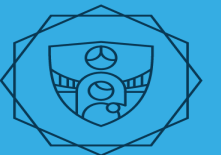


The Time for Change. The Need for Change. The Case for Change.

Matthew Richardson and Alex Laing
Barristers, Coram Chambers
November 2020



The big picture

- 22 April 2014 – the Child Arrangements Programme, FPR 2010 PD 12B, and the creation of the Family Court
- From 2014 – 2019:
 - England, private law applications: 29%+
 - Wales, private law applications: 27%+
- “*Court has become the default option for too many unhappy separators*” Anthony Douglas CBE, Cafcass
- All before the COVID-19 pandemic



Private Law Working Group

- General remit
- Membership: judiciary, lawyers, Cafcass, MoJ
- Timeline:
 - June 2019, first (interim) report
 - July – Sep 2019, consultation
 - March 2020, second (interim) report
 - June 2020, MoJ report, Assessing Risk of Harm to Children and Parents in Private Law Children Cases



June 2019, first (int.) report

- Introduction of non-court dispute resolution, Family Solutions and Supporting Separating Families Alliance
- View of children
- Revitalising the MIAM
- Gatekeeping; tracks; and triage
- Judge-led conciliation
- “Returner” cases
- Digitisation; and pilots



July – Sep 2019, consultation

- Three-month consultation on the June 2019, first (int.) report
- 133 written responses, “*views received were thoughtful, constructive, in some instances detailed and qualitatively rich*”, p 9, March 2020, second (int.) report
- Consultees: 28.5% professional representative bodies; 20.3% litigants / personal experience; 15% solicitors; 12% mediators; 10% judiciary; etc.



March 2020, second (int.) report

- No 'quick fix' solutions
- Fundamental and systemic change
- Long-term view; deeply ingrained traditional practices need to be changed
- The system is not functioning appropriately
- Focus on the impact of delay
- Focus on the need for more investment
- Pilots to be developed



March 2020, second (int.) report

- More co-ordinated use of services that includes community support, where court is only one option
- An inquisitorial rather than adversarial process
- Support for early intervention with cases, pre-application protocol, triage
- MIAMs system not working as intended, MIAM needs to be revitalised More data is needed
- Review of court forms and digitisation
- Different tracks for different types of cases



March 2020, second (int.) report

- Changes to language and labels
- Conciliation at the first hearing
- Amplified voice of the child, [child impact statement](#)
- A form of SSFA pilot in Dorset and Kent
- Subject to the Harm in Private Law report
- Focus on proper process for piloting, evidence-gathering, data, outcomes etc.



MoJ's June 2020 report

- 4 'barriers' to a proper response to DA
- Culture: pro-contact safety/protection
- Approach: adversarial investigative
- Resources: limited sufficient
- Integration: silo coordinated



MoJ's June 2020 report

- Complete re-design of the private law system
- Increased investment in all areas
- A statement of practice for DA cases
- Review the presumption of parental involvement
- Enhance the voice of the child
- Review special measures & participation directions
- Reverse exceptionality requirement for a 91(14)
- Family court co-ordinated with related services



A wider issue

- Concerns about re-shaping the system based on the issues caused by cuts
- *“The stark reality is that with ever-increasing numbers of applications ... delay is an inevitable and regrettable consequence”*
- *“System and its rules were designed at a time when lawyers were routinely involved ... Given the high number of LiPs, the system needs an overhaul”*



A wider issue

- Harm in Private Law panel recommends designing new procedures and systems with the needs of LiPs as a central consideration
- Does this serve permanently to bake the cuts into the system? Should the system be designed on the basis that legal advice is not now, nor will it ever be, adequately funded?



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