

## JUDICIAL REVIEW TEAM

### **Thematic Review of the Protocol for Judicial Case Management in Public Law Children Act Cases**

#### **General:**

1. The Judicial Review Team (JRT) was set up by Dame Elizabeth Butler-Sloss P. to undertake reviews of the Protocol and its associated Practice Direction [2003] 2 FLR 719. The Protocol is a statement of best practice case management, the implementation of which is dependent upon the management of family proceedings by the specialist family judiciary. As an instrument of judicial management and as guidance relating to the making of judicial decisions the terms of the Protocol are a matter for the judiciary<sup>1</sup>. The JRT's review reports on case management are undertaken for the President of the Family Division as the Head of Family Justice. The JRT has also been asked to consider the terms, development and review of the Private Law Programme.
2. In January of this year a consultation exercise concerning the effectiveness of the Protocol and the Practice Direction was undertaken by the judiciary in partnership with Her Majesty's Court Service (HMCS). The questionnaire and the detailed summaries in response are available on the Protocol website<sup>2</sup>. A composite summary of responses is attached to this report at Annex A. There were 291 responses to the questionnaire. The summary together with a document setting out the emerging themes of the consultation exercise was submitted in May of this year to Family Division Liaison Judges (FDLJs), Designated Family Judges (DFJs) and representatives of the Department of Constitutional Affairs (DCA), HMCS and those agencies with whom consultation is provided for by central Government on the (public law proceedings) Delay Programme Board and its associated Ministerial Steering Group. Consultation was thereby provided with the Magistrates Association, Justices' Clerks, CAFCASS, local authorities and professional representative groups, among others. The summary of emerging themes is attached to this report at Annex B. The intention was to stimulate discussion and to ask for feedback before the final draft of this review was prepared.

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<sup>1</sup> (2004) 26 January, paragraphs 65 and 47 of 'the Concordat'

<sup>2</sup> (2004) December, [http://intranet/csd/family/public\\_law\\_protocol.htm](http://intranet/csd/family/public_law_protocol.htm)

3. Coincident with the preparation of the themes of the review the following relevant strategic papers were published:
  - a. HMCS Management Proposals to Develop a Unified Family Service<sup>3</sup>
  - b. Report of the Constitutional Affairs Select Committee<sup>4</sup>
  - c. Judicial Resources Review<sup>5</sup>
  - d. A Fairer Deal for Legal Aid<sup>6</sup>
  - e. The Child Care Proceedings Review: Key Issues Summary<sup>7</sup>
  - f. Focusing Judicial Resources Appropriately<sup>8</sup>
  - g. Moving Towards a Single Family Court<sup>9</sup>
4. While the detailed content of these inquiries and reviews falls to be examined elsewhere, it has to be acknowledged that there has been a significant increase in the frequency and volume of initiatives and examinations relating to the family justice system. As a preliminary observation, it should be recorded that careful management of these projects is essential if those responsible for the delivery of the service are not to be overburdened.
5. Alongside the examination of public law proceedings to which the Protocol relates, there has been an equal if not at times greater focus and emphasis upon relationship breakdown and its associated private law proceedings and processes. Although this report will concentrate on public law proceedings, a keen eye must be kept on the advances presently being achieved in the determination of private law disputes consequent upon relationship breakdown.
6. Alongside the questionnaire responses, the JRT has received a significant volume of judicial comment, in particular that derived from the President's Conference; the annual Judicial Studies Board training and information conference for the managing family judiciary.
7. The main findings of the questionnaire exercise were as follows:
  - a. 80% of all respondents felt that overall performance had been improved when measured against the paramount objective of the Protocol
  - b. 42% of all respondents felt that the greatest benefit since the introduction of the Protocol had been an assured timeframe that focused on 40 weeks

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<sup>3</sup> (2005) 17 February, Position Paper, Sheridan Greenland, Area Director (Family) HMCS

<sup>4</sup> (2005) 1 March, HC 116-1, TSO

<sup>5</sup> (2005) July 2005, Judicial Resources Review

<sup>6</sup> (2005) July, Cm 6591, TSO

<sup>7</sup> (2005) September, DCA Working Party

<sup>8</sup> (2005) October, Focusing Judicial Resources Appropriately

<sup>9</sup> (2005) 7 November, DCA News Release: Moving Towards a Single Family Court

- c. 35% of all respondents felt that the greatest disadvantage of the protocol was that there was too much paperwork and / or bureaucracy
  - d. The prescription of standard documents did not appear to have led to a marked improvement in case management
  - e. The 3 main improvements suggested were i) improved criteria for transfer ii) addressing the shortage of children's guardians and iii) addressing the shortage of judges.
8. In addition, judges asked for more effective listing policies including more realistic provision for reading time and judgment writing time.
9. The overall response to the Protocol was very positive albeit there were certain specific suggestions for further improvements to our working practices. Most importantly, many felt that the overall profile of the work and its need for prioritisation had improved. It should be noted that there were very few responses to the questionnaire that proposed amendments to the detailed process of the Protocol or its target timescales. However, when the questionnaire responses were analysed in more depth with respondents, issues of principle were identified that have been considered within the main body of this report, for example, whether more control needs to be exercised over the excess paperwork generated by care proceedings.
10. A separate but strong theme of DFJ comment was that with the advent of the management of local family justice and judicial resources by each DFJ in consultation with the FDLJ, a firm steer or clear plan is required to enable DFJs to manage from a secure information base. This would provide a consistency of approach and clarity of goals, expectations and criteria for management decision making. In plain English, a strategy is required. This theme is consistent with many discussions that have taken place over the last year or two between DFJs, FDLJs and the President of the Family Division.
11. It was pointed out by respondents that were a strategy to be launched; the information that informs it would be the touchstone for development of good practice and guidance including the review of the Protocol in future years. It is a consistent theme of judicial comment that effective case management is dependent on resources and the quality of the management of the justice system locally i.e. that constraints and policies determining the latter (e.g. local listing policies, insufficient ticketing or training or other resource shortfalls) will damage the former.

## Family Justice Strategy

### **Background:**

12. With the implementation of the Concordat and the enactment of the Constitutional Reform Act 2004, the dividing lines between the Judiciary and Executive are more clearly drawn. In particular, certain functions relating to the management of the judiciary and of the justice systems must be exercised by the senior judiciary.

13. The President of the Family Division has for some time been undertaking strategic and managerial functions in the manner now to be developed by the judiciary as a whole. These functions now include, but are not restricted, to the following:

- Management : of the local family judiciary including the family magistracy
- Categorisation: determination of the classes (i.e. types and levels) of family proceedings that are to be heard by judges of the High Court, Circuit Judges, District Judges and Magistrates
- Allocation: the allocation of each category of family proceedings to the judiciary and magistracy
- Ticketing: the accreditation of those who hear categories of family proceedings
- Listing: listing policy and the allocation of individual proceedings to individual judges
- Guidance concerning judicial decision making and management
- Training of the judiciary and magistracy through the independent auspices of the JSB
- Support functions for the managing judiciary
- Family Justice Council (FJC): providing strategic responsibility for the Council and its proceedings

## **Recommendation**

14. At the President's Conference in 2005, the JRT with the concurrence of the President **recommended** that the existing planning materials and systems in the President's Office be described and brought together into a **President's Family Justice Strategy** setting out the management functions performed by him, the President's Office and the FDLJs on his behalf and his expectations for the development of those functions on a year on year basis.
15. It is suggested that in future, the strategy will inform local discussions between the family judiciary and Regional and Area Directors of HMCS and the local FJC's and will itself be informed by a) discussions with the Family Justice Council, b) judicial discussion, in particular with FDLJs and DFJs and c) discussions with policy advisers in HMCS and Ministers and policy advisers in the DCA.

## **Family Court Reports**

### **Background:**

16. Crown Court Reports were first introduced for the year 2000/01, with County Court Reports following in 2002/03. Family Court Reports will be introduced in the year 2005/06 with the intention that all of the Reports are published together. DFJs will be responsible for submitting Family Court Reports through the FDLJs to the President. The reports will bring together the judicial and executive perspectives for each HMCS area in particular describing local resources, plans and schemes that are in place together with expectations for the future. Family Proceedings Courts (FPCs) will be included in Family Court Reports in the year 2006/07.
17. As Family Court Reports are intended to provide the opportunity for the managing judiciary and HMCS to describe the local arrangements that are in place to deliver family justice, it is important that recent Protocol and Private Law Programme initiatives that were designed to achieve the same objective are brought together so as to avoid duplication and provide a single coherent information base for judiciary, administrators and customers alike.

### **Recommendation:**

18. The JRT **recommends** that the Care Centre Plans and the Family Proceedings Court Plans that are a requirement of the Protocol (Appendix E/1 and E/2) and the Private Law Schemes that are a requirement of the Private Law Programme should be brought

together in the annual Family Court Report. It will then be possible to have described in summary form local resources, structures, limitations and expectations in a single document whose contents need not be repeated. In the longer term, this will provide the text for local plans for family justice derived out of the President's strategy.

19. As an initial step for the year 2005/06 the JRT **recommends** that the Care Centre Plan and the FPC Plan be merged together and that a resulting Public Law Plan together with the Private Law Schemes for the courts in each local area be annexed to the Family Court Report.
20. **Postscript:** draft templates for the Family Court Report are to be piloted by the Northern Circuit (HMCS North West Region) so as to provide a model Report and a draft local plan for discussion at the President's Conference in May 2006.

### Specific Proposals

#### **Jurisdiction**

21. The widening of the jurisdiction to hear contested public law proceedings has been announced by the Lord Chancellor. The announcement anticipated the strong recommendation of the JRT and the separate substantial work that was undertaken and support that was given to this proposal by successive Presidents of the Division.
22. Recorders who are nominated and trained to conduct public law Children Act proceedings will be able to be accredited to exercise the same jurisdiction as a nominated Circuit Judge. Both existing Recorders and those who apply in the specialist Civil/Family Recorder competitions will be eligible. Bids for existing Recorders to be nominated must be made through the appropriate FDLJ to the President and it is likely that applicants will be required to give a commitment a) to sit for a minimum sitting period (e.g. a minimum block of 5 days and 10 care days a year) b) not be cancel a sitting once booked and c) to sit at the Care Centres in their Region where there is a business need.
23. The extension of jurisdiction for selected District Judges to hear contested care proceedings in the FPC has also been announced. A similar bid process for accreditation will be put in place. It is important to note that a District Judge who is not simultaneously an accredited family Recorder will not be asked to undertake contested public law proceedings in the Circuit Judge's List nor may he/she be "made up" or "make himself up" for that purpose. Rather, this is a

step towards the creation of a more substantial and effective first tier of family jurisdiction: a composite District and Family Proceedings Bench.

24. It is hoped that this will increase flexibility of listing, particularly where, as will increasingly be the case, family court resources are co-located and jointly administered. This will help to provide a better match between scarce judicial resources and cases so as to make more effective use of the existing specialist judiciary and magistracy and thereby reduce delay.
25. By way of example, one of the drivers of delay that could be addressed by this development is the transfer of care proceedings from FPCs to Care Centres when the lay bench is unable to commit sufficient hearing days in an appropriate time frame to the resolution of the case. These lengthier but less legally complex cases inevitably contribute to the delay profile of a Care Centre and may themselves be delayed by transfer. Such cases would be particularly suitable for determination by District Judges with the new accreditation or District Judges (Magistrates Court).
26. The JRT **recommends** the development of the jurisdiction of District Judges sitting to hear fully contested care proceedings and in particular the use of District Judges alongside District Judges (Magistrates Court) and the lay magistrates so as to provide an effective tribunal for a body of cases that are transferred to the Care Centre. Examples of cases that would be suitable for hearing before a District Judge are those where the estimated length of hearing is beyond that to which the individual magistrate or lay bench can be committed and cases where a genuine complexity has been resolved and the final hearing can be released for hearing to a District or lay bench.

### **Transfer Guidance**

27. Arising out of the questionnaire exercise, there were a series of clear requests from FPCs for additional guidance to regulate the manner in which the FPC transfers proceedings to the Care Centre. Inconsistency in the application of transfer criteria has led to a significant over-load in some Care Centres of cases that do not objectively need to be transferred. Likewise, although a reducing problem, there remains a core of cases that are transferred too late. Aside from questions of delay, the increasing tendency to transfer care proceedings is one of the factors most frequently cited as being responsible for the declining experience of the lay bench.
28. It has been suggested by respondents that all transfers from the FPC should not only be advised upon by the senior family legal adviser

(Justice's Clerk) but should normally be decided by them or where available by the District Judge who holds a family ticket. This would achieve consistency and help to maximise the resources of a combined District and Family Proceedings Bench.

29. If the District Judges' jurisdiction referred to in para 23 above is developed, then within reason i.e. absent other complexity issues, the length of a case should not continue to be regarded as a valid reason for transfer from an FPC, particularly where co-location and joint listing is in place or accredited District Judge sittings are available.
30. The JRT **recommends** that transfers from the FPC should where possible be referred to the senior family legal adviser or a District Judge for determination so that all available judicial resources can be identified for the determination of the individual case.

### **Judicial Management**

31. Individual Care Centre and FPC Plans provide for different local approaches to case management e.g. whether First Hearings in the FPC are to be conducted by the family legal adviser or a lay bench and in the Care Centre whether case management is undertaken by Circuit and/or District Judges. The Protocol provided that judicial management decisions of this nature were matters for each DJF and Justices Clerk in consultation with the FDLJ, so as to ensure that sufficient regard was had to local conditions.
32. Judicial management of this kind cannot be effective unless adequate up-to-date information is provided to the DFJ and each case management judge about the individual case and indeed about all outstanding cases. It remains a sad commentary on existing IT systems and inter-disciplinary co-operation that there is an inadequate knowledge of what is happening to the extent that case management judges and court officers will often have an incomplete picture or overview of all of the cases for which they are responsible. There is accordingly no sophisticated ability to prioritise, to predict settlements, to list other than in a formulaic manner (usually at a fixed volume such as 170%) or to match case timetables with available hearing windows and judges.
33. It is arguable that one of the aims for the future should be that every case is given its own timetable so as to ensure that targets are more than just lip service to the best interests of each child who is the subject of proceedings. Besides permitting more effective time management this would more effectively ensure that existing statutory duties and human rights expectations are provided for. The timetable should be

set by the case management judge who is responsible for safeguarding the welfare of the child and should exist alongside target times and central Government targets i.e. not be constrained by them.

34. It has been suggested to the JRT that in addition to their responsibility to achieve central Government targets, HMCS should provide sufficient information for each DFJ to show the circumstances of all outstanding public law cases, their allocation by judge and their expected hearing windows i.e. qualitative rather than just quantitative information. In a number of High Court District Registries and Care Centres there are “co-ordinating listing officers” or Senior Associates i.e. a court officer who has administrative knowledge of the state of readiness of each case, the likelihood of its settlement, the alternative listing estimates, the possibility for cases being brought forward, delayed and/or interposed and the availability of all judicial resources. It should be noted that good listing offices already provide this service and that regional co-ordination is a recommendation of the Judicial Resources Review for High Court work.
35. In FPCs this vital support for effective case management is undertaken by the specialist legal advisers who are themselves able to undertake case management. This unique combination of a delegated judicial jurisdiction and an administrative role is an example of best practice that could be shared with Care Centres in a unified family service.
36. A pilot project is being undertaken by HMCS at the request of the Delay Programme Board to see whether case progression officers can assist DFJs in the targeting of cases to available judges and courtrooms. It remains to be seen whether in the absence of additional resources this will provide for the high level co-ordination and information exchange that is required.
37. The JRT has requested the Delay Programme Board to consider the assignment of a specialist family legal adviser could be assigned to those DJFs who are soon to be responsible for co-located Care Centres and FPCs so that the legal adviser might undertake ‘case progression / case management’ for the DJF as well as the lay bench, thus ensuring that the overall caseload in a Care Centre is managed i.e. cases are correctly identified as being ready for hearing and that pro-active case management is undertaken to progress cases that are not ready.
38. The JRT **recommends** that in addition to the case progression officer pilot project, the following be considered by the HMCS for a feasibility report to the President within 3 months:

- a. Whether specialist family legal advisers could assist DFJs in the management of case progression; and
  - b. A cost benefits analysis of the roll out of regional and area listing co-ordinators for all High Court District Registries and Care Centres.
39. In addition the JRT invites the President to refer to it the following questions for consideration:
- a. Whether, and if so what, guidance should be issued concerning listing systems and protocols; and
  - b. Whether existing public law target times should be refined to pay greater regard to the circumstances of the case by development of the concept of the case timetable or case plan.

### **The Care Proceedings Review and the Use of / ADR**

40. A draft report from the Chief Medical Officer on the use of clinicians as forensic experts is with Central Government. Concurrent with this report, work is also being undertaken by an experts' working party of the Family Justice Council and by the Delay Programme Board to address the following:
- A shortage of experts i.e. both forensic practitioners and clinicians
  - The standards i.e. the skills and experience that are required of experts
  - The purposes for which forensic and clinical practitioners are used by legal practitioners and the courts
  - The use of experts to advise the court at an early stage on case management decisions, in particular, the use and terms of instruction to experts
  - The development of improved letters of instruction (to ensure that the same material informs each of the experts in the case and to reduce the number of questions that are routinely asked of each expert)
  - The purposes and funding of residential and non-residential section 38(6) assessments
  - The use of family group conferences and other inter-disciplinary and ADR environments.
41. It remains a stark fact that the time that is taken to identify key issues, find and select an expert and receive their advice is the single greatest driver of delay in the determination of most care cases. This is not the place to examine in detail this very complex issue or to proffer solutions. There are many factors that are inextricably linked and that

require careful analysis. Some of the questions that are presently being posed by leading commentators are as follows:

- What are the outcomes that we seek to deliver for children and how do we measure those outcomes
- Whether an inter-disciplinary ‘problem solving’ approach to child care coincident with modern health and social care practice can be adopted in child protection practice and child care proceedings so as to further the outcomes we have identified
- Whether and how key issues are identified in cases
- Whether key issues can be linked to the identification of specific goals and components (i.e. how to achieve the goal): a mechanism known as a ‘case plan’ , a document that would settle the essential questions to be answered by the court for the child and the parties
- Whether case plans can be used as a more comprehensible and effective device for expeditious and fair decision making in children proceedings
- How the quality and availability of social care advice and assessment can be improved and provided at the earliest stage in proceedings
- How clinicians and other professionals are used in an inter-disciplinary environment before proceedings are contemplated
- How clinicians and forensic practitioners should be used in an inter-disciplinary environment once proceedings have begun;
- What role the court and in particular the child’s lawyer and the children’s guardian should play in a problem solving forum and at what stage in the process
- Whether there are and what are the sufficient protections in an inter- disciplinary / ADR process for a person against whom an allegation is being made that is denied.

42. These are questions that are fundamental to the way we undertake most children proceedings and are not to be answered lightly or without careful analysis. The JRT would welcome a careful inter-disciplinary approach to these issues in the manner that has been so successful in the past under the auspices of the President’s Interdisciplinary Committee, which is now a sub-committee of the Family Justice Council chaired by Lord Justice Thorpe, the Deputy Head of Family Justice.

43. The Experts Working Party of the FJC has carefully considered the questions which it recommends be asked in letters of instruction to child mental health professionals and paediatricians (having regard, in particular, to the Protocol Appendix C paragraph 3.1). The JRT is grateful to the Working Party and **recommends** that their standard

questions (at Annex C) be adopted as part of the code of guidance to experts which is contained in the Protocol at Appendix C.

44. The JRT **recommends** that the issues that have been identified continue to be considered on a consensual inter-disciplinary basis and that any proposals be subject to careful scrutiny in the existing inter-disciplinary consultation arena.
45. The JRT will submit detailed proposals to the recently announced DCA/DfES Care Proceedings Review for the expansion of the provisions of the Protocol grounded in the success achieved under the Private Law Programme by the early conciliation appointment. In outline, the proposals are as follows:
46. **A Pre-Proceedings Protocol:** the re-introduction of a proposal made to the Lord Chancellor's Advisory Committee in 2002 to enhance existing guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970 by a detailed protocol or Practice Direction which describes best practice prior to an application being made with the intention of a) avoiding proceedings in appropriate cases where issues can be resolved in an ADR environment and b) concurrently with (a) preparing for proceedings by identifying key issues, goals and their components, to minimise delay and costs.
47. **A Children's Dispute Resolution Appointment (CDRA):** the introduction of a judicially led initial stage to all care proceedings bringing together 3 concepts: (i) 'early neutral evaluation', (ii) inter-disciplinary professional advice to the court on key issue identification, case management and assessment (itself mirroring recent proposals made by the Chief Executive of CAFCASS in the consultation document: 'Every Day Matters') and (iii) case planning. The introduction of a CDRA ought to be at least cost neutral, by serving to combine or eliminate steps 1, 2 and 3 (and in some cases step 4) of the Protocol.
48. **The Case Plan:** the introduction of the concept of a 'case plan' which describes in words that are comprehensible to the parties:
  - a. The identified key issues
  - b. The goals that need to be achieved for the child to receive the standard of care that he/she needs
  - c. The components of the goals: i.e. clear and unambiguous inter-disciplinary advice on the steps that are necessary to achieve the goals
  - d. A child centred timetable for the achievement of the goals and decisions in the proceedings

- e. Accountability for delivery of the plan and its parts
- f. A mechanism for re-evaluation to take account of any changes of circumstance during the plan.

49. It should be noted that (a) and (b) are likely to embody the threshold criteria and such facts as need to be proved to inform effective care planning; (c) will describe the essential elements of an interim care plan and (d) will provide the case timetable which remains the primary device by which a child can be protected from the detrimental effects of unnecessary delay and poor planning processes. Their identification as a matter of course in every case and as a concise and readily comprehensible set of propositions will do much to simplify issues in particular where proceedings have to be taken.

50. The JRT has been significantly assisted in its forward thinking by recent experience of the judiciary as advised by leading forensic experts, existing healthcare and social care research materials and the experience of healthcare professionals who use a model known as 'treatment evaluation' for rehabilitative care. The model proposed would make provision for inter-disciplinary advice at the earliest stage of a referral and the construction of a written case plan that forms the basis either for agreements with families or for independent decision making. It is particularly suitable for use in the child protection arena and if used in a consistent manner by professionals both before and during proceedings it could dramatically improve issue resolution, case management and timely decision making.

51. It is the provisional view of the JRT that if 'treatment evaluation' and case planning were adopted by social and health care professionals and the courts, much of what is suggested to be 'wrong' with care proceedings could be improved. For example the 'medicalisation' of proceedings would be replaced by an enhanced inter-disciplinary emphasis which would be more comprehensible to parents and children alike and adversarial disputes about key issues would be clarified, and where possible, minimised. There will always be a core of serious allegations and welfare issues which if unacknowledged have to be determined by a court. However as a logical, and some would say necessary, precursor to a Care Plan, the use of the case plan mechanism should be effective to reduce protracted welfare disputes which frequently arise out of inadequately thought through care planning.

### **Other FPC Issues**

52. Prior to the publication of the Protocol Report, His Honour Judge Cryan chaired a Lord Chancellor's working party that considered

delay in the FPCs. That working party made recommendations to central Government to enhance the effectiveness of FPCs<sup>8</sup>. Central Government accepted many of the recommendations that were made. The JRT believes that the recommendations then made remain valid and that they should be implemented as soon as possible.

53. The specific recommendations which the JRT endorses are set out in a formal letter of request from Judge Cryan to the DCA dated the 4<sup>th</sup> April 2005, attached to this report at Annex D. They include:

- a. The power to impose sanctions for non compliance with directions
- b. Enhanced monitoring and compliance responsibilities for children's guardians
- c. Enhanced specialist training and career progression for specialist family legal advisers.

54. In addition to the above, the JRT endorses the need previously identified by the President for an urgent amendment to be made to the guidance issued to magistrates to enable those who wish to specialise in family proceedings to do so without reference to any minimum requirement to sit in another jurisdiction.

## **Documentation**

55. One of the initial reasons for the creation and implementation of the Protocol was to reduce the significant overload upon judges and magistrates of unhelpful and/or unnecessary paperwork. The JRT considers that there remain significant opportunities for reduction in the volume of paperwork presented to the court and to the parties, often too late for it to be read and in a manner not easily capable of analysis.

56. It is one of the most consistent themes of the questionnaire responses that this issue has not been satisfactorily resolved, four elements of the problem being particularly identified by respondents asked for more detail from their experience:

- a. The use (or misuse) of checklists by practitioners and courts as if they were a document to be considered and completed in court and filed in the proceedings
- b. The lack of use of the standard documents at Appendix B of the Protocol so that standard information is omitted from case management summaries with the parties' advocates having to

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<sup>8</sup> (2002) September, LCD, Lord Chancellor's Working Party on Delay in FPCs under the Children Act 1989

re-invent the wheel by developing their own customised materials for the court for each hearing

- c. The over provision of identical information by parties in the multiple completion of case management questionnaires and other case management documents when one composite document would suffice and/or be more informative
- d. The lack of any effective case management control over the filing of documents by parties, the timing of that filing, the content and lodgement of bundles, the lack of recommended reading lists and any time for judicial reading and judgment preparation.

57. In addition, the quality of the orders produced for the purpose of informing subsequent case management and enforcement is poor. Despite attempts to create standard wording it is generally accepted that there needs to be a review of the unacceptable state of many of the orders issued and the timeliness of their service upon parties and CAFCASS. There is more than anecdotal evidence that delays in the promulgation of orders are significant and that this effects the allocation of guardians after their appointment by the court.

58. The JRT has asked His Honour Judge Cryan to undertake a comprehensive review of the standard documents prescribed in the Protocol and those used for similar purposes in other jurisdictions in order to identify best practice and to make recommendations to the President. In his initial analysis of questionnaire responses and judicial commentary he has identified the need for simple documentary templates for similar types of proceedings that all practitioners (including the litigant in person) could use with ease.

59. On a similar basis, the JRT has asked His Honour Judge Iain Hamilton to liaise with the Senior District Judge of the Principal Registry of the Family Division to construct standard orders templates to substitute for the comprehensive nature of the Standard Variable Directions which have proved too cumbersome for easy use in practice.

60. Pending receipt of their advices, the JRT makes the following comments and **recommendations** about the specific issues raised:

- a. It was never the intention of the Protocol that the Case Management Checklist and the PHR Checklist (Appendices A/3 and A/5 of the Protocol) be completed in court or at all. They are for reference purposes as an aide memoir, in particular for use by advocates at advocates meetings
- b. Standard documents including the SVD orders package were prescribed to help achieve consistency and clarity. It was an

obvious and stated corollary of that objective that software should be available to courts and practitioners alike for compatible electronic communication of information in standard formats. That intention has been frustrated by the lack of agreement on piloting commercial IT solutions common to both court-based IT systems and the parties' representatives. With the implementation of Link technology in the courts, IT solutions should now be urgently reconsidered

- c. Step 2.7 of the Protocol which provides that FPCs should make a direction at the First Hearing that documents should not generally be filed without the court's permission has been ignored. Until new rules are drafted for the family courts, FPCs should make the direction required of them by the Protocol (which is a binding Practice Direction) unless there are good reasons to the contrary
- d. The Practice Direction (Family Proceedings: Court Bundles) [2002] 1 WLR 737 should now be amended to provide for more rigorous requirements and more effective compliance.

## Other Issues

61. The imminent implementation of the provisions contained in the Children Act 2004 and the Adoption and Children Act 2002 will necessitate guidance as to how the statutory information-sharing procedures and the adoption and placement order processes fit with existing Protocol steps and target times. There is a particular need for guidance to be given about the necessary relationship between the provisions of the Protocol and the recently published Adoption Rules and their associated Practice Directions.
62. The JRT **recommends** that Her Honour Judge Swindells QC be asked to draft a best practice note for inclusion in the Protocol as an appendix.
63. Despite the very careful construction of an agreement that regulates the appointment of children's solicitors where there is a delay in the allocation of a children's guardian after appointment (step 1.4 of the Protocol), there remains a level of concern within the profession as to the fairness of the systems for selection of children's solicitors by the court. It has been decided to refer this issue to a working party of the Law Society, Resolution and the ALC for further recommendations to be made by the end of 2005.
64. In discussions with CAFCASS it has been suggested that delays could be reduced in individual cases by a better use of the children's guardians' time. In particular, it is suggested that up to 10% of

hearings may not need a guardian to attend if the issues which are to be dealt with are considered from the child's perspective. The JRT **recommends** that the judiciary be encouraged in the course of their case management to excuse the children's guardian from hearings where their attendance is not necessary and where the child's solicitor is in any event fully apprised of all of the issues.

65. Some of the issues raised by respondents to the Protocol Review are outside the scope of judicial comment. Nevertheless, the issues are of the utmost importance and deserve repetition, not least because they are a reflection of the 'Major Obstacles to Success' of the Protocol identified by the Lord Chancellor's Advisory Committee in its report in June 2003. The most common themes are as follows:

- There is a continuing shortage of children's guardians
- There is a continuing delay in the allocation of a children's guardian once an appointment has been made
- There is a continuing significant shortage of social care professionals generally
- The level of skill and expertise being provided by available social care professionals in particular when undertaking vital family assessments and in care planning is not of a sufficiently high standard
- There is a general shortage of available expertise in many of the specialist areas upon which a family court will need advice
- There is a lack of integration in the Family Court system
- There is a lack of a standard integrated IT system across courts, agencies and practitioners
- There is no IT diary for integrated listing and judicial management
- There remains a shortage of available specialist judiciary, court room space and dedicated court officers.

66. These resource considerations need urgently to be addressed. They are causative of significant delay. The JRT **recommends** that central Government considers initiatives which provide financial incentives for the resolution of the specific problems identified.

### **Future Considerations**

67. As can be seen from the text of the recommendations made by the JRT, very few recommendations touch upon the detail of the Protocol itself. In part this is because both respondents and the JRT share a concern that, although much has been achieved from a standing start, there needs to be a period of consolidation, training and experience, before embarking upon further radical change in a field already over-populated with initiatives, consultations and change.

68. Despite intensive training in the 12 months that followed the Report of the Advisory Committee, priority does not appear to have been maintained and concerns are beginning to be expressed by the judiciary that there is a danger of slipping back into bad habits. There are still practitioners in all of the child care professions who appear never to have read the Protocol and in particular the best practice documents annexed to it.
69. Despite this, it appears that the luxury of an extended period of consolidation is no longer available. The 'Care Proceedings Review' is due to report to Ministers in January 2006. Were that review to sponsor inter-disciplinary consideration of the issues raised in paragraph 40 of this report and in the manner described between paragraphs 41 and 50, there would be a prospect for widely supported and successful innovation to rival the unanimous backing that the Protocol received from its Advisory Committee in June 2003.

Munby/Coleridge/Ryder JJ  
14<sup>th</sup> December 2005