultural revolution..."¹

Children and Families Act 2014

The Children and Families Act 2014 ("the Act") came into being as the Government's response to recommendations made by an independent review of the family justice system Chaired by Sir David Norgrove between 2011-2012. Administration of the courts, with a view to implement changes brought about by the Act, is led by HM Courts and Tribunals Service (the accountable service), with the Lord Chief Justice and Lord Chancellor holding ultimate responsibility.

Prior to the Act, which came into effect on 22 April 2014, children waited 'an average of two years between entering care and moving in with an adoptive family'². The Act was therefore

¹ Speech by Sir James Munby President of the Family Division and Head of Family Justice in the President's Court 29 April 2014

² according to the Department for Education <http://www.education.gov.uk/a00221161/children-families-bill>

introduced to try to make the adoption process easier for prospective parents and avoid delays within proceedings.

As part of the reforms, from 22 April 2014 Family Proceedings Courts, at the Magistrates' and County Court levels, ceased to exist. Magistrates' courts and the new single County Court³ no longer have jurisdiction to hear family proceedings. Instead, nearly all cases will be heard in the new single Family Court⁴. The High Court will still hear family proceedings, but only specialist matters reserved exclusively to them. It is anticipated that the new single jurisdiction in England and Wales will create a much simpler system, with all levels of judges being able to sit in the same building, and greater flexibility for cases to be allocated to the right judge from the start.

Having different levels of Family Court judges working in one court (Lay Magistrates, District Judges, Circuit Judges and High Court judges) will allow more effective and efficient use of judges' time, court staff and buildings. It is thought that this will make it easier for those people using the courts as they will simply submit applications to the Family Court in their area and the case will be allocated to the right level of judge in the most suitable location.

Family Justice: Reducing the time limit for care proceedings to 26 weeks

One of the main reforms introduced by the Act include a provision for public law proceedings cases to begin 'without delay' as well as setting a 26 week maximum limit on the time that courts can take to decide whether a child should be taken into care. A 26 week timetable is drawn up by the court and can be extended if that is what is needed to resolve the proceedings justly⁵. However, although there is no limit to the number of extensions that can be granted by the court, any extension must be justified and consideration given to the welfare of the child and effect on the conduct of proceedings when deciding on an extension period.

Extensions are not to be granted routinely and are to be seen as requiring specific justification⁶. Each extension lasts 8 weeks at the most and is measured from the later date of either the end of the period being extended or the end of the day on which the extension is granted. When granting an extension, the court must have regard to the impact of any ensuing timetable revision on the welfare of the child in question. As such, extensions should only be granted in exceptional circumstances.

Problems with meeting the 26 week deadline may occur if there are multiple children with split hearings involved or when neglect is not a major issue in the adoption. That is, where it is not absolutely clear what the best interests of the child are. Therefore, revision of the timetable may occur once the court has assessed the possible effect on the child and on the length of the process.

New requirements - Mediation Information and Assessment Meetings

The family justice measures also require courts to send 'a clear signal to separating parents that courts will take account of the principle that both should continue to be involved in their children's lives'⁷. It is anticipated that this will ensure that the child will be able to develop relationships with both parents and not just one.

³ Established by section 17(1) of the Crime and Courts Act 2013

⁴ Established by section 17(3) of the Crime and Courts Act 2013

⁵ http://www.familylaw.co.uk/news_and_comment/major-changes-in-family-courts

⁶ Children and Families Act <http://www.legislation.gov.uk/ukpga/2014/6/part/2/enacted>

⁷ <https://www.gov.uk/government/news/major-changes-in-family-courts>

The reforms also allow greater opportunity for families and parents to access mediation before the matter is taken to court, making it a requirement that separating parents attend a meeting about mediation before being allowed to dispute child custody or family finances in court.

The Pre-Application Protocol (part of Practice Direction 3A) introduced in April 2011 clearly stated that prospective applicants and respondents in family cases were 'expected' to attend a mediation information and assessment meeting (MIAM) to see if mediation might be helpful to them, before they could make certain applications. The Children & Families Act turns this 'expectation' into a legal requirement for the applicant so it is more important than ever to ensure that any prospective court applicant knows that they need to contact a mediator in order to arrange a MIAM.

Revised statutory guidance for local authorities

The Act includes provisions which:

- are intended to encourage local authorities to place children for whom adoption is an option with their potential permanent carers more swiftly, by requiring a local authority looking after a child for whom adoption is an option to consider placing them in a 'Fostering for Adoption' placement if one is available;
- are intended to reduce delay by removing the explicit legal wording around a child's ethnicity so that black and minority ethnic children are not left waiting in care longer than necessary because local authorities are seeking a perfect or partial ethnic match;
- will enable the Secretary of State to require local authorities to commission adopter recruitment services from one or more other adoption agencies;
- are intended to give prospective adopters a more active role in identifying possible matches with children by amending the current restrictions in relation to "public inspection or search" of the adoption register so that they can access the register directly, subject to appropriate safeguards;
- are intended to improve the current provision of adoption support by placing new duties on local authorities to provide personal budgets upon request and to give prospective adopters and adoptive parents information about their entitlements to support; and
- make changes to the arrangements for contact between children in care and their birth parents, guardians and certain others and adopted children and their birth families, former guardians and certain others with the aim of reducing the disruption that inappropriate contact can cause to adoptive placements.

In support of the changes introduced by the Act, the Department for Education issued revised statutory guidance to support local authorities: Court Orders and Pre-Proceedings Guidance. The guidance sets out the steps local authorities need to take before applying for a court order. It also includes information on pre-proceedings and adoption, to support changes in practice to align with the Public Law Outline (which replaces the previous Protocol for Judicial Case Management in Public Law Children Act Cases published in 2003). This revised guidance came into force in England on 17 April 2014.

The focus of the Public Law Outline is on improved case preparation, active case management, the early identification of the key issues requiring determination and cooperation between the parties to achieve timely decisions within the timetable for the child. The Public Law Outline aims to reduce unnecessary delay and is designed to promote better cooperation between all parties involved in care and supervision cases.

Public Law Proceedings are commenced under section 31 of the Children Act 1989 where the Local Authority takes the view that it is no longer possible to safeguard and promote the welfare of the child by promoting his/her upbringing by his/her family without a care or supervision order (or emergency action). This decision is one that should be reached with the benefit of inter-agency advice and legal advice.

Witnesses

The following individuals have been invited to attend the meeting:

- Her Honour Judge Judith Rowe QC - Designated Family Judge for West London
- Borough Solicitor
- Principal Lawyer (Adult Social Care & Education and Children's Services)
- Children and Young People's Service Manager

SUGGESTED KEY LINES OF ENQUIRY

The effects of the *Legal Aid, Sentencing, and Punishment of Offenders Act 2012*

Cuts in legal aid have led to a marked increase in litigants in person. This poses problems when courts have to consider funding of expert reports in children proceedings where neither party has the means to do. In the recent case of *Re B, Re C [2014] EWFC 31* there was even a suggestion by the President of the Family Division, Sir James Munby that in such instances HM Courts and Tribunal Service should bear the cost of expert assessments. Litigants in person and funding issues have added unprecedented pressure on courts.

1. How are the courts managing this?

26 weeks time limit

s.14 of Children and Families Act 2014 ("the Act") imposes a 26 weeks time limit in public law proceedings (care and supervision orders).

2. Has this measure had the intended outcome of reducing unnecessary delays?
3. If so, has this not been at a cost of the interests of justice?
4. Is the court alive of the pressure placed on social work professionals to undertake assessments within the 26 weeks court time limit? And if so, how can these be mitigated?

Expert assessment

s.13 of the Act provides that expert assessments in family proceedings are now to be commissioned with the permission of the court only when necessary to resolve the case justly, and not 'reasonably required' as was previously the case, taking into account the impact on the welfare of the child.

5. Are the courts moving towards recognising social work assessment as 'expert' assessment, in the true sense, where their skills are relevant to issues to be determined?

PART I – MEMBERS, PUBLIC & PRESS

A single Family Court

Since the establishment of the Family Court there are now different tiers of judges, within a single court, available to hear family cases.

6. With reference to listing of cases, have judges found that this assists in timely disposal of matters?

The revised Public Law Outline ("PLO")

The PLO was introduced in April 2014. The expectation is that Local Authorities should undertake assessments of families pre-proceedings, where it is safe to do so, commonly referred to as 'front-loading'. At the point that proceedings are issued cases should be ready for litigation to avoid assessments being commissioned only then which result in delays for children.

7. Have the courts seen any positive trends as a direct result of the introduction of the new PLO?

Court listings

The Family Court sits nationally with at least one Designated Family Centre ("DFC") in each Designated Family Judge ("DFJ") area. The West London Family Court, located at Hatton Cross, is the DFC for the West London area hearing both public (from 9 different local authorities) and private law matters. Her Honour Judge Rowe QC is the DFJ for this area. The location presents logistical issues for Hillingdon residents more so when a majority of the families involved in public law proceedings are on low income.

8. How is West London Family court coping with listing demands for public proceedings, from different local authorities, coupled with hearing private law matters?
9. Is there a pattern in the adjournment of proceedings as a result of lay parties being unable to attend court on time given the geographical location of the court?