



JUDICIARY OF
ENGLAND AND WALES

Judicial proposals for the modernisation of family justice

Mr Justice Ryder

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Key points

- The single Family Court will be the vehicle for a significant change of culture characterised by strong judicial leadership and management and evidence-based good practice
- The single Family Court will be a network of Local Family Court Centres judicially led and managed by the Designated Family Judges, where all levels of judge and magistrate will sit as Judges of the Family Court
- The effective management of judicial resources will help to reduce delay by better deployment practices which improve continuity and listing
- A framework of good practice will highlight materials which are to be used to improve outcomes for children
- Robust case management of public law cases is dependent on a timetable based on evidence and compliance with that timetable and the directions given by the court
- The immediate challenge is to develop effective methods of assisting self-representing litigants in private law cases, while maintaining fairness to all parties
- Self-representing litigants will need to be assisted to understand and comply with the procedures which are necessary to achieve fairness in financial remedy cases
- The High Court's unique jurisdiction will be preserved
- Consideration should always be given to how the voice of the child is to be heard in family proceedings
- The judiciary have made their proposals for the modernisation of family justice and are working with HMCTS and Government to make arrangements to implement change

Introduction

By Mr Justice Ryder

1. The Family Justice Review was published on the 3rd November 2011 and the Government's Response to the Review was laid before Parliament on the 6th February 2012. I was appointed by the President of the Family Division with the agreement of the Lord Chief Justice on the 2nd November 2011 to prepare a judicial response to the Review by the 31st July 2012 and to make judicial proposals for the modernisation of family justice.

2. Over the last eight months I have been engaged in an extended conversation with over 5,000 interested parties and individuals at conferences, seminars and meetings around the country. The process has included an examination of outline proposals with leadership judges at the President's Conference in May and discussions with the Judicial Executive Board (JEB), the Board of Her Majesty's Courts and Tribunals Service (HMCTS), the Family Justice Board, the Family Justice Council, the Family Procedure Rules Committee and the Judicial College. I have also had the benefit of regular discussions with each of the representative associations of the judiciary and magistracy, with a significant number of individual judges and magistrates in every court from the United Kingdom Supreme Court to the Family Proceedings Courts and with the various agencies, professional and representative interest groups involved in family justice. I have received contributions from distinguished academics and jurists including the Chief Justice of the Family Court of Australia, the Principal Family Court Judge of New Zealand, Dr Julia Brophy, Professor Simon Deakin, Professor Adrian Dixon, Professor Gillian Douglas, Professor Judith Masson, Professor John McEldowney, and Professor Mervyn Murch.

3. I am very grateful to the local Family Justice Councils and the associations, professional bodies, academics, practitioners and specialist chambers and firms who have sponsored and participated in the many events to which I have been invited. In particular, I am grateful to the Law Society for the

significant role it has performed in organising a series of seminars and bringing together the Faster Family Justice Group which has provided an invaluable national forum for discussion and to the Chief Lawyer of the Community Services Team at the London Borough of Islington and her colleagues who organised seminars for local government lawyers and child care practitioners from far and wide. I express my personal gratitude to my fellow Presiding Judges, my Clerk and to those officials in the President's Office and the Office of the Senior Presiding Judge at the Judicial Office who have supported the development of this programme with enthusiasm and professionalism.

4. It is not the judiciary's purpose to undertake a reform programme for Government. My proposals for change are the judiciary's and are independent of Government. In coming to my conclusions, however, it has neither been possible nor sensible to ignore the Government's legislative programme and I acknowledge the cross party consensus for change in support of the Family Justice Review's conclusions. The judicial modernisation programme is a plan which is designed to ensure that there is a robust framework in place to give effect to both the judiciary's proposals and legislative change. To that end, there have been extensive and careful discussions between the judiciary and Government departments and agencies during the development of the programme which reflect the distinct roles of the Executive and the judiciary. The process itself, together with the essential checks and balances which have been developed, is worthy of note.

5. The judicial family justice modernisation programme reflects a consensus for change among judges and professionals of all disciplines and is the judiciary's agreed response to the Family Justice Review. The many people who were involved in our discussions chose to contribute to them, they did not have to do so. I do not underestimate how important family justice is to them and the children and families with whom they are involved.

Summary

The single Family Court will be the vehicle for a significant change of culture characterised by strong judicial leadership and management and evidence-based good practice

6. The Crime and Courts Bill presently before Parliament provides for a new single Family Court, to replace and simplify the existing arrangements. The launch of that court will be the vehicle for the implementation of the judicial family modernisation programme. The programme is intended to create a significant change of culture: one in which strong judicial governance and evidence based good practice will inform the structures, processes and decisions of the court. The proposals which I describe are judicial solutions to the problems which are identified in the Family Justice Review.

7. There are two key elements to the proposals. The first is strong judicial leadership and management i.e. judicial control of the workload of the court by the management of judicial deployment to match resources to need. The second is robust case management of proceedings by the requirement to have a welfare timetable for each child based on evidence and research. The court will use evidence-based good practice to control the material which it receives in particular that of expert witnesses. My purpose is to provide access to justice for children in families because that is the real mischief identified by complaints about delay. The two elements of the proposals are reflected in a framework for leadership and management of the court and a framework of good practice.

8. The modernisation programme will be in two phases. Each phase will take approximately a year. The intention is to prepare everyone for the statutory principles that are expected to be implemented at the end of a process of legislative change in the Summer of 2014 when the Government's second Bill, the Children and Families Bill, will complete its consideration by Parliament.

9. Phase one of the Programme will put in place the structures, leadership and management principles to enable the primary legislation which creates the new

court to be ready by the end of 2013. By then the judiciary and HMCTS will have designed the structures and administrative support for the new court including the unified family administrations that will bring together the listing and deployment functions of each of the separate courts that presently exist. New statutory instruments, rule and practice direction changes will have been made in parallel with the primary legislation to provide for the distribution of the business of the court, the destination of appeals including case management appeals, the use of experts and the harmonisation of the powers of the separate courts.

10. There will be new judicial guidance relating to the deployment of judges, magistrates and legal advisers including sitting patterns for judges and magistrates, listing and 'gatekeeping' i.e. a single point of entry for applications to the court where cases are judicially allocated in accordance with principles which provide for judicial continuity or docketing. During phase one, there will be a strong emphasis on leadership and management development for the judiciary and the introduction of new management information to support leadership judges in their management of the court's judicial resources.

11. In parallel with phase one of the programme, evidence-based good practice pathways and supporting materials will be published which the Family Court will use to improve the outcomes for children involved in cases by reducing delay. All public law authorised family judges and certain

The Crime and Courts Bill presently before Parliament provides for a new single Family Court, to replace and simplify the existing arrangements.

specialist legal advisers who are magistrates' trainers will receive additional training in these good practice materials before the Summer of 2013.

12. Phase two of the programme between 2013 and 2014 will be a year during which the court will prepare for the implementation of the Children and Families Bill. The year will begin with judicial training and end with the anticipated implementation of the second Bill in the Summer of 2014. It is likely

that the second Bill will deal with the Government's published desire to limit care cases to 26 weeks save in judicially excepted circumstances, to describe a more focused scrutiny of the final care plan, extend interim and supervision care orders without monthly renewal for six months and implement the Government's proposals in private law relating to shared parenting, child arrangement orders and contact enforcement. The various options will be debated in the public domain and ultimately decided by Parliament.

"Much of the improvement for children will have to come from change in the way people choose to work, from change to the culture of family justice, and from change to the culture of delay."

"Everyone in the system must play his or her part to support effective case progression..."

Final Report of the Family Justice Review, November 2011

The single Family Court

The single Family Court will be a network of Local Family Court Centres judicially led and managed by the Designated Family Judges, where all levels of judge and magistrate will sit as Judges of the Family Court

13. The aim is to have a new court with a new structure where the work of the court will be directly managed by the judiciary working together with HMCTS and where all levels of judge and magistrate will be members of the same court i.e. they will all sit as 'Judges of the Family Court'. At a national level the court will be judicially led by the President of the Family Division assisted by an implementation group which will project manage the modernisation programme and the Family Division Liaison Judges (FDLJs) who will be responsible for implementing the change programme in each of the regions of England and Wales i.e. the Circuits. The court will be operationally managed by the Family Business Authority of the HMCTS Board, which was created under the Framework Document of April 2011 to reflect an agreement reached by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals on a partnership between them in relation to the effective governance, financing and operation of HMCTS.

14. The Family Court will be a network of local Family Court Centres organised around care centres which will be judicially led and managed by the Designated Family Judges (DFJs). Family Court Centres will usually comprise one or more hub courts and their satellite hearing venues. Wherever possible, judges and magistrates should sit in the same buildings and plans will be developed by the FBA to facilitate this over time and to the extent that resources permit. Unified family administrations providing listing, case progression and other deployment, administration and business support functions for the DFJ will be co-located in the hub courts.

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15. Family Court Centres will provide specialist judges, magistrates and legal advisers who are able to undertake work in the full range of family jurisdictions including those presently limited to nominated courts e.g. civil partnership and forced marriage proceedings. The judiciary propose that the full range of jurisdictions be available locally albeit that some proceedings may be limited to be heard by authorised judges of the court. Financial remedy proceedings presently conducted in the High Court and the County Courts will become one of the specialist jurisdictions of the Family Court limited to those judges who already specialise in this work and those who in future will be trained and authorised.

16. The Family Court Centres will continue to be district registries of the Family Division of the High Court and High Court judges will continue to sit at local venues in England and Wales as judges of the Family

Court, judges of the Court of Protection and as judges of the High Court in their reserved jurisdictions. District Judges of the High Court and in particular the District Judges of the Principal Registry of the High Court in London will continue to exercise an important gatekeeping and case management function for the High Court in its reserved jurisdictions. Deputy High Court judges will be able to sit both as judges of the Family Court and as judges of the High Court.

17. The Family Justice Review recommended that the roles of the District Judges of the three existing courts be aligned. This will be provided for within the new allocation arrangements in the new court. District Judges of the Magistrates' Court and District

Judges of the County Court who are authorised to conduct public law children proceedings should expect to undertake as part of their overall workload more complex work than that allocated to magistrates sitting with a legal adviser. District Judges of the Principal Registry have an enhanced jurisdiction which is equivalent to that of a Circuit Judge and they should expect to undertake work of a complexity commensurate with that jurisdiction.

18. Magistrates and their legal advisers will be members of the new court with leadership arrangements that reflect both their membership of existing benches where they will remain available to continue to sit in crime and youth justice and their new role as members of the Family Court. In particular, although magistrates will remain members of their home benches, participating in the management and representative structures which already exist, they will also be provided with separate management and representative arrangements when they sit as members of the Family Court. These should include a Family Training and Development Committee and a Family Bench Issues Group for each Family Court Centre.

19. All Family Court judges, including magistrates and their legal advisers, will be represented both nationally and locally on judicial advisory groups. Locally organised Family Court business committees, involving all practitioners in each Family Court Centre, will continue to exist, but with a more focused role to discuss local operational issues. A national Family Court business committee has been created out of the Faster Family Justice Group to enable a wide range of professional associations and interest groups to continue to contribute to the modernisation programme and to work with the judges of the Family Court to identify and consolidate good practice.

20. The development of a plan for London is the responsibility of the FBA in consultation with the London Region of HMCTS and local judiciary and magistracy. It is critically important for the maintenance of the profile of family work that is

attracted to London and to the development of the highest standards of good practice that London continues to provide a world class specialist court. That should be provided by a Family Court Centre for London which combines the skills and expertise of the Inner London Family Proceedings Court and those of the Principal Registry of the Family Division on one site as a hub court with satellite courts providing local access to justice across the 33 Boroughs of London. A plan is being developed which will lead to the co-location of the existing central London courts within the next two years in parallel with the continuing development of satellite outer London courts where family judges and magistrates can work together.

21. The Family Justice Review made its view about the absence of reliable management information very clear. The FBA responded to this by commissioning the design, development and introduction on the 1st April 2012 of a new system. For the first time, there is a system capable of providing the management information necessary to enable effective case management by reference to the timetable for the child, the allocation of cases to available resources and business planning including forecasting. The new Care Monitoring System (CMS) was introduced in a trial form to a specification written by the judiciary and in particular by Designated Family Judges. It will be developed over the next year to provide information about workload, allocation, timeliness, the reasons for adjournments and the use of experts.

22. The need for the protection of sensitive private and family information necessarily arises out of the content of such a management information system and this has been provided for by the development of a comprehensive memorandum of understanding on the use to which un-attributable i.e. anonymous information may be put. It should not go unremarked that the Head of the Business Information Division of HMCTS was able to put together a design and implementation team that developed CMS with the judiciary from a paper specification to a working system within months rather than years and at no additional cost. This is a

very significant achievement indeed.

23. The role of the judiciary on the Government's new family justice bodies has been agreed. In order that the independence of the judiciary is respected the Lord Chief Justice and the Judicial Executive Board have described the role of the judiciary on bodies that are answerable to Ministers. Government has agreed with the judiciary detailed terms of reference for the national and local executive bodies (the Family Justice Board, local Family Justice Boards, the Performance Improvement Sub-Group and the Family Justice Network for Wales) and memoranda of understanding relating to the involvement of the judiciary on these bodies which have been published.

24. The national Family Justice Council has been retained as an independent advisory body to be chaired by the President. It has revised terms of reference and a more streamlined structure designed to allow it to provide inter-disciplinary advice on a range of issues referred to it by Ministers and the

judiciary. At a local level the former local Family Justice Councils have become interdisciplinary training committees of local Family Justice Boards. By retaining the interdisciplinary training committees, a forum for high quality inter-disciplinary discussion and training has been preserved.

25. The Family Justice Council has been asked to contribute to the modernisation programme by providing multi-disciplinary advice on a number of issues, including:

- More effective use of expert evidence in the family courts
- Best practice and quality standards for experts in the family courts
- Pre-proceedings in private law
- Self-representing litigants

A framework for leadership and management

The effective management of judicial resources will help to reduce delay by better deployment practices which improve judicial continuity and listing

26. One of the keys to better performance in reducing delay is the more effective management of existing judicial resources. This will be provided by better patterning of judges and magistrates to enhance experience and to provide judicial continuity. Better listing practices will improve the preparation and hearing of cases particularly during case management. A more reasoned and informed allocation of workload to available judicial resources will reduce the prevalence of proceedings being transferred on the grounds of complexity after months have elapsed and also between judges because of their unavailability. In addition, a well-led and managed system, informed by management information as to workloads and timeliness, will allow judges and case managers to prioritise cases to provide more timely opportunities for cases to be heard.

27. Whatever has been the case in the past, it is essential for proper case management that good deployment practices are encouraged. In particular, it is vital that judges, magistrates and legal advisers are given sufficient time to read essential documents and that listing practices are in place to ensure that important case management hearings are not compromised by being interposed into part-heard contested cases, thereby damaging the effectiveness of both. It is implicit in this that the documentation filed in proceedings must be proportionate to the issues identified and to be determined, and that the court remains in control of the timetable, the issues to be decided and the evidence which is necessary. Parties must expect agreements reached outside court to be subject to detailed scrutiny by judges of the court.

28. These problems can be traced to poor deployment practices: patterning, continuity, allocation and listing, and these are all matters for the judiciary. The leadership judges in the new court will

need to give clear deployment instructions to their unified family administrations and be well informed in their discussions with HMCTS and the Presiding and Family Division Liaison Judges.

29. There will be a careful examination of the patterns of public law circuit judges. This cannot be immediate and will take time, not least because the allocation of sitting days and planning cycles are based on itineraries which are fixed for a 12-month period from the first of April each year. The aim will be to develop itineraries that allow public law circuit judges to sit for not less than 40 per cent of each year on public law proceedings in the Family Court and not to be away from their Family Court centre for more than four weeks to provide continuity of case management to the cases allocated to them.

30. The aspiration is that over time, this level of specialisation will become the norm for all of the judiciary undertaking public law proceedings but because of the very different deployment issues that arise for District Judges and magistrates, the development of specialisation and continuity principles will need to be managed carefully and by agreement, where possible. There will have to be exceptions to any general rule based on geography and workload. As part of the co-ordination of the legal structures review with the modernisation programme, specialist family legal advisers will also be encouraged and eventually deployed to work in the Family Court for not less than 40 per cent of their time.

One of the keys to better performance in reducing delay is the more effective management of existing judicial resources.

31. Continuity guidance for judges of the Family Court has been agreed by the Judicial Executive Board and will be implemented by the FBA through the unified family administrations under the supervision of DFJs. Magistrates' representatives have agreed that it is appropriate for continuity guidance to apply to cases allocated to them and to their legal advisers which in essence will provide that at least one magistrate, preferably the chairperson, together with a legal adviser who is one of the case managers should provide continuity between any hearings where findings of fact have been made or where case management continuity needs to be provided other than by the case manager sitting alone.

32. Allocation in the Family Court i.e. the distribution of the business of the court will be a new function which will be described in secondary legislation and guidance. The existing concepts of transfer and review will no longer be relevant. The decision to be made will involve identifying the most appropriate judge available for the kind of case by reference to deployment information and guidance derived from existing case law on the distribution of cases by complexity. The initial allocation decision will be made on paper by an allocation judge with a right of oral reconsideration before the same judge or another allocation judge. A case management appeal will lie from an allocation decision made after oral reconsideration and provision is expected to be made for case management appeals to be heard quickly. Allocation judges will normally be senior legal advisers or District Judges.

33. Pilot allocation schemes have already been trialled and a nine-month study of draft guidance and allocation procedures is being evaluated by an academic research project. It is likely that guidance will require Family Court centres to implement allocation procedures by having both a District Judge and a specialist legal adviser i.e. a representative from each of the existing courts sit together as allocation judges to make allocation decisions. Experience suggests that consistency of approach is rapidly obtained allowing the allocation judges to sit alone. Guidance will also provide for an allocation group to monitor the consistency and success of the allocation process with representatives drawn from the judges who sit at the centre. Appeals from allocation judges will be to a circuit judge nominated by the Designated Family Judge, who will be responsible for

the overall allocation policy in the Family Court centre.

34. Provision is to be made in legislation for a more flexible scheme for the delegation of powers to legal advisers in the Family Court. Legal advisers will derive authority to act from the judges of the court to enable them to support all members of the court, for example, by undertaking case progression and compliance for judges. They will also act as allocation judges. The aim is to have a specialist support function for the new court, and thereby to provide a career structure which permits legal advisers to be appointed to the judiciary.

35. Guidance on leadership and management will be issued by the President as part of a virtual Family Court Guide which will be susceptible to change and interpretation by the decisions of the Court of Appeal or judges of the High Court and which will include:

- Deployment of the judiciary and magistracy (patterning, listing and judicial continuity)
- Allocation of proceedings
- Case management appeals
- The public law pathways (standard, exceptional and urgent)
- The private law pathway

36. In addition, FDLJs and DFJs will have a web-based resource providing examples of existing protocols and agreements with other agencies which have already been successfully trialled and which can help to reduce delay by using agreed standard processes.

37. The FBA will provide a Programme for the Single Family Court which will bring together the development of the new Family Court structures, the framework for judicial leadership and management of the court, guidance on the unified family administrations and standard operating procedures for the court. As part of HMCTS business planning, the FBA will be invited to develop a business plan for the court in order to analyse performance, forecast workload and plan for the most effective use of resources.

A framework of good practice

A framework of good practice will highlight materials which are to be used to improve outcomes for children

38. In formulating proposals which are intended to improve performance by reducing delay, I acknowledge that alongside the quality of deployment decisions made by leadership judges, the other key judicial factor is the quality of case management decisions made by individual judges and case managers. The quality of case management decisions is affected not just by the process adopted at and around the hearing but also by the quality of the evidence provided by the parties. The quality of evidence provided to the court by the local authority and by the child's guardian also informs many of the decisions made by judges about the use of experts. There is a striking consensus about the quality of evidence which needs to be built upon to develop better practice. Quality does not depend on quantity. Most court bundles and experts' reports are disproportionately long on records and short on analysis. The court needs quality analysis, and projects in which the content of statements, assessments and experts' reports are quality assured demonstrate that significant reductions in delay can be achieved.

The quality of case management decisions is affected not just by the process adopted at and around the hearing but also by the quality of the evidence provided by the parties.

39. The decision to remove a child from his or her parents demands a rigorous approach to decision making. It is no doubt human nature to err on the side of compassion but it is also fundamental to the judicial process that a judge will strive to make sure that the decision making process is fair. Fairness in children proceedings must balance the impact on the child of the case management decision which is asked for. The rights arguments that are pursued on behalf of parents will almost always have a concomitant argument that should be raised on behalf of the child which will often involve an analysis of the harm that will be caused to the child by an adjournment, a

delay for another expert or a sub optimal placement or contact regime. A rigorous approach to case management should always consider this analysis which should be expected from the children's guardian as part of the exercise of his or her duties under Rule 16.3 of the Family Procedure Rules 2010.

40. Care cases can be complex and each family is unique and deserving of the court's full attention. That is not to say that in every case every theoretical welfare option needs to be investigated by the court.

In many cases, options will already have been tried or assessed before the proceedings were issued and it will neither be a necessary nor proportionate way of undertaking case management to re-assess all of those options. To do so may breach the overriding objective, which is the principle arising out of legal

policy, that should determine case management in the individual case within the context of the management of the overall workload, to ensure a fair and timely hearing in every case.

41. The use of experts by the court deserves particular attention because of the time that it takes to undertake an expert assessment or analysis. The court must be adept to scrutinise whether the evidence that is necessary is already before the court and if it is, why further expert assessment or analysis is necessary on the same issues. To do otherwise where no complaint about the methodology or factual basis of existing evidence is identifiable, suggests that the court is being asked to provide a multi-layered alternative to judicial decision-making which is inappropriate. That is not to say that experts are unnecessary but rather that they are misused and

over used. There is a place for independent social work and forensic witnesses to advise on discrete issues which are outside the skill and expertise of the court or to provide an overview of different professional elements in the more complex cases, but regard must be had to why those who are already witnesses before the court have not provided the evidence that is necessary and who should pay for it when it is missing. In every case, the judge should be able to say: is your expert necessary i.e. to what issue does the evidence go, is it relevant to the ultimate decision, is it proportionate, is the expertise out with the skill and expertise of the court and those already involved as witnesses by reference to the published and accepted research upon which they can rely and of which the court has knowledge.

42. Decision-making is a risk-based judgement call based on principles. That is what we appoint and train our judges to do. They are not alone in performing that task and there is a deal of evidence about decision-making in other risk environments which I have been able to consider. Judges identify and solve the problems which lead to an ultimate decision and the best judges, like the best advocates, learn to discard the noise of peripheral disputes and concentrate on key issues. The art of a quality

decision making process is the balance between the risk that is being taken and the protection against that risk which is part of the process.

43. In order to avoid delay caused by poor practice and failures of perception and analysis, the court needs to adopt a rigorous approach to case management based on knowledge of what works i.e. research on outcomes for children and materials identifying what is good social work practice and what the court needs to make the decision asked of it. The framework of good practice will describe case management pathways for both public and private law proceedings, and supporting materials to help practitioners provide that which the court needs.

44. The aim of the framework is not to tell people what to do, or even how to do it, but to give them materials which provide headlines and signposts to the rules, practice directions, and good practice which should be used to improve outcomes for children. The materials will be contained in a virtual Family Court Guide. They will be collaboratively produced under the supervision of the President's implementation group, which will continue the existing professional working relationships with Government departments, the Family Justice Board and others.

Public law case management

Robust case management of public law cases is dependent on a timetable based on evidence and compliance with that timetable and the directions given by the court

45. In order to help achieve quality case management decisions, there will be rule and practice direction changes relating to the use of experts and a timetable track which will presume that non-exceptional cases can be completed in 26 weeks. These will be known as pathways and they will describe in permissive language how to achieve the objective i.e. making the best decision for the child within the welfare timetable set for the child. The timetable for the child is to be set at the beginning of each case (no later than at the Case Management Conference) and is to be a welfare decision based on evidence. The pathways will be supported by the Family Court Guide, which will signpost good practice and the content of the rules and practice directions of the court, including:

- Local authority work to prepare for proceedings
- The content of social work evidence
- How to make the decision which is the timetable for the child
- What is key issue identification
- What is the threshold
- How and when to use experts
- How to represent an incapacitated adult party and how to identify and ask for special

measures to assist vulnerable parties and witnesses

- How to obtain third party disclosure and manage concurrent proceedings
- What scrutiny is to be expected of placement proposals and care plans
- How to use published and peer-reviewed research in court.

46. In addition, a statement of evidential principles for use in children proceedings will be published to assist everyone to understand that save in relation to adversarial fact finding sufficient to make the ultimate decision before the court, the judge's function in a welfare determination is investigative. The judge is in control and the judge decides what is to be determined, what is the evidence that is necessary for that decision to be made and how it is to be tested before the court. The principles will reinforce the concept of active case management which is to be found in paragraphs 3.19 and 3.20 of practice direction 12A. The principles will also describe the process of early neutral evaluation which is expected of all courts at the Issues Resolution Hearing.

47. It is likely that the standard pathway will describe a case where the threshold is agreed or established on a prima facie basis, i.e. the filing of further threshold evidence by the local authority is not necessary. The legal environment that remains is

In order to help achieve quality case management decisions, there will be rule and practice direction changes relating to the use of experts and a timetable track which will presume that non-exceptional cases can be completed in 26 weeks.

a welfare or investigative environment, not an adversarial fact-finding environment. The problem to be solved is essentially placement, which of course includes the potential success of rehabilitation and the feasibility of family and other kinship options and contact. Good practice demands that these options are identified in the social work statement at the beginning of the proceedings and it follows that this is much more likely to occur where family group conferencing or similar early engagements with families have occurred to identify alternative placements for the child. If an expert is required, any expert evidence that is necessary is likely to be provided by a single or single joint expert so that an issues resolution hearing can be listed at about 20 weeks to identify the issues which remain and list the final hearing shortly thereafter.

48. The urgent pathway will describe the process for emergency protection order applications and urgent interim care order applications where removal of the child from the care of a parent is proposed.

49. During the course of this next year expectation documents will be published which will describe agreements that have already been reached with family justice agencies to describe in plain language what the court can expect from existing or new processes which are fundamental to the court, for example:

- HMCTS (guidance for the development of unified family administrations)
- Cafcass (court social work analyses)
- The availability of contact services
- The nature and extent of safeguarding services
- The availability of testing services
- Legal Services Commission (public funding decisions)

50. The Independent Advisor for Criminality Information Management has consulted with the judiciary in the compilation of her reports to the Home Secretary on the criminal records regime. One very useful consequence of this co-operative approach has been the drafting of new Home Office circulars on the conduct of criminal record checks required by the family courts. This will significantly improve the timeliness of disclosure of risk information held by the Police.

51. In addition to the principal pathways and supporting materials, specific projects will be piloted when research has evaluated them as successful. At the moment, the Family Drug and Alcohol Court (FDAC) is being evaluated and projects which assist domestic abuse victims to be successfully rehabilitated as the carers of their children are being considered. New materials by way of practice notes and explanatory guidance will be provided for self representing litigants and 'McKenzie friends'. Peer-reviewed research materials which are accepted by a reasonable body of professional opinion will be made available to judges and practitioners.

52. A consistent but firm approach will be developed to litigants, whether represented or not, to ensure that issues remain in focus and that they are addressed within the timetable set by the court. That will require a new culture of compliance. Compliance will need to relate both to good practice and to sanctions but the key to compliance is an effective timetable based upon the child's welfare. Sanctions should include fixed costs to be paid by parties for non-compliance.

Private law

The immediate challenge is to develop effective methods of assisting self-representing litigants in private law cases, while maintaining fairness to all parties

53. Most private law parties i.e. parents who seek to resolve their differences about the plans for their children will fall outside of the scope of public funding after 1st April 2013. The judiciary must take steps to ensure that those who are entitled to family justice are provided with access to it, whether represented or not. The judiciary are not responsible for the the pre-proceedings processes that are being put in place.

54. What is clear is that the courts will have to deal with a volume of previously represented parents. They will not have had the benefit of legal advice to identify solutions to their problems or the merits and demerits of their proposals. They will not have had identified to them the issues the court can address before arrival at the court door. They will arrive without professionally advised applications seeking permission to file evidence. Many will have no idea what a conventional court process entails and some will have difficulty in understanding its rules.

55. A private law pathway will be published describing what the court can and cannot do and how it does it, a procedure that helps to identify safeguarding issues i.e. risk and urgent cases and an investigative environment within which most decisions will be made. In a conventional case that may involve restrictions on the right of one party to cross examine another, relying instead on each party having their say, the judge identifying the issues upon which he or she needs further assistance and then the judge asking questions of each party himself or herself.

56. Private law proceedings range from the most complex family breakdowns, involving intractable disputes and serious safeguarding issues to relatively modest disagreements about contact arrangements. These can be allocated between available judges of the court without the need for complex tracking arrangements. They will all benefit from continuity of judicial oversight once allocated.

57. In the proceedings where parties are unrepresented, the court is faced with very real evidential difficulties. Interpretation facilities, capacity, safeguarding and expert advice issues must all be dealt with by the court without the assistance of lawyers. The most pressing issue which requires a solution is a mechanism to obtain expert analysis for the court where neither party can afford to pay for an expert and there is no public funding. Examples of discrete issues which may require analysis are parentage (DNA tests), and drug or alcohol abstinence (hair strand tests).

58. The Family Justice Council is collaborating with professionals with expertise in assisting self representing litigants and Government to provide advice and materials to assist courts and self-representing litigants in the conduct of private law and financial remedy proceedings. These materials will be available in a variety of formats so that they can be accessed electronically and for use by professional and lay advisers and voluntary sector organisations. A very constructive dialogue has already taken place with courts, interest groups and professionals who have provided materials which have been demonstrated to add value. On the 19th April 2012 the Law Society published guidance in the form of a professional practice note for solicitors who may need to have professional dealings with self-representing litigants which sets out the Law Society's view of good practice.

What is clear is that the courts will have to deal with a volume of previously represented parents. ...Many will have no idea what a conventional court process entails and some will have difficulty in understanding its rules.

Financial remedy cases

Self-representing litigants will need to be assisted to understand and comply with the procedures which are necessary to achieve fairness in financial remedy cases

59. Many of the judges of the county court together with their colleagues in the High Court (both at the Principal Registry and in the Family Division) undertake a significant volume of financial remedy cases. The judiciary have agreed that these cases will become one of the major strands of work in the new Family Court but that the specialist services that are provided both in London and elsewhere need to be preserved so that this work remains allocated to the existing specialist judges who undertake it and those who are trained and authorised to undertake it in the future.

60. The Money and Property working group of the Family Justice Council will be invited to develop proposals for reform to the rules and practice directions relating to financial remedy cases to take account of the inclusion of this important strand of work within the business of the Family Court and to set out proposals for dealing with financial remedy cases where one or both parties are self-representing litigants. The group will be asked to consider the content of the existing financial remedy practice notes and guidance and whether their status and distribution should be enhanced.

61. One of the more worrying problems to be solved is how self-representing litigants can be assisted to understand and comply with the procedures which are necessary to achieve fairness in financial

Many of the judges of the county court, together with their colleagues in the High Court (both at the Principal Registry and in the Family Division) undertake a significant volume of financial remedy cases.

remedy cases, for example to provide full and frank disclosure including accurate completion of Form E and to describe agreements in enforceable terms in court orders.

62. The working group will also be asked to make recommendations about rule and practice direction changes to facilitate the determination of cases out of court; for example, where the parties have agreed to an arbitration conducted in accordance with the principles of English law by an accredited family arbitrator, including interim directions and whether special arrangements should be made for the expedition of the approval of consent orders to reflect arbitrated decisions.

The High Court

The High Court's unique jurisdiction will be preserved

63. The Family Court will not absorb the High Court, but in future High Court judges will regularly sit in the Family Court providing much-needed leadership to interpret and apply legislation, rules, practice directions and existing case law in decisions that provide binding precedent. One of the most glaring omissions of recent years is the paucity of guidance available to family judges on case management and good practice from the High Court in children cases. That is an accident of circumstance caused by the unintended consequence of measures and workloads that have removed the High Court from regular contact with public and private law children cases: a circumstance that urgently needs to be changed. The separate or reserved jurisdictions of the High Court will also be preserved, principally those involving international issues and the use of the

inherent jurisdiction, with a power to transfer cases to the High Court out of the Family Court where the use of the High Court's exclusive jurisdictions is required.

64. One important message from the process in which I have been involved is that the High Court judges (and on appeal the Judges of the Court of Appeal) are the key element of strong and consistent leadership in any programme that aims to improve the management of cases. Their decisions are more likely to influence good practice than any review or rule book and their role both in and out of the Family Court must be acknowledged and strengthened.

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The voice of the child

Consideration should always be given to how the voice of the child is to be heard in family proceedings

65. Although not directed at the judiciary, the recommendations of the Family Justice Review relating to the voice of the child deserve careful consideration and are agreed. In particular, the respect which ought to be accorded to the United Nations Convention on the Rights of the Child 1989 should be demonstrated by:

- An engagement with children to facilitate their understanding of the process of proceedings where that is coincident with their welfare
- The ascertainment of a child's wishes and feelings and an opportunity to be heard, where the child wishes it; and
- An explanation for every child of the decision of the court.

The National Assembly for Wales has passed the Rights of Children and Young Persons (Wales) Measure 2011, under which the Welsh Government is required to produce a Children's Scheme setting out arrangements that are put in place to ensure compliance with a statutory duty on Welsh Ministers to have due regard to the UNRC which will include the functions of Welsh Ministers and Cafcass Cymru.

There are cogent arguments raised about the confidentiality of a child's private and family information in both public and private law family proceedings.

66. There are cogent arguments raised about the confidentiality of a child's private and family information in both public and private law family proceedings. The same arguments arise in respect of the private and family information relating to adults involved in all family proceedings. Balanced against that is the need for a Family Court to explain and demonstrate its decision-making. Proposals will be developed to require case management decisions that involve adjournments and/or the use of experts to be explained in publicly available rulings. The aspiration is that over time the majority of judgments and reasons can be handed down in an anonymous form and with sufficient protections by agreed redactions to protect the privacy of individuals, especially children.

Judicial response to the Family Justice Review

The judiciary have made their proposals for the modernisation of family justice and are working with HMCTS and Government to make arrangements to implement change

Recommendations 12, 16-20, 29, 30, 32-34, 38 and 64¹

67. Enhanced judicial leadership and management arrangements including management information and support in a single Family Court:

1. The single Family Court will have strong judicial leadership and management structures provided by the Family Business Authority, the President's Implementation Group for the modernisation programme and a Judicial Advisory Group
2. The Family Business Authority (FBA) has an agreed membership and terms of reference and provides national operational management for the court in accordance with the Framework Agreement between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals
3. The President's Implementation Group is a programme board supported by the Judicial Office and chaired by the President tasked with the implementation of the family modernisation programme. Its membership is agreed and includes senior family leadership judges, the offices of the President and the Senior Presiding Judge and observers from Government departments and those agencies who work together in the family justice system. A detailed implementation plan administered by a project manager on behalf of the group will be agreed with the JEB and the

FBA. Training and communication plans have been agreed with the implementation group which will be implemented by the Judicial Office

4. The existing communication plan will be developed to ensure that all judges, magistrates and legal advisers are provided with regular information and opportunities for feedback through a national judicial advisory group which will be replicated by a judicial advisory group in each Family Court centre chaired by the DFJ. Practitioners and professional interest groups will have a national Family Business Group (presently the Faster Family Justice Group sponsored by the Law Society) which will be replicated locally by existing Family Court business committees which are chaired by the DFJ
5. The Family Court will be a network of Family Court centres usually comprising one or more hub courts and satellite hearing venues led and managed by the DFJ
6. Family Court centres will provide specialist judges including High Court judges, magistrates and legal advisers who will be members of the same court and who will be able to undertake the full range of family jurisdictions. The roles of the District Judges of the County Court and the Magistrates Courts will be aligned

1. References to recommendations in this section can be found in the Government's Response to the Family Justice Review at: <http://www.justice.gov.uk/publications/policy/moj/family-justice-review-response>

7. The allocation of proceedings i.e. the distribution of the business of the court will be undertaken by allocation judges under arrangements which are to be led by the DFJs.
 8. A plan for London based on a specialist Family Court in central London and satellite courts that provide access to justice across Greater London will be overseen by the FBA.
 9. There will be judicial management of the workload of the court in accordance with clear principles consistent with the Overriding Objective [Part 1 rules 1.1 to 1.4 FPR 2010]. This will be the responsibility of the DFJ working under the supervision of the FDLJ
 10. Judicial leadership and management responsibilities for FDLJs and DFJs will be set out in job descriptions. The FDLJs will be responsible to the President for the local implementation of the family modernisation programme
 11. There will be judicial leadership and management training in December 2012 for leadership judges, including all FDLJs and DFJs
 12. A robust judicial management information system has been introduced by the FBA for public law proceedings (the Care Monitoring System) to inform judicial management of the workload of the court
 13. The leadership judiciary will participate as observers on Executive performance bodies (the Family Justice Board, the Family Justice Network for Wales, the Performance Improvement Sub Group and local Family Justice Boards) in accordance with terms of reference and a memorandum of understanding to protect judicial independence which have been agreed with Ministers.
 14. The judiciary will provide leadership of inter-agency bodies (the Family Justice Council, local inter-disciplinary training committees and both national and local family court business committees) where asked to do so
 15. Family Court business planning will be developed by the FBA to provide an annual planning and budgetary cycle within which workloads and resources can be forecasted and planned for the Family Court. Each DFJ has contributed to a local plan which has been introduced to ensure that resources and in particular sitting days are effectively used.
 16. The FBA is developing standard operating procedures for the Family Court including new guidance on the recording of time spent by judges in civil and family proceedings.
 17. The FBA will be asked to consider proposals for digital working to include the recording of proceedings before magistrates, telephone and video hearings, electronic bundles, library resources, improved electronic orders templates and judicial itinerary, listing and diary functions.
- Recommendations 21 to 24, inclusive and 125**
- 68. Judicial continuity**
18. The itineraries and sitting patterns of judges, magistrates and legal advisers/case managers will be reviewed by the President in consultation with the Senior Presiding Judge and the FBA to provide for continuity of case management and greater emphasis on the development of skill and expertise in the conduct of family proceedings by more specialist judges, magistrates and legal advisers
 19. Deployment guidance will be issued by the President to describe the principles to be applied to the itineraries and sitting patterns of judges and magistrates, the allocation of

proceedings and listing of hearings including the development of protocols to permit judicial continuity where judges and magistrates sit in other jurisdictions

20. The FBA will co-ordinate the legal structure project for legal advisers with the family modernisation programme to ensure that there are sufficient specialist legal advisers with appropriate skill and expertise in Family Court centres
21. Judicial continuity and docketing guidance has been developed and will be applied by leadership judges and listing officers to allocated proceedings
22. Unified family administrations (UFAs) are being developed by the FBA in each Family Court centre to provide 'judiciary facing' unified listing arrangements and support functions for deployment (patterning, allocation, case progression and listing)
23. Allocation arrangements will be developed in each Family Court centre by DFJs in consultation with their UFAs which take account of available resources having regard to the President's deployment guidance
24. A plan for London is being developed by the FBA in consultation with the London leadership judges and magistracy to provide a specialist family court in central London with satellite hearing centres

Recommendations 25 to 27, inclusive

69. Specialisation

25. As part of the itinerary review, specialisation will be promoted by the deployment guidance to be issued by the President
26. Judicial posts and components of posts that require specialist family skill and expertise will

be identified in vacancy notices to ensure that the Judicial Appointments Commission is aware of the need for appropriate emphasis to be placed on specialist experience during the appointments process of both salaried and fee-paid judges

27. There will be agreed governance arrangements for magistrates who sit in the Family Court so that Family Training and Development Committees and Family Bench Issues Groups are developed to replace the parallel functions of Bench Training and Development Committees and Judicial Issues Groups for the (s)election, training and deployment of family magistrates. Family magistrates will continue to be members of their home benches and will continue to be available to undertake criminal and youth justice sittings. It is only in their sittings in the Family Court that their governance will be aligned with that of other Family Court judges
28. The Judicial Office will work with Government to provide flexibility in the authorisation of magistrates to sit with greater frequency in the Family Court to obtain and maintain specialist experience
29. Protocols will be published to enable 'mixed ticket' judges to provide judicial continuity in each jurisdiction under arrangements managed jointly by resident and designated judges

Recommendation 45

70. Case reviews

30. The existing system of local teaching and development sponsored by the Judicial College in crime (the annual criminal seminars) where real case examples are used to analyse judicial decision-making should be extended to family judges and magistrates. This is consistent with the family course teaching methods employed

by the Judicial College in its training and development courses

31. Greater training opportunities should be afforded to legal advisers both as magistrates' trainers and case managers
32. Inter-disciplinary reviews of process and decision-making in completed cases should be extended by the use of development opportunities afforded by inter-disciplinary training committees
33. FDLJs, DFJs, Justices Clerks and Magistrates Family Liaison Judges should offer the opportunity for personal supervision and advice to judges, magistrates and legal advisers within their Family Court centres

Recommendation 44

71. Post proceedings outcomes

34. There should be a pilot study on the feasibility of providing feedback to the judiciary and magistracy on the outcomes of cases after proceedings have been concluded. The Family Justice Council has made a start on this by funding a research project, led by Professor Judith Masson, to gather views from the judiciary on the provision of feedback to them in public law cases. The fieldwork for this project has begun.
35. The role of Independent Reviewing Officers should be examined as part of the pilot study to consider whether their duties and responsibilities to scrutinise the implementation of care plans and refer cases back to court are adequate, particularly in the context of any proposal to limit the scrutiny of the court within proceedings

Recommendations 15, 44 to 55, inclusive and 67

72. Training

36. There is a funded and agreed training plan for leadership and management training for all leadership judges and for the training of all Judicial College family tutor judges in December 2012
37. There is an agreed training plan for which funding has yet to be confirmed for new core skills for judges, magistrates and legal advisers including inter-disciplinary good practice, case management and the use of expert evidence. This will be made available to all public law authorised judges and certain specialist legal advisers who are magistrates trainers in April and June 2013
38. Training for all family magistrates and legal advisers in the same core skills will be 'cascaded' during the second half of 2013. It is hoped to enhance magistrates' training by using Magistrates' Family Liaison Judges and judges who have received the new core skills training
39. The judiciary would like all core skills training materials to be made available to practitioners, interest groups and commercial and professional training organisations so that inter-disciplinary training on the principles underpinning the family modernisation programme is consistent and freely available
40. An opportunity must be provided to disseminate good practice materials to district judges and others describing a recommended process for private law applications and hearings after April 2013 when public funding will not be available for the majority of litigants. A private law pathway and information for self-representing litigants will be published

41. The annual leadership conference for family judges, magistrates and legal advisers (the President's Conference) will be developed to provide opportunities for leadership judges to set an agenda for their own development and also to provide a separate opportunity for the Circuit/regional leadership judges, magistrates and legal advisers to discuss the local delivery of family justice
 42. The existing annual Circuit/regional family training seminar, whether presently provided by the Circuit or the local Family Justice Council, should in future include case review material and should be organised by the interdisciplinary training committees under the supervision of the DFJ and the FDLJ
 43. Regular information meetings for all family judges, magistrates and legal advisers in Family Court centres should be provided by DFJs
 44. Local Family Justice Boards, interdisciplinary training committees, judicial advisory groups and family court business committees should be kept informed of the family modernisation programme and training opportunities and good practice developments by the DFJ
 45. A virtual Family Court Guide will be developed to signpost good practice, the President's Guidance, the Rules and Practice Directions of the Court and associated web-based resources for DFJs in their leadership and management roles and for judges of the court and practitioners to access original research and inter-disciplinary materials
 46. Training materials on messages from research and child development are to be provided to all judges, magistrates and legal advisers
 47. Family induction training for judges, magistrates and legal advisers should include an opportunity for visits to be undertaken to local family justice agencies in the same manner as occurs after criminal induction training
- Recommendations 28, 60-62, 68-73, 76, 81-84, 123 and 124**
73. Case management
 48. Case management pathways for public law proceedings will be published describing in what circumstances and how the timetable for the child is to be achieved, in particular a standard pathway of 26 weeks, an exceptional pathway which enables a timetable for the child to be set for a period longer than 26 weeks where that is in the interests of the child and an urgent pathway to resolve immediate issues such as emergency protection and the removal of a child from his or her family. A private law pathway will also be published
 49. Supporting materials drafted in consultation with practitioners and interest groups under the supervision of the President's implementation group will describe good practice
 50. Revised rules and practice directions relating to expert evidence have been agreed by the Family Procedure Rules Committee and will be issued after consultation later this year. There will be guidance on the use of experts
 51. Expectation agreements will be agreed with agencies to describe what the family court should expect of them
 52. Standard orders/directions and formats to provide for ease of delivery in electronic format will be provided for
 53. Statutory instruments dealing with the distribution of the business of the court by allocation judges and legal advisers, case management appeals and the destination of appeals will be accompanied by the President's deployment guidance which will describe a flexible allocation environment to make the most effective use of local judicial resources and to ensure that appeals on important points

of policy or procedure can be heard by a High Court judge sitting in the Family Court

54. Costs and committal powers will be harmonised to provide for more effective enforcement of and compliance with the decisions of judges and magistrates. The judiciary will continue to press for fixed costs orders to be available to the court for non compliance with the court's directions
55. Leadership and case management judges (including magistrates' case managers) now have access to CMS data to provide accurate management information about the progress of a case and other cases allocated to the judge/case manager or within a court or court centre
56. Leadership judges and case managers will be provided with case progression advice by UFAs including data on allocations
57. The Family Procedure Rules Committee will be invited to give consideration to the content of Part 12 of the Family Procedure Rules 2010 (Proceedings Relating to Children etc) and consequential changes to the Public Law Outline (practice direction 12A) and the revised Private Law Programme (practice direction 12B) once all related case management changes and guidance have been drafted. This may include consideration of the use of Judicial Conferences at the beginning of all cases where timetables and issues are to be identified, and the specification of case progression duties for legal advisers in a similar manner to that set out in the Magistrates' Courts Rules 1981.
58. The training plan will include training on all aspects of good practice and case management set out above.