

EXTERNAL SERVICES SCRUTINY COMMITTEE: REVIEW INTO FAMILY LAW REFORMS

Cabinet Member	Councillor David Simmonds
Cabinet Portfolio	Cabinet Member for Education and Children's Services
Officer Contact	Nikki O'Halloran, Administration
Papers with report	None

1. HEADLINE INFORMATION

Summary	Following the External Services Scrutiny Committee single meeting review of family law reforms on 11 February 2015, this report sets out the Members' findings.
Contribution to our plans and strategies	Putting our Residents First; <i>Our People</i>
Financial Cost	There are no cost implications resulting from this report.
Relevant Policy Overview Committee	External Services and Children Young People & Learning
Ward(s) affected	All

2. RECOMMENDATIONS

That the Cabinet welcomes the review of the External Services Scrutiny Committee and:

1. Commends the work that has already been undertaken by officers with regard to the reforms introduced by the Children & Families Act 2014; and
2. Supports the continued partnership working with the West London Family Court to ensure that everything possible is done to safeguard children in Hillingdon.

Reasons for recommendation

During this single meeting review, Members gathered information from witnesses about the implications for the Council of the recent legislative changes in relation to family law proceedings and to identify areas for possible improvement. The recommendation supports the work that has already been undertaken in Hillingdon whilst also acknowledging that continued partnership working will help to safeguard children in the Borough in the future.

Alternative options considered / risk management

The Cabinet could decide to reject or amend the Committee's recommendation.

3. INFORMATION

Supporting Information

1. The Children and Families Act 2014 ("the Act") came into force as the Government's response to recommendations made by an independent review of the family justice system chaired by Sir David Norgrove in 2011/2012. Administration of the courts, with a view to implementing 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.
2. 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'¹. The Act was therefore introduced to try to make the adoption process easier for prospective parents and avoid delays within proceedings.
3. 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 Court² no longer have jurisdiction to hear family proceedings. Instead, nearly all cases will be heard in the new single Family Court³. 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.
4. 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 also 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.
5. Historically, cases have gone from one hearing to the next without any target end date in both private and public law, with insufficient onus to resolve issues outside of the courts. The reforms introduced through the Children and Families Act 2014 looked to address the length of cases with removal of the child being the last option.
6. Since its inception in April 2014, the West London Family Court has focussed initially on implementing the new regime in public law as introduced by the Act and has, more recently, turned that focus to private law cases. With regard to public law, a new structure has been adopted in relation to the allocation of cases. Although cases were previously issued in Magistrates Courts and transferred up as appropriate, this process has been streamlined under the new single Family Court. The 11 London boroughs covered by West London Family Court now submit all applications electronically to a central location (a single secure email address). The following day, applications are assessed jointly (by a legal advisor and a District Judge) and allocated to the right level of judge for its duration.

¹ according to the Department for Education <http://www.education.gov.uk/a00221161/children-families-bill>

² Established by section 17(1) of the Crime and Courts Act 2013

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

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

7. 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 a court can take to decide whether a child should be made the subject of a full care order. A 26 week timetable is drawn up by the court and can be extended if that is what is needed to resolve the proceedings justly⁴. 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.
8. Extensions are not to be granted routinely and are to be seen as requiring specific justification⁵. 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.
9. 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.
10. Ideally, cases are considered in no more than three hearings: a Case Management Hearing (CMH) will usually take place within 12-18 working days; an Issues Resolution Hearing (IRH) should be completed by week 20 (in West London, the aim is to complete this by week 18); and a Final Hearing will be held by week 26. Courts are able to allow extensions to these timescales as it is acknowledged that there are times when it is not possible to complete an application within the 26 week deadline. For example, a complex Fact Finding Hearing (FFH) may need to take place or assessments may need to be undertaken abroad.
11. As the issue of family law is cross-cutting, the Chairman and Labour Lead from the Children, Young People and Learning Policy Overview Committee were asked to join the External Services Scrutiny Committee Members in this single meeting review held on 11 February 2015. At this meeting, Her Honour Judge Judith Rowe QC (Designated Family Judge for West London sitting at the West London Family Court) explained the implications of the legislative changes that had recently come into force and talked about the progress that has been made in Hillingdon.
12. Since the implementation of the new system on 22 April 2014, there has been a steady and significant improvement in the processing of cases in Hillingdon. Since its inception, there has been a one week reduction in the average duration of cases each month, resulting in a current average of 30 weeks. Judge Rowe advises that this progress has been welcomed by the Family Justice Board but it has been acknowledged that further improvements could be made in relation to issues that fall within the court's control.
13. Judges have worked together with agencies to make the process more efficient and streamlined and to ensure just outcomes for all parties. Regular meetings are held to identify common themes and areas for improvement and each local authority in West

⁴ http://www.familylaw.co.uk/news_and_comment/major-changes-in-family-courts

⁵ Children and Families Act <http://www.legislation.gov.uk/ukpga/2014/6/part/2/enacted>

London meets quarterly with a judge to discuss issues relevant to them. Hillingdon's performance has received excellent feedback from court staff and judges at these meetings. Judge Rowe confirmed that Hillingdon's performance has significantly improved over the last six months and is now one of the best in this court area.

14. The judiciary is only one part of the process and local authorities have a huge part to play in achieving the 26 week deadline. Hillingdon has already made improvements to the quality of its work and to its processes to ensure that officers are tracking cases more effectively and at an early stage. These improvements have also resulted in the reduction of social workers' caseloads and the quality and timeliness of assessments has improved. Legal planning meetings are now undertaken earlier to ensure good pre-proceedings work and establish timelines before going to court. It is noted that legacy cases, which had increased Hillingdon's average completion time, are now significantly reducing as they are being brought to final hearing for conclusion.
15. The previous high turnover of social workers in Hillingdon has now been resolved and there is stability in the workforce. However, some local authorities have had to buy in assessments as suitably qualified and experienced social workers are not available. To help local authorities, a report template has been produced which sets out the assessments that need to be undertaken and any other requirements that need to be met.
16. To reduce the number of delays in concluding cases, many judges have become stricter with regard to things like the commissioning of unnecessary separate Fact Finding Hearings and the inclusion of superfluous expert witnesses. Judges consider social workers to be experts in their field and, as such, need to be encouraged to feel like experts. As the quality of social workers' written and oral evidence improves, Judges have reduced the need to allow third party 'expert' witnesses in proceedings which has helped to reduce the time it takes to conclude cases. Furthermore, insofar as courts not being available to hear cases promptly are concerned, every effort is made to find a courtroom elsewhere for a hearing to take place if there is no availability at a particular court.
17. In December 2014, there were 25 live public law cases in Hillingdon and in January 2015 there were 24. Of these 24 cases, in terms of progress made on each case and the likelihood of meeting the 26 week target, 7 have been classified as Red, 4 as Amber and 13 as Green. However, these classifications are not an absolute indication of a case being able to achieve the 26 week deadline as the ratings are automatically allocated by the computerised data collection system. It is noted that it can be difficult to benchmark local authorities as the number and complexity of cases for each varies significantly and this needs to be taken into account.
18. The 26 week period is supposed to be a maximum timeframe and cases exceeding this timeframe are the exception, with the majority being considered within this period. However, there are times when a case is put before a judge before the necessary assessments (such as parenting, or psychological) have been undertaken. These assessments can take two months to arrange, with further time then needed to prepare a report. As such, the completion of assessments prior to going to court is helpful in achieving the 26 week target.
19. Whilst it had initially been feared that achieving the 26 week target would be at the expense of the parents being properly represented in the process, this has not proved to be the case. Parents can be given time to improve their parenting skills but this period needs to be finite. If they are able to show good evidence of improvement, the 26 week period can be extended.

New requirements - Mediation Information and Assessment Meetings

20. Insofar as private law proceedings are concerned, cases tend to be brought by private individuals (rather than the local authority) and are generally in connection with divorce or the parents' separation. The family justice measures 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'⁶. It is anticipated that this will ensure that the child will be able to develop relationships with both parents and not just one.
21. 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.
22. 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.
23. Although a number of voluntary organisations provide mediation services, this service has been slow to take off. To help improve the take up of the service, Relate has been reviewing publicity for its service and is currently looking at the possibility of accessing mediation services through applications such as Skype. During January 2015, Relate worked with approximately 50 individuals through the Separated Parents Information Programme (SPIP which is a course for parents who are separated and/or divorced and are involved in court proceedings).
24. In addition to Cafcass, which advises courts on what it considers to be in the best interests of individual children, there is a growing raft of support available to litigators to help them take responsibility for their own cases and reach an agreement. This support includes the development of a duty mediation scheme, although it is acknowledged that this is making slow progress.
25. Family Drug and Alcohol Court (FDAC) provides a problem-solving, therapeutic approach which aims to improve outcomes for children by helping parents change the lifestyle that has put their children at risk of harm. Active consideration is being given to how to introduce FDAC in West London. However, as concern has been expressed that this is a costly approach, it is deemed to be work in progress.

Revised statutory guidance for local authorities

26. 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;

⁶ <https://www.gov.uk/government/news/major-changes-in-family-courts>

- 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.

27. 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.

28. 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.

29. 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.

30. Although every effort is made to agree on issues at a hearing, the issue of safeguarding children cannot be compromised. As such, if parents want the opportunity to contest an application, they have to be given the opportunity to submit evidence. Once this evidence has been submitted, the local authority can submit evidence in return. Finally, the guardian is able to review the evidence submitted by the other parties and submit their own.

31. Hillingdon's legal team has built stronger relationships with social workers over the last few months which has resulted in 100% compliance with court orders. Although a locum has been in place and dealt with 90+ court hearings over the last year, a permanent in-house advocate has now been appointed. It is anticipated that the appointment of this advocate will result in continued savings to the Council, a consistency of approach and will ensure that the best possible case is presented to the court.

Financial Implications

There are no direct financial implications arising from the recommendations in this report. However, Central Government has recognised that the impact of the Children and Families Act 2014 will require local authorities to change their ways of working, to this end, grant funding has

been provided to assist with the implementation of Adoption Reform. In 2014/15, the total grant received by Hillingdon was £310,025, this funding has been used to fund a Barrister, a Clinical Psychologist and a Court Tracker, which has supported the development of a good working relationship with the Courts as mentioned in the main report.

4. EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

The recommendation in this report is designed with the purpose of raising awareness of the work that has been undertaken within the Council to meet the requirements of the Children and Families Act 2014.

Consultation Carried Out or Required

The Committee heard evidence from a range of witnesses during this single meeting review.

5. CORPORATE IMPLICATIONS

Corporate Finance

Corporate Finance has reviewed this report and concurs with the financial implications above, noting that there are no direct costs associated with the recommendations in the report. In line with the Government's new burdens doctrine grant funding was made available during 2014/15 to assist the Council in managing the impact of the Children's and Families Act.

Legal

The legal implications are contained within the body of the report.

Relevant Service Groups

Children's Services and Legal have been consulted on the report.

6. BACKGROUND PAPERS

- **Major changes in family courts;** <https://www.gov.uk/government/news/major-changes-in-family-courts> (13 March 2014)
- **Children and Families Bill 2013;** Department for Education; <http://www.education.gov.uk/a00221161/children-families-bill> (12 March 2013)
- **Crime and Courts Act 2013,** <https://www.gov.uk/government/publications/crime-and-courts-bill>
- **Major changes in family courts;** Matthias Mueller; http://www.familylaw.co.uk/news_and_comment/major-changes-in-family-courts (13 March 2014)
- **Children and Families Act;** <http://www.legislation.gov.uk/ukpga/2014/6/part/2/enacted>