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**Family Law**

# Editorial

## Richard White

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**The political conflict reported (see eg the Times 9 April 2008) between the Secretary of State for Justice and the Secretary of State for Children, Schools and Families on their policies for youth justice reflects long held differences of opinion between Departments, previously fought out within the Home Office and the Department of Health, when they both had responsibilities for children. It appears that the arrangements to improve matters by having a joint interdepartmental team for youth justice may not have bridged those differences.**

What is increasingly clear is that similar political differences must exist between the two Departments in relation to child welfare issues. The Ministry of Justice is the tool by which the Government is seeking to control the judiciary and the courts. Operations in relation to legal aid, the family justice system, child protection and care proceedings which are a small part of the responsibilities of that empire are being harmed in consequence. Policy in relation to children and families in the context of court proceedings, which also affects the work of the Department for Children, Schools and Families, is being driven more by the exigencies of the Ministry of Justice than concern for child and family welfare.

The dissatisfaction with Government policy on the Family Justice System is unprecedented. Throughout the professions and from the House of Lords to the magistracy criticism is being more openly expressed.

Alistair MacDonald, Co-Chair of the ALC, in his speech to the annual conference (see page 15) records that he and his Co-Chair Caroline Little 'have sought to demonstrate [to the Government] why the work of the Family Justice System is so fundamental to the foundations on which our society is based, to show why the duty of care owed by the State to its vulnerable children and young people must be met by those to whom the people have given custody of

that duty'.....'Sadly, of the duty of the State it may be said that we have seen little that evidences understanding from those charged with honouring it.'

Lord Justice Wall in a recent speech to the Lancashire Family Justice Council said:

'I am angry because I think the Family Justice System is being exploited and abused. Our dedication, our goodwill, our passionate belief that our function is to address the best interests of vulnerable children and families is not being recognised by a government which, however much it pays lip service to the welfare of children, is frankly indifferent to disadvantaged children and young people who are the subject of proceedings, and simply refuses properly to fund the Family Justice System, relying instead on the fact that we have always got by in the face of government indifference, and will continue to do so.'

At the ALC conference in November 2007 Mr Justice McFarlane also said that were he present the President of the Family Division would repeat what he had already said publicly before and identify the real danger, as he saw it, that by mid-2008 there would be a developing and irremediable crisis in the Family Justice System if the Legal Services Commission plans for legal aid funding in public law care proceedings were pursued without modification.

And in the most widely publicised comments Mr Justice Coleridge said recently at the Resolution conference: 'I am afraid that the time has come for family judges to speak out publicly in protest at the way in which the Family Justice System in this country has been and is being mismanaged and neglected by government.' Predictably but sadly the Government has played down these concerns.

In a paper to a conference, 'Looking Back – Looking Forward: 150 Years of Family Law', at Cardiff University in March 2008, the Editor of this Journal

said: 'The tools with which they are now dismantling the Family Justice System are destruction of legal aid, inadequate provision of court services and as part of a wider discouragement of local authorities from taking proceedings, a massive increase in court fees.'

Government policy appears to be to remove work from the courts. Is it the start of a deliberate attempt to diminish their power and change the constitutional balances which have existed for years? In relation specifically to family justice is it that the Government seeks to provide a minimalist judicial system, which offers no more than an immediate protection in the most serious cases which would otherwise attract public criticism. The vast majority of cases would be controlled by a local authority or similar possibly privatised child welfare agency. The

Government could achieve this by attrition in the core services on which the Family Justice System is dependent. Such a system would not provide satisfactory protection for children or families on a longer term but it could meet their short term financial objectives.

The fees increase has driven another nail into the coffin in which the Government has encased the child protection aspects of the Children Act 1989. In six months they have destroyed what took a decade to build. The exercise has been shrouded in deceit and hypocrisy and the Government should be ashamed of it. Such a policy should be out in the open and a proper debate held on whether it is what this society wants for its vulnerable children and families.

# Push Me – Pull You

## The Future of Justice for Children

### Mr Justice McFarlane

High Court Judge of the Family Division

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#### Keynote Speech to the Association of Lawyers for Children Annual Conference held at the Midland Hotel, Manchester on 15th to 17th November 2007.

It is important to have a sense of direction. I did not choose the title for this conference, but the ‘push-me-pull-you’, with its themes of ‘direction’ and ‘tension’ created by movement in opposite directions, is not an inappropriate motif for the various matters that I have in mind to share with you this morning.

If there is a second theme it is that of communication. Communication, and problems around communication, is not infrequently a major difficulty both within the individual cases with which we deal, but also within and between the various agencies who are key contributors to the family justice system.

Communication is a two-way process and plainly involves effective reception of, and comprehension of, information as much as it involves effective transmission. How does one head of the push-me-pull-you communicate with the other? And in this context I will not only look at the need for effective communication between the profession and the government on the issue of fees, but also difficulties over communication which permeate many other areas of the work of the family justice system. I will consider communication between:

- the system and the public at large;
- local authorities, courts and families in the context of emergency removal of children; and
- those who work within the different levels of the courts in the system.

#### The system and the public at large

Perhaps the most prominent, and important, example of a breakdown in communication that has

occurred in recent times in connection with cases of alleged child abuse, arose following the sequence of high profile criminal cases involving mothers who were accused of unlawfully killing their children.

Some of you may have heard an excellent presentation by David Spicer on this topic. Over the course of 30 minutes he unpicks the sequence of events around these cases, the most prominent of which were those of Trupti Patel, Sally Clark and Angela Cannings. Having set out the facts relating to each case, David then goes on to look at the resulting statements of government ministers and the ensuing press coverage. It is a most useful exercise. I suspect even those of us who practice in this field have swallowed all or part of the myth that seems to have grown up around these cases to the effect that they are each similar, show similar failures in the justice system and these failures are largely due to bad practice by paediatricians, with one, Professor Sir Roy Meadow, being singled out for particular blame.

Constraints of time and my own position make it inappropriate to do little more than draw attention to this topic and to commend David Spicer’s exposition to you. I will however give you a few headline points:

- Trupti Patel was acquitted of the murder of three infants;
- Hers is palpably not a case of an innocent woman being convicted on flawed evidence with a consequent miscarriage of justice
- In the later Cannings case, the Court of Appeal were at pains to point out that ‘no issue of principle’ was involved in the Patel case and that the jury’s verdict in a criminal case did not amount to a finding of ‘innocent’;
- Sally Clark’s trial in October 1999, as is well known, heard evidence from Professor Sir Roy Meadow upon the supposed statistical probability of more than one Sudden Infant Death occurring in the same household.
- Sally Clark’s 2nd appeal was allowed on the basis of a combination of (a) the pathologist’s failure to disclose potentially crucial test

results found post-mortem and (b) Prof Meadow's flawed statistical analysis.

- Court of Appeal in 2nd Appeal:  
"We are aware that there is public speculation as to whether other convictions of mothers for killing their babies where the babies died sudden deaths, are similarly unsafe. The matters to which we have referred are directly referable only to this case."
- Angela Cannings was convicted in April 2002 of the murder of two of her children.
- At her appeal in December 2003 the conviction was quashed on the basis that the case had in effect involved exclusively or almost exclusively a dispute between two reputable bodies of expert medical opinion; with the court holding that in such cases a prosecution should not be commenced, let alone proceed to trial.
- Of the three cases, therefore, the Cannings case **was** of general application to the criminal system, however the Court of Appeal Civil Division held that it had some, but only limited, application to care proceedings.
- Attorney General announced in January 2004 a review of all criminal cases which depended *"exclusively or almost exclusively on a serious disagreement between distinguished and reputable experts."*
- The AG later announced that of 297 cases reviewed some 28 cases indicated "questions" about convictions
- In a separate review of 88 'shaken baby' cases three were found to be 'questionable'
- The AG referred a batch of four 'shaken baby' cases to Court of Appeal [R v Harris]. The result was, I hope, a useful evaluation of the current understanding of the medical issues in such cases.
- In February 2004 the Minister for Children announced that local authorities will review past and current child care cases within certain limits focussed upon cases where the "finding of significant harm depended exclusively, or almost exclusively, on a serious disagreement between medical experts about the cause of harm" and might be considered "unsafe"
- Anecdotally, I understand the results appeared to be that very few, if any, cases were brought back to court.

What of Professor Sir Roy Meadow? He was initially found guilty of serious professional misconduct by the General Medical Council. That decision was quashed on the merits by the Administrative Court in judicial review proceedings. On appeal by the GMC, the Court of Appeal held that Professor Meadow's conduct did not amount to serious professional

misconduct and that he acted honestly and in good faith.

That, in very short compass, is a summary of the key events in relation to this group of cases. They can be seen to be separate cases each with different idiosyncratic details. The review following the headline decisions led to a very limited reopening of cases, despite the authorities undertaking a detailed trawl.

Despite those factors, there is, however, an association in the mind of the public and of politicians of the separate cases of Clark, Cannings and Patel being part of some systemic malaise in the criminal **and** family justice system when approaching these highly important cases. Shaken baby cases have also become associated with this general feeling of unease. There is public concern about expert witnesses in criminal and child care. Professor Sir Roy Meadow has been cleared of serious professional misconduct, yet the public perception is still, I suspect, a notorious rogue witness.

In my view, the confabulation of each of these separate cases, the separate issues upon which they each turned, and the resulting press coverage relating to Professor Sir Roy Meadow, has created a totally erroneous impression in the mind of the public at large and, no doubt, the body politic.

All of this is profoundly unhelpful to the family justice system, with which we are all concerned. None of these high profile cases was in fact a family case, but the overall impression is left of a systemic failure with courts blindly adhering to the flawed evidence of rogue medical experts. The situation, so far as we are concerned, is further compounded by the suggestion that behind closed doors, the 'secret family justice system' is regularly involved in such 'miscarriages of justice'.

A further and equally worrying consequence is the understandable reluctance of medical practitioners to put themselves forward as experts in these difficult cases. It is to be hoped that the Chief Medical Officer's proposals for reform of the delivery of medical expert evidence in family cases ('Bearing Good Witness' 2006) will now be developed following the largely favourable response to the consultation that closed in February 2007. However, the pace at which these proposals have moved forward has so far been measured in years. The problem faced by the family courts in finding suitable experts is an acute and present problem. It is therefore important that any attempts to alleviate this situation are now brought forward with some speed.

Reference to 'the secret family justice system' leads inevitably to consideration of the need to open up the work that we undertake to general public scrutiny. I have long associated myself with the more prominent statements of Wall LJ, Munby J and others on the legitimate need for a means of access by press and, through them, the public to the work of the family court. In this context I would applaud and support the current BBC project in which your co-chair, Alistair MacDonald, and others are involved.

The title of the current government consultation process '**Confidence and Confidentiality: Improving transparency and privacy in family courts**' shows at a glance the Push-Me-Pull-You factors in play in this debate: **Confidence** (in the sense of greater knowledge about and therefore trust in the system) AND **confidentiality** with respect to the individuals involved in each case; Improving both **transparency** AND **privacy**. One can readily see a whole herd of Push-Me-Pull-You's hoving into view here, and so it has proved to be.

The debate, so far as the government's position is concerned, commenced with the Minister, Harriet Harman QC MP, announcing at The President's Conference in May 2006 that the government proposed opening up all hearings to both the media and to the public in general. There was, however, to be a consultation, and when the first consultation paper came out in July 2006, whilst it maintained a default position of the media being free to attend hearings, the proposal that the general public were also able to do so had been dropped. The Push-Me-Pull-You was on display in the executive summary as follows:

- 'We want to make the family courts more open, but we want as well to ensure people's anonymity.'

The senior judiciary generally supported the media proposal, as, predictably, did the media respondents, but it received a very negative reception from other levels of judiciary, other agencies and, in particular, young people whose views had been canvassed in a number of ways. One such, Rocky, put it succinctly as follows:

"Who wants to be in the papers? It would not be very nice for everybody to read about your life in the papers. Some people are great, but some are horrible. Some things are private in the family, and it's better like that. The family comes together to help out in bad times. What would other people do? Just be nosy."

Having considered these responses, the government produced a second consultation paper '**Confidence and Confidentiality: Openness in Family Courts: A New Approach**' in June 2007. In his Foreword, Lord Falconer in terms said that the government had changed its mind and its approach to these issues. No longer was the emphasis to be on people coming **in** to the family court, but upon information going out from the court by means of far greater use of anonymised judgments and/or summaries of decided cases. One welcome by-product of such a scheme would be the routine provision of 'later in life material' which would be available to the subjects of the proceedings to read when they are mature enough to do so.

In terms of the announced starting point, namely both media and public attending all family hearings, it is plain that the Push-Me-Pull-You has been very active during this consultation process. What is suggested now is not in fact a radical departure from the current arrangements, save for the substantial additional burden it will place upon the courts, and in particular the judges, to produce approved and fully anonymised versions of their judgments in the majority of cases, or to take the not inconsiderable time to produce a carefully worded summary.

The ALC response to the consultation welcomes the proposals in this regard. There is a palpable sigh of relief that the prospect of the media having a **right** of access has passed.

Whilst the current proposals may be very largely 'business as usual' for the profession, regard has to be had to how the system is to produce a full written anonymised judgment in most public law cases. Just pause for a moment and contemplate the scale of that task. Added to it is the need for judges and magistrates not only to decide the case and explain their reasons to the adult and professional parties before the court, but to do so in a way that meets the needs of the child who, so many years hence, may read this 'later life material'.

The High Court judges have responded to the consultation, which closed 6 weeks ago, pointing out the very considerable additional burden and cost that would be placed upon the judges and courts at all levels in proof reading and rendering anonymous transcripts in most cases. Attention is also drawn to the problem of producing a suitable document following the making of a consent order. At a time when all are concerned with reducing delay in getting cases before judges for determination, introducing a major additional call upon judicial time in completing current cases would seem to pull (or is it push) in the other direction. Sensibly, there is a plan to pilot these proposals at a variety of courts, so any root and branch changes may be some way off.

Despite those obvious difficulties in implementing such a scheme, the proposal for greater access to judgments is, in my view, welcome and should go some way to reduce the charges of there being a secret justice system by making the reasoning of judges clear to the public in the ordinary run of cases.

We now await the government's further considered view on this, possibly intractable, subject.

Having considered the Transparency Push-Me-Pull-You, can I now turn to another member of the genus: the **EPO Push-Me-Pull-You**. This is an animal that is very familiar to us all, but I believe that there is still much that can be done to improve its grooming and management. I am reinforced in this view by a recent study of the beast's behaviour by Professor Judith Masson (*Fair Trials in Child Protection* March 2006 *Journal of Social Welfare and Family Law*).

The focus of the research was, in part, to identify the impact of the Human Rights Act on emergency practice, particularly in the area of without notice or short notice hearings.

I hope that I am able to do justice to Professor Masson's work with the following summary:

- Each year over 3000 EPO's are made and (outside London) at least 6000 children are placed in police protection;
- a three year study was conducted of emergency intervention in child protection cases in three different areas of England;
- in addition a national telephone survey of magistrates courts was undertaken;
- there were widespread differences in practice across the country with just over half very rarely hearing cases without notice, whilst the remaining 44% said that they usually heard cases without notice or were willing to do so – with a third of this group saying that they never heard EPO's on notice;
- this divergence of approach was mirrored in the three areas under close study;
- Prof Masson identified the use of police protection to be driven by three alternative factors:
  - An immediate need for protection; or
  - Where the local magistrates took a restrictive approach to without notice hearings; or
  - Where the need to intervene arose outside normal working hours.
- Whether intervention was by without notice EPO or by police protection, the effect on parents was statistically similar in the different areas with children being removed without notice in about a third of cases;

- Where police protection had been used, the parents would normally have notice of any ensuing EPO or ICO application and thus the proceedings may be said to be more fair, however, of course, the child had already been removed prior to the first hearing;
- Some courts approach the balance between immediate action and fairness by abridging the statutory notice period of one full day to provide a short notice 'on notice' hearing;
- Where notice was abridged only half of parents were represented, compared to 70% where full notice was given;
- Parents who attended an abridged notice hearing were doubly disadvantaged: they lost the right to challenge the EPO available in without notice cases, but had little opportunity to participate in the proceedings.

Professor Masson's conclusions included:

"Overall, the compromise of holding EPO hearings on short notice appeared to undermine the rights of parents rather than to protect them. Although the proceedings might give the appearance of fairness, the more limited opportunity for representation and the loss of the right to challenge the order meant that the parents had less opportunity to be involved in the process than if either the hearing had been on full notice or without any notice at all."

Professor Masson considered that the move to more abridged notice hearings, rather than being *more* ECHR compliant than a without notice process, actually achieved the reverse as the changes made did *not* increase the opportunities for parents or children to be involved in the decisions, as would be the case if the court made a without notice order and routinely timetabled the matter for review after 72 hours (as is the case apparently in Scotland).

The light that Professor Masson has shone on this very important area is, in my view, most welcome. It has analysed a movement of the Push-Me-Pull-You away from without notice hearings, a movement made for overtly sound ECHR motives, but which has had the effect of increasing the use of police protection in some cases and of reducing the ability of the parents to be adequately involved in the process in others, where notice is given but time is abridged.

I suspect that the contributions that both Munby J and I (as his junior in this as in all respects) have made in *X v B* in 2004 and *Re X* in 2006 with the aim of firming up the evidence and procedure at without notice hearings will have unintentionally added to the impetus for a push away from such hearings and a pull towards either police protection or short notice hearings.

The ECHR case law places a premium, under Art 8, on a parent having adequate involvement in the decision making process, and see the advantage in that regard of a without notice order, made on a basis that complies with the Munby/McFarlane strictures, which may then be challenged after 72 hours.

In regard to the 72 hour embargo on challenge, change is in the wind. Mr Justice Gillen in the High Court in Northern Ireland in a recent judicial review case of *Re ES* considered Article 64(8) of the NI Order which prevents an application for discharge of an EPO before the expiry of 72 hours. Art 64(8) is in identical terms to CA 1989, s 45(9). Gillen J has declared that this provision is incompatible with ECHR Arts 6 and 8 on the basis that it is an unnecessary and disproportionate response to the self-evidently legitimate aim of protecting children. As Gillen J puts it: 'the effect is to remove for 72 hours the access to justice of parents in such a way and to such an extent that the very essence of the right is impaired for that period'.

The Children and Young Persons Bill currently before Parliament proposes the repeal of the 72 hour air lock. Looking back now, it is difficult to recall the reasons that justified its existence in the first place.

A removal of, or reduction in, the 72 hour holding period could in turn have the potential for another move in favour of without notice hearings, followed by a challenge by parents at a time when they and their representatives considered that they were in a position to oppose the continuation of the order.

For me the most striking information within Professor Masson's paper is that the use of police protection outstrips the use of an EPO application by a factor of 2 to 1. As a barrister, now judge, I know little of the manner in which the police protection procedure is operated. My fear, nay expectation, is that it is a far less structured and analytical process even than the without notice process in the FPC which has drawn such adverse comment from Munby J, myself and others. There is, I believe, a need for greater judicial scrutiny of the police protection process, particularly if in some cases it is being used by local authorities to circumvent the requirements of the court process in applying on the day of intervention for an EPO.

These cases very rarely come before judges. Recently, however, in the Midlands a child was removed by police protection within an hour of birth from a young mother. The parents had the advantage of solicitors already engaged on their behalf in pending care proceedings for an older child. Rather than wait for the inevitable EPO application a day or so in, the solicitors issued wardship proceedings, which came

before me on paper that afternoon. I confirmed the wardship and directed that any EPO application must be transferred to the High Court. The solicitor's prompt and effective action, of which I expressly approved, brought the issue out of the FPC and up to the High Court.

Decisions of the sort of which I am talking rank amongst the most important in any family's life and in the life of any public law case. They remove a child from the care of his parents. They frequently establish the de facto interim care arrangements for many months. There is, and has always been, in my view a strong argument for such decisions to be taken at a level higher than the FPC. This is a personal view; I do not know if it is shared by others on the bench. The current Allocation Order prevents an EPO application being transferred out of the FPC (unless it relates to ongoing proceedings at another level). The new unified gate-keeping and allocation arrangements in courts that are being brought in next year would provide an ideal system of quick evaluation by both the FPC and the care centre of the weight of a particular EPO and permit allocation to the appropriate level of judge; however, absent of a change in the statutory provision, the ability to do so will not exist.

## The President's Initiative and the PLO

I suspect that much of this conference will be spent in discussing the new Public Law Outline for the Conduct of Care Cases and I will not therefore make more than passing reference to it here. The shortness of my reference to the PLO does not, however, betray any misapprehension as to the significance of this change and the other changes that are being made in the coming year.

Prior to the implementation of CA 1989, there was some hope, forlorn as it turned out to be, that a unified Family Court would be created. It was not to be. For historic reasons, the family jurisdiction in the magistrates' courts and that in the county court and High Court had developed from very different origins. Different government departments were responsible for the different layers of court, with staff employed by different organisations working in each. The squads of judiciary, be they justices or judges, were entirely separate from each other. Each side of the divide had a very different culture and ethos. There was, in short, something of a Berlin Wall between the lower and the upper levels of the Family Justice System. Whilst well intentioned attempts were made to punch holes or make windows in it, there was in reality very little communication between those who worked on either side of the Wall.

That this should be the case within anything that sought to call itself a 'system' was, of course, entirely counterproductive. If inventing a system from scratch, the idea that there should be a very substantial divide between two levels of court, each of which was working in the same field and, supposedly, transferring work from one to the other, would not even see the drawing board.

If those who work, say, in the county court (be they staff or judges) have never even met their counterparts in the local magistrates court, the chances of them working together and transferring work between each other confidently, appropriately or at all must be low.

The opportunity to change this unhelpful landscape has come about on the side wind of a number of government and legislative changes, each of which was not directly aimed at family justice. These were, principally, the criminal justice reforms and the announcement of the abolition of the Lord Chancellor. The consequence has been, firstly, the creation of HMCS which is a unified organisation that employs all of the staff and controls all of the buildings on both sides of the Wall. Secondly, there is now a unified judiciary, which includes the magistrates, under the leadership of the Lord Chief Justice and, for our purposes, The President.

Having spotted the opportunity created by these changes, Sir Mark Potter P has seized the initiative and set about demolishing what I have called the Berlin Wall and constructing in its place a unified family justice system – a Family Court.

Whilst the way in which these changes are being made are, of necessity, behind the scenes in the sense that they are taking place largely within the Court Service and amongst the judiciary, they will have a real, and hopefully beneficial, impact upon the professions and those who use the courts.

In short what is to happen is:

- The co-location at each care centre of the administration of both the FPC and the county court;
- A unified system between the FPC and care centre for gate-keeping and allocation of cases;
- Introduction of new allocation guidelines or directions;
- A revised ticketing scheme for all judiciary and more flexible listing arrangements;
- Introduction in April 2008 of the PLO; and
- New Family Procedure Rules covering in one instrument all levels of court.

All of these changes, which rightly travel under the label of The President's Initiative, will, I am confident, bring about very substantial and beneficial change. The PLO is an important part of this new structure.

## Public Funding

In this context it is timely to turn to look at legal aid, which The President has recently described as 'The Elephant in the Room' in the sphere of publicly funded family law.

Even a cursory read of the proposed PLO will see that, for it to function, parents and children require skilled and effective legal representation from experienced professionals who are adequately resourced. The PLO cannot, on any view, work without it. To expect litigants in person, or the children's guardian, to undertake the tasks that are to be required of them under the PLO without a lawyer is to expect too much. Where one or more parties have no advocate, the concept of an advocates meeting is emasculated.

As the President, with the cooperation and encouragement of the government, pushes forward with his Initiative, there is more than a danger that the countervailing effect of the recent legal aid changes will render this the paradigm example of the Push-Me-Pull-You effect at work in the family justice system. Richard White points out in the July editorial to the ALC Newsletter that the initiative on legal aid fees and the initiative to introduce a new Protocol are inimical. He rightly states that the authors of the PLO are well aware that it cannot be made to work without the skilled input of experienced solicitors and he rightly identifies the key question as being 'will enough practitioners remain' to undertake this work.

As a judge, it is not for me to make any points for or against the details of fixed fee or advocacy schemes and I do not seek to do so. My concern is for the operation of the system as a whole and the need for provision of the essential legal services required to ensure its effective operation. Having now read and, I hope, fully understood the detail of the new and proposed schemes my concern for the delivery of justice for children and families is, and can only be, of the highest order.

My concerns, which are in terms also those of the President, are threefold:

- first, that the overall fixed fees proposed to be paid in those cases will be adequate enough to keep the specialist solicitors who do this essential work in business;
- second, that proper provision will be made for the advocacy element within the schemes;

- third, and of particular importance to the implementation of new Public Law Outline, those fees should be tied appropriately to the separate key steps in the proceedings, so as to ensure proper conduct and continuity in the hands of the advocate concerned.

To this I would add my own worry that the recent introduction of a limited form of merits test for parents in public law cases, betrays the thin end of a wedge that has not hitherto been in view.

It is not an infrequent occurrence for a judge to encounter both sides in a private law dispute who are acting in person. In such a situation the judge often comes into the courtroom completely cold and devoid of any information about the case at all. Before he can begin to determine such issues as there may be, he has to coax out of the litigants the necessary information and advise them as to the procedures and progress of their dispute, without appearing *parti pris*. This all takes time and runs the risk that the judge may remain ignorant of some very important information. The court is often obliged to grant adjournments or afford other indulgences which would not usually arise were the parties to be represented. This aggravates delays within the system. The situation where one party is represented and the other is not, is an improvement, but is not free from the difficulties that I have described.

We have not yet got to that situation in public law proceedings, but may well do so if the already reducing number of firms and barristers willing to do legal aid work decide to quit the field in the face of the new rates being offered. Were that to happen, with the result that parents and children were regularly before the family courts in care and adoption cases without any legal representation and without the funds to commission expert evidence to question the case put forward by the state, the potential for injustice or for lifelong decisions to be made on an erroneous basis is, to my eyes, all too clear.

Now that the death penalty is no more, the most Draconian order that an English court can make is one for the adoption of a young child without the consent of the birth parent, with the effect that he or she is permanently removed, for life, from his family of origin. To contemplate a situation where such orders may be made, when, because there are no lawyers who are able to run a practice at the rates payable under legal aid, the parents and children in such cases are unrepresented and cannot access a second expert opinion, is to contemplate the unacceptable.

So, as someone who is profoundly concerned for the future health and efficiency of the family justice system, I look with great anxiety at the potential for the push me pull you effect to neutralise, or worse, the progress that we are trying to make to improve the system.

Were he here The President would repeat what he has already said publicly before and identify the real danger, as he sees it, that by mid-2008 there will be a developing and irremediable crisis in the Family Justice System if the Legal Services Commission plans for legal aid funding in public law care proceedings are pursued without modification.

Sir Mark foresees that for many firms public law practices will become unsustainable and there will be a departure from the scene of a substantial number of the already dwindling band of solicitors prepared to do public law work. His concern is that this substantial exodus of competent experienced solicitors with the consequent adverse effect on the conduct of proceedings will take place at precisely the time when all of his other initiatives are being implemented with the aim of reducing delay and otherwise improving the operation of the system.

## Conclusion

Despite the financial climate in which our work may have to be undertaken, there is much that is good and strong within the family justice system. The ALC itself, for example, has become a highly regarded and effective professional organisation in a way that more than meets the aspirations of those of us who were involved in its early years. The fact that there may be a 'Push-Me-Pull-You' process at work in various parts of the system is not all together a bad thing. It is indeed a necessary process for bringing about change and improvement. I would therefore urge you not to lose heart, but to continue to strive to deliver the quality service to children and families as you have done in the past.

I leave you with this thought: assuming for one final moment that the family justice system does indeed have more than a passing resemblance at times to a Push-Me-Pull-You, I hope that you who are involved in trying to coax the beast in all of these various directions will be able to spare a thought for the hapless judge, who is, of course, undoubtedly cast in the precarious role of jockey!

# The Public Law Outline

**Andrew Norton**  
Family Law Chambers  
1 Garden Court

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**This is a perhaps an unprecedented time of change for family practitioners involved in public law proceedings. All of us are trying to grapple with the recent funding changes introduced by LSC and anxiously await their extension in April 2008 before being able then, we hope, to determine finally the impact they will have on practice for all of us in this area.**

In parallel to these funding changes, the very nature of care proceedings is being altered by revised **Children Act 1989 Guidance and Regulations Volume 1** and also the **Public Law Outline**.

In June 2007 the DfES as it then was<sup>1</sup>, began a consultation about new *Children Act 1989 Guidance*, designed to underpin the changes that will be implemented by the PLO. The guidance, like much of the PLO, places emphasis, for Local Authorities, on preparation in advance of issue. It anticipates that assessments will have been completed and care plans completed before proceedings commence.

The genesis for the PLO lies in a judiciary led exercise to revise the *Protocol for Judicial Case Management in Care Proceedings* (the protocol), but it later became a consideration of a Child Care Proceedings Review jointly undertaken by two government bodies, the DCA and DfES, together with the Welsh Assembly. The ultimate objectives identified by the review were stated to be:

- **Helping families** – Ensure Families and children understand proceedings
- **Better informed resolution** – Ensure applications are only made after all safe, appropriate alternatives have been explored

- **Preparation for proceedings** – Improve quality and consistency of section 31 applications
- **During proceedings** – Improve case management
- **Inter-agency working** – Encourage closer professional relationships<sup>2</sup>

Underlying those objectives appears to be a fundamental expectation that the PLO will lead to a reduction in the time taken to conclude proceedings (currently on average 51 weeks in Care Centres and 42 in the FPC).

The PLO is to be fully implemented by a Practice Direction of the President of the Family Division which will be effective as from 1st April 2008. Until that time, it has been tested in 10 initiative centres. Cases commenced before 1st April 2008 will not be subject to the PLO although courts may utilise the case management tools contained within the PLO guidance.

The aim of the PLO appears to be to “front load” care proceedings, by requiring Local Authorities to undertake significant work pre issue. The PLO has as an overriding objective the enabling of the court to deal with cases justly having regard to the welfare issues involved. It introduces explicitly concepts of proportionality and saving expense.

If and when applications are issued, the PLO aims to make s31 applications more streamlined. The six stages under the current *protocol* will be reduced to four stages: First Appointment, CMC, Issue Resolution Hearing and Final Hearing.

Prior to issue, Local Authorities are expected to have completed a Core Assessment, any Section 7 or 37 report, filed minutes of meetings, produced an initial social work statement and chronology, produced a schedule of proposed findings and produced an initial Care Plan. Court forms (for example PLO 1)

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<sup>1</sup> Now the Department for Children, Schools and Families. Website still [www.dfes.gov.uk](http://www.dfes.gov.uk)

<sup>2</sup> [www.dca.gov.uk/publications/reports\\_reviews/childcare\\_ps.pdf](http://www.dca.gov.uk/publications/reports_reviews/childcare_ps.pdf)

have been devised to ensure compliance with case management objectives.

Local Authorities will also be expected to have sent parents a "Letter before Proceedings" which will be important in alerting the parents to imminent proceedings but also is a key stage in the parents' ability to access funding for legal advice.

Guidance for the PLO suggests that it is recognised that not all cases will allow for this preparation (where there are issues of urgency for example). It is however clearly expected that most cases will *not* be brought to court before this work is completed. Where a different approach is required, the reasons for departing from the PLO will be recorded on the face of the order.

Upon issue, the court will give standard directions (without attendance by parties) which are designed to ensure that the Local Authority has completed all necessary pre issue documents and if not, to set a timetable for their completion.

His Honour Judge Altman (Designated Family Judge for London) describes the period around issue as a "short but sharp period of intensive work to launch the case in court and to prepare for its resolution with the minimum of delay".

Around the time of issue, Local Authorities are expected to liaise with local CAFCASS managers to notify them of relevant dates and general details of the case. Upon issue a Children's Guardian is to be appointed. That appointment should therefore certainly occur before the *first* court hearing (by day 6) and is expected to occur by day 3. It is also expected that by the time of that first court hearing there may even be an initial CAFCASS analysis. The CAFCASS officer should be present at the first hearing.

It will be important for the Children's Guardian to identify what gaps may still remain in the Local Authority's presentation. Unlike the current system where the Children's Guardian rarely reports until the end of the proceedings, it is expected that the Children's Guardian will report *at each stage*. Practice that has grown from the pilot centres shows that this report is often made orally at court.

Also at issue and prior to the first hearing, it is proposed that the court will have already considered whether any party requires the Official Solicitor to act and whether there should at that stage be a transfer to another court level

In advance of both stage 2 (the CMC) and stage 3 (the Issues Resolution Hearing - IRH) it is expected that there will be an advocates' meeting. These *shall*

occur not less than 2 days before the hearings and so it will no longer be possible to have advocates' meetings on the morning of a hearing. Anecdotal evidence from some pilot areas suggests however that advocates meetings continue to occur on the morning of the hearing.

At the advocates' meeting before the CMC, it will be expected that the Local Authority's documents will be scrutinised and a draft CMC Order completed. The CMC Order is a lengthy document, designed to cover each eventuality.

Many of the matters addressed on the CMC/IRH order (and therefore to be considered in advance at the advocates' meeting) are self evident but a number of new concepts arise.

First, the concept of the "**timetable for the child**". It is expected that, upon issue the Local Authority will have devised a timetable for the child. This is a timetable of all key steps that are likely to occur in the child's life during the proceedings, to include legal as well as social and educational events. For example, it is expected that the court timetable will be set taking into account a child's meeting with a paediatrician, his first day at school, or consideration by the Education Authority of a Statement of Special Educational Needs.

Secondly, **Issue Resolution**. This is intended to be an opportunity to identify and to "narrow" the key issues. It is expected that this will be the hearing just before the Final Hearing, thus obviating the need for a PHR. It is also anticipated that there are circumstances where the final hearing *won't be listed* until the Issues Resolution Hearing (IRH). It should however also be noted that the PLO also anticipates that some cases will be suitable for an "Early Final Hearing" (where for example the child has no parent or Guardian or other relative able to care. Such cases are likely to be listed for final hearing at the First Appointment).

His Honour Judge Altman has suggested during the pilot phase that the IRH will certainly involve discussion with the parties but "it also involves resolving issues, sometimes by taking evidence". He indicated that the IRH could be listed for 2 hours and could include the taking of expert evidence. The President's Direction however seems to indicate that those issues that cannot be resolved by agreement will be resolved at "a hearing (ordinarily the Final Hearing) where there is an opportunity for the relevant oral evidence to be heard and challenged".

There are clearly some important and positive changes contained within the PLO. During the consultation process many agencies that have a direct interest in public law proceedings have

responded to the proposals, including the Family Justice Council, BAAF, the ALC, the Magistrates' Association and on behalf of the Official Solicitor.

Each of those bodies has responded on behalf of their own constituents, but all family practitioners would benefit from reading those responses, to be found on the websites of the respective organisations.

There were clearly problems with the protocol for judicial case management and additionally strains on diminishing budgets. Change was therefore both required and inevitable.

It is on the face of it possible that the PLO will lead to a reduction in the time taken to conclude

proceedings. The President's Practice Direction is a user friendly document which clearly sets out the steps to be taken. The forms, though comprehensive are designed to ensure practitioners remain alert to all possible issues in a case. They seek to ensure that case management runs smoothly and that the overriding objective of the PLO is met.

Ultimately however, the success of the PLO depends on practitioners to work with the new regime. The extent practitioners feel able to embrace the PLO will itself depend on whether the pilot has successfully ironed out some obvious faults and what effect other changes to Local Authority Guidance, CAFCASS restructuring and not least the LSC funding changes have on practitioners.

# DNA Testing – some procedural points

**George Eddon,**  
ALC Executive Committee

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**We tend to think that, compared with most other forms of expert assessment that are commissioned during care proceedings, DNA testing is straightforward, quick and precise. This comforting belief is unlikely to survive a reading of the the judgment of Anthony Hayden QC in the case of *Re F (Children)(DNA Evidence)* [2007] EWHC 3235 (Fam). This was a case where the initial tests were carried out by a company that is not on the approved list, and which lost crucial records. When the results were challenged, further tests were commissioned from a second company from the approved list, but the instructions to the company were ambiguous and the results were completely wrong. Only when a third company was commissioned to carry out further tests was the confusion resolved. The case provides a useful opportunity to remind ourselves of the procedure for using DNA evidence.**

The court's power to give directions for DNA testing is contained in section 20 of the Family Law Reform Act 1969, not it seems under section 38(6) Children Act 1989. Section 20 provides that any testing must be carried out by a provider who appears on the Ministry of Justice approved list. The up-to-date list can be found at [www.justice.gov.uk/docs/list-bodies-parentage-test.pdf](http://www.justice.gov.uk/docs/list-bodies-parentage-test.pdf) and is worth looking at – I was alarmed to find that my office had used several firms that claimed to do reports for court but turned out not to be on the list.

Most requests for DNA testing relate simply to paternity – is Mr A the father of the child? Some cases, however are more complex and may involve a range of possible relationships. For example, it may be unclear whether two children who have entered the country together are full siblings, half siblings or completely unrelated. In such cases, it is important to ensure that the testing provider is aware of the full range of possible relationships, as well as what the parties believe their relationship to be. Unlike other

court-appointed experts, DNA testers do not see all the court papers and cannot be expected to look beyond the specific instructions that they are given.

If the purpose of the testing goes beyond merely establishing or excluding paternity, the provider's standard form will not give enough information and should be supplemented with a letter of instruction setting out the relevant relationships as they are believed to be and the range of possible relationships.

A direction for DNA testing will normally only allow one set of samples to be taken. If the tests cannot be completed, for example because the samples are contaminated, the court's permission will be required for repeated samples to be taken. Section 20 also provides that a sample cannot be taken from a child aged under 16 without the consent of the person with care and control of the child. It is therefore helpful to identify this person in the directions.

Comprehensive guidance on the use of DNA testing in such cases can be found in the judgment of Anthony Hayden QC in the case of *Re F (Children)(DNA Evidence)* [2007] EWHC 3235 (Fam) at [32].

The suggested form of direction set out on page 14 is adapted from that suggested by Ward LJ in *Re H(Paternity: Blood Test)* [1996] 2 FLR 65 at 83D, with modifications suggested in *Re F (Children)(DNA Evidence)*.

## Suggested Form of Order for use in Public Law Proceedings

It is directed pursuant to s20(1) of the Family Law Reform Act 1969:

- a) that DNA tests be used to ascertain whether such tests show that [Mr A] is or is not excluded from being the father of [name of child] born on [date of birth]<sup>1</sup>: and
- b) that for that purpose samples be taken on or before [date] from the following persons namely [Mr A], [B], the mother of the child and the child; and
- c) that the person appearing to the court to have care and control of the child, who is under the age of 16, is [name of local authority (assuming that an ICO is in place)]; and
- d) that such tests be carried out by [name of testing company taken from MoJ list or a testing provider who is currently on the Ministry of Justice approved list, to be agreed by the parties by [7 days from date of order] and failing such agreement determined by the court; and
- e) the instructions shall be prepared and submitted by the solicitor for [lead party], who is to act as the lead solicitor. [The instructions are to be given in the form of a letter of instruction, which shall identify all relevant possible relationships between the individuals concerned and what they believe their relationship to be. The letter shall be agreed between the parties by [14 days from date of order] and failing such agreement shall be settled by the court.]<sup>2</sup>
- f) The child is to be made available for the purpose of obtaining one set of samples for testing. In the event that the provider is unable to complete the testing process without taking further samples, and the parties agree that further samples should be taken, the parties may apply by consent in writing for permission for repeated testing.
- g) The cost of the testing shall be borne by [the local authority, the mother, the alleged father and the child] in [four] equal shares and in the case of those parties who are in receipt of public funding shall be a proper charge on their public funding certificates.
- h) The lead solicitor shall file and serve the report of the outcome of the testing by 4pm on [ ]

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<sup>1</sup> Adapt as appropriate, for example "... whether Mr A or Mr B or neither of them is or is not excluded from being the father..."

<sup>2</sup> The words in square brackets are not required where the testing is for paternity only.

# Duty

## Opening Address to the ALC Annual Conference 2007

### Alistair MacDonald

Co-Chair, Association of Lawyers for Children

**Thomas Carlyle urges us to "Do the duty that lies nearest thee, which thou knowest to be a duty." As family practitioners, the words enshrined in Section 1 of the Children Act 1989 are now etched upon our consciousness by usage and the passage of time. When a Court determines any question with respect to the upbringing of a child the welfare of that child shall be the Court's paramount consideration. Thus the elegant and seminal duty of the Court.**

We know also and well our own duty. To represent without fear or favour children and young people at the very margins of society, to represent parents who struggle to care for children in conditions of great poverty, social deprivation and personal adversity. Representation that extends not only to addressing the needs of vulnerable clients within the bounds of our strict professional duty, but to assisting them to navigate the darkening storm, to make sense of what seems to them senseless, to engender faith in a system that seems to them designed to tear their family asunder. Thus the duty of the family practitioner. A duty the call of which we have a long and proud record of going well beyond.

But what of the State? The classic formulation of the theory and practice of welfare provision in this country tells us that we can expect a guarantee of minimum standards, social protection in the event of insecurity and the provision of services at the best possible level. If fidelity to the paramount nature of a child's welfare is the central precept of our legal code, then faithful service to ensuring that those working within the child protection and family justice systems are properly resourced must surely be the touchstone of the State's clear duty to vulnerable children and young people; that legal and moral covenant that stems from the self evident truth that safeguarding our children safeguards our society.

So much for principle. So much for duty. What next? It is easy when one objects strongly to something to lose perspective. The man with the placard will

always tell you that his is the most important issue facing society today, that it is his issue that constitutes the greatest present threat to the rights, the freedoms and the welfare of the individual. But what can rightly be said about the reforms to family legal aid proposed by the Government and the wider chronic under-resourcing of the family justice system, what can rightly be said to be common ground amongst many eminent individuals and organisations whose opinions deservedly command respect, is that those reforms constitute an unprecedented threat to access to justice for vulnerable children and families in this jurisdiction.

As we work to ensure our economic wellbeing in the face of this unprecedented threat there will come a point for each of us where we simply cannot continue to alleviate its corrosive consequences using only that which we have managed to preserve for ourselves from the rubble. Social workers, Children's Guardians and Judges cannot continue to do more and more with less and less simply to satisfy the voracious appetite of the market economy. Of course the better use of existing resources can lead to improvements. But it must also be acknowledged that there is a level of chronic under-investment below which even the most efficient use of existing assets cannot mitigate the impact of that chronic under-investment. The State's covenant with the vulnerable and the threatened must extend to providing dedicated professionals with the resources they need to do that which it is *their* duty to do.

My Co-Chair Caroline Little and I have been to meetings beyond count over the past 12 months. It has been our endeavour to communicate to Ministers and civil servants during that time that we are not simply lawyers seeking to protect our purses, to demonstrate why the work of the family justice system is so fundamental to the foundations on which our society is based, to show why the duty of care owed by the State to its vulnerable children and young people must be met by those to whom the people have given custody of that duty.

We have sought to make clear to the Ministry of Justice that the new Public Law Outline and the revised Children Act Guidance are designed to be

implemented and operated by specialist legal practitioners; that those twin reforms can only be effective in reducing delay and improving outcomes for children if a sufficient and sustainable supplier base of such specialist legal practitioners is maintained. We have repeatedly highlighted that the Constitutional Affairs Committee has recognised, having heard evidence from all interested stakeholders from the senior judiciary to children's charities, that the proposed reforms to legal aid constitute a "breathtaking risk."

A breathtaking risk no less in fact than the decimation of the supplier base of the very specialist legal practitioners expected to implement the new Public Law Outline and revised Guidance in which so much hard work has been invested. We have striven to highlight the sad irony that is constituted by one part of the Ministry of Justice pursuing reforms that will frustrate and destroy the very real progress made by another part of that Ministry.

Sadly, of the duty of the State it may be said that we have seen little that evidences understanding from those charged with honouring it. Despite our urgent and repeated representations, we cannot offer you good news, we cannot say to you that the campaign is almost won; we cannot say to you that the end is in sight.

It is easy to lose heart, to ask ourselves whether we will ever formulate an argument that will not be met with a hollow economic rebuttal, to wonder whether there is a way to compel understanding on the part of those with the power to effect change. In the end, to compel such understanding, I think we must keep returning to the children and young people we represent to remind those we seek to persuade of the consequences that flow when the system for which they are responsible breaks down, which it will surely do if the Government continues on its present path.

In preparing this address, I found what I think is one such compelling reminder among many. It is contained in small pamphlet published in 2003, entitled "*The Victoria Climbié Inquiry – Summary and Recommendations*". It recounts the following:

"Dr Alsford arrived around midnight. Her examination of Victoria was limited because her first wish was to increase Victoria's temperature, which at that point was 28.7 degrees Celsius. In any event, she could not have recorded the injuries she saw because they were 'too numerous'... Victoria was transferred to St Mary's Hospital Paddington where she remained in a critical condition with severe hypothermia and

multi-system failure. The medical staff were unable to straighten her legs. Over the hours that followed, Victoria suffered a number of episodes of respiratory and cardiac arrest. Her respiratory, cardiac and renal systems began to fail. At about 3.00pm Victoria went into cardiac arrest for the last time. Cardio-pulmonary resuscitation was attempted but Victoria did not respond. She was declared dead at 3.15pm on 25th February 2000. She was eight years and three months old."

That cold bright hospital room at the dawn of our century was as about as far as it is possible to get from the world fashioned by W.H. Auden when he sang of a "*childhood moving like a sigh through green woods.*"

As we have observed before, as a society we are entitled to expect from our Government that it will take all steps necessary to prevent its youngest and most vulnerable citizens from falling, by reason of their early and involuntary disadvantages, into neglect, abuse, crime, mental illness and, ultimately, again, into family strife and breakdown. We again recall Hanway's stipulation that "*we ought no more to suffer a child to die for the want of the common necessities of life, though he is born to labour, than one who is the heir to a dukedom.*" That is why the ALC will continue its work; that is why each of the matters that Andrew will speak on this morning are so pressing, that is why the work Nick Crichton continues to advance is so elemental.

What we do is important, it is vital and it *must* be done. There are no ifs, there are no buts. We are required if children and young people caught in the system are to realise the potential in each and every one of them.

That is why the ALC will continue to campaign for proper public funding, for sufficient resources for hard pressed social workers, for independent minded experienced Guardian's, for truly independent Independent Reviewing Officers.

Above all, the ALC will continue to campaign for a commitment by this Government that will honour the expectations of Maria Colwell, of Victoria Climbié, of Jasmine Beckford and of all those children and young people who are entitled to expect from the State nothing more than that it will do its duty.

We welcome you warmly to the ALC Conference and we ask you to steel yourselves once again for the continuing battle on behalf of the children and young people this organisation was fashioned to represent.

# Neither Blind to Culture nor Blinded by Culture

Dartington Hall Conference 2007

## Malek Wan Daud

FJC Diversity Committee member

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**What is the Dartington Hall Conference? Prior to being involved in organising it I had no idea but I had, over the years, heard it mentioned in hushed tones. It all seemed shrouded in mystery and made me think that it was linked to transubstantiation in some way!**

The Dartington Hall Conferences have taken place bi-annually since 1995 at Dartington Hall, Totnes, Devon. The success of the 1995 Conference led to the creation of the President's Interdisciplinary Committee which organised the conferences in 1997, 2001, 2003. The Family Justice Council (FJC) came into being in 2004 and it has organised the subsequent Conferences which took place in 2005 and 2007.

The FJC has been aware of the need to address the question of diversity since its formation and the Diversity Committee chaired by Khatun Sapnara has been one of the busiest and most active Committees

of the FJC. In 2005 the Diversity Committee proposed that the next Dartington Conference should be on the subject of diversity. The FJC Executive Committee with enthusiasm accepted this and planning for the 2007 Conference began in earnest.

Attendance at the Dartington Conference is by invitation only and it is structured to achieve the highest level of intellectual discussion and debate. The papers by the speakers are sent out to all delegates in advance of the conference and all delegates are expected to have read and digested the papers before hand. At the Conference each speaker gives a short presentation on their paper. After each paper the delegates, including all the speakers, disperse into discussion groups of about 12 to discuss the issues raised by the presented paper. At the end of the conference there is a plenary session where the groups feed back to the conference on each of the papers and resolutions are proposed, discussed and agreed.

The 2007 Conference entitled "Integrating Diversity" took place from the 28<sup>th</sup> September until 30<sup>th</sup> September. The theme of the Conference was to

Dartington Hall



examine the question of diversity, looking at how it affects the work of the Family Justice system. There was a further aim which was to promote good practice and to identify failings. Diversity, by its very definition, involves numerous strands and the conference sought to address many different aspects of the area. The speakers truly reflected the interdisciplinary ethos of the Family Justice Council's work. Controversial and challenging contributions were made from the numerous intellectual disciplines that affect our work namely from paediatricians, psychiatrists, psychologists and academics not only legal academics but also from the academic disciplines of social policy and social work. Insightful presentations were also given from both members of the judiciary and practising lawyers. The papers addressed the issues of human trafficking, same sex parenting, families and children of mixed heritage, trans-generational and cultural clashes, families with learning difficulties, trans-racial placements as well as issues of ethnic and cultural diversity in child protection.

Each plenary session brought about heated, but intellectually honest, and rigorous debate from very different perspectives. Issues from which many professionals shy away, hiding behind notions of impartiality and professionalism, were aired and examined. It was out of this hothouse of debate and discussion that the conference resolutions were conceived. The Resolutions entitled *Neither Blind to Culture nor Blinded by Culture* are included at the end of this article and are available on the FJC website at [www.family-justice-council.org.uk](http://www.family-justice-council.org.uk). I encourage everyone to look at them.



The resolutions have been adopted by the FJC executive and will guide the future course of the Council's work. The FJC seeks to engage constructively with Government in taking forward its work to improve the operation of the Family Justice system and several officials from the Ministry of Justice, and other relevant Government departments and agencies, were present at Dartington. The resolutions are not, therefore, merely words to be recorded and forgotten but the seeds of reform. Please read them and watch the ideas formed at Dartington grow into the Family Justice system of tomorrow. All the papers presented at the Conference will be published by Jordans.

The Resolutions Committee who are Samantha Singer, Yvonne Brown, Malek Wan Daud, Katy Rensten, Danya Glaser, Ann Phoenix and Khatun Sapnara.

## Neither Blind to Culture nor Blinded by Culture

1. This Conference adopts the proposition that there are no homogeneous cultures. We must understand culture in context as it is not monolithic or static but variable and dynamic. The Conference recommends that in dealing with individual cases all professionals involved in Family Justice do receive appropriate training to enable them to elicit culturally related information that is relevant.
2. This Conference believes that if the Family Justice System is to improve its approach to diversity more time is needed to prepare and investigate individual cases. This Conference fears that this may not be possible given the imminent public funding changes.
3. This Conference advocates that families must be able to access culturally sensitive support and services to prevent court intervention.
4. This Conference seeks a review of policy to enable every child to have access to care, education and medical services regardless of immigration status.
5. The expectation of this Conference is that Independent Reviewing Officers will fulfil their duty to ensure the welfare of children regardless of immigration status.
6. This Conference strongly recommends review of current practices of deportation

and incarceration of children and young adults who do not have the automatic right to remain in this country.

7. This Conference believes that children who are born as a result of egg or sperm donation are entitled to information about their genetic identity but the provision of this information should not automatically give rise to any parental entitlement to the donor.  
A. This Conference invites a re-examination of the concept and definition of Parental Responsibility to reflect diverse and complex family relationships.

8. This Conference recommends that there be an amendment of the welfare checklist so that s1(3)(d) of the Children Act 1989 reads "his age, sex, background, including his **racial, religious, cultural and linguistic background** and any other characteristic of his, which the court considers relevant"

The Conference notes that making changes to primary legislation is a lengthy process and therefore recommends that, as an interim measure, a practice direction should be issued, the purpose of which would be to indicate that the wording highlighted above is already implicit within the existing legislation and that consideration of those matters to which it refers would be appropriate and proper, notwithstanding that the wording is not yet explicitly contained within primary legislation.

9. This Conference recommends that in cases where parental learning disability is a significant factor, save in exceptional circumstances, the local authority should only bring cases before the Court where, having complied with their obligations under the Disability Discrimination Act 2005, the children's needs have nevertheless not been met.  
A. This Conference advocates as good practice the nationwide use of a model akin to the Cornish Special Parenting Service.  
B. This Conference recognises that there needs to be more uniform awareness of the Good Practice Guidance on Working with Parents with a Learning

Disability (2007) and the work of the Disability Rights Commission. It recommends to the Judicial Studies Board and CAFCASS in England and Wales that it should form part of the basic training for all levels of judiciary and for Children's Guardians doing public law work to ensure the provisions of the Guidance upon local authorities are complied with when cases involving learning disabled parents are litigated.

10. This Conference highlights the need for good quality interpreters and agrees that the current mixed quality of the interpreters available to the Courts and professionals is a cause for concern. We encourage long term investment in training and accreditation of interpreters to achieve high professional standards and a uniform good service throughout the country.
11. This Conference recommends that all experts, including paediatricians, should address relevant issues of diversity in their assessments and reports.
12. This conference believes that physical abuse as a form of discipline of children is unacceptable and transcends class, race, cultures and religion.
13. This Conference recommends the wider dissemination of discussions arising from Dartington Conferences to ensure the spread of the valuable information. For example by way of regular articles in practitioners' publications such as Family Affairs, Family Law, Resolution Review, etc.
14. This Conference recommends that there be improved training and support for alternative carers, including family members to enhance the child's sense of belonging and identity.
15. This Conference requests that research be commissioned for the purpose of ascertaining the accurate demography of children, in particular minority ethnic children, in the Family Justice System and Looked After children system across England and Wales.

# Public Law Family Fees Consultation Paper

## ALC Response

### A. The Principle of Full-Cost Recovery

We note what is said in the paper about the policy of full cost recovery, and that this is to be treated as a 'given' for the purpose of this consultation. We have responded to the questions on that basis but, like a number of other consultees, we are concerned that this issue has not been the subject of earlier consultation or debate.

The ALC is opposed to the principle of full-cost recovery in public law cases. The effects of implementing these proposals are more complex, and more directly relevant to the welfare of children, than has been acknowledged. Those effects need to be thought through in more detail; it is not simply an accounting exercise between agencies.

We note in this context the comment at page 38 of the *Civil Court Fees Consultation Paper* (CP5/07) issued as recently as April 2007, under the heading "Medium-term objectives":

*"The SR04 66% target was based on achieving 100% cost recovery (net of [remissions and exemptions]) for most non-children private law family fees. Different policy considerations may apply to public law care cases, adoption, domestic violence and private law children cases. For example, it is arguable that domestic violence injunctions should not be a fee-charging service at all (because of their urgency and the vulnerability of the applicant)." (emphasis added)*

This passage strongly suggests that, even in a context of seeking full-cost recovery in relation to the majority of civil litigation, it was accepted that debate was needed as to whether this should apply to public law children cases. The Civil Fees consultation closed on 25th June 2007.

Less than six months later, on 19th December 2007, the present consultation was issued, including (at page 7) the words:

*"The paper is concerned with the next step in the strategy. That is to increase most fees for public*

*law family cases – fees that are paid by public bodies, not individuals – to full-cost price levels from April 2008."*

There should have been further consultation and reflection as to whether, as suggested in CP5/07, there are indeed "different policy considerations" that apply in public law care cases and therefore whether full-cost recovery is appropriate. This does not appear to have taken place. It must take place before these proposals are implemented.

The ALC's view is that full-cost recovery is inappropriate in public law work. We suggest that local authorities, when discharging their statutory child protection duties are in a position analogous to prosecutors in criminal cases in that, on behalf of society, they are required to take action to protect its vulnerable members. There is no suggestion that prosecutors should be required to pay full-cost fees. If implemented, these proposals will place child protection proceedings on the same footing as commercial litigation, debt recovery and personal injury cases, where only the parties themselves have an interest in the outcome. In those cases, parties can reasonably be expected to conduct a cost-benefit analysis before deciding whether to start proceedings and incur court fees. Local authorities do not, and must not, have that luxury.

### B. Issues not addressed in the Consultation Questions

We think that the following points should be addressed, in addition to our concerns about the principle of full-cost recovery and the issues raised in our responses to the specific questions:

#### 1. The timing of the proposed implementation

The timing of the implementation of the proposals (less than three weeks between close of the consultation and planned implementation of the outcome) is far too short. There will be insufficient time to give meaningful consideration to the responses to the consultation, decide on a final fees structure and implement the resulting Fees Order before 1st April. The recent announcement that implementation has been

put back until May is helpful, but still insufficient. The new fees structure is intended to match the structure of the Public Law Outline (PLO), which is to be implemented on 1st April, but the implementation of the PLO is not dependent upon the simultaneous implementation of the fees structure.

The urgency in this case appears to be the result of Government's decision to remove money from the HMCS budget and distribute it to local authorities with effect from 1st April, making it necessary to press on with implementation of the new fees on, or shortly after, that date. If, following the consultation, Government accepts our view that more careful consideration is needed, it is essential that a way be found to manage the funding situation in order that implementation can be delayed until part way through 2008/9. We are not experts in central government finance, but suggest for example that contingency funding be used to replenish the HMCS budget (on the figures in the paper, this would for example require £20 million to defer until October 2008), with the funding being recovered through the local authority settlements for the remainder of the three-year cycle.

## 2. Lack of information for local authorities

There is concern that local authorities have received only limited and belated information about the proposals and their financial implications. The experience of one particular local authority is believed to be typical of many:

- The senior child care lawyer had, by chance, noticed the reference at page 38 of the Civil Court Fees consultation issued in April 2007 (CP5/07), to the existence of a medium-term objective in relation to public law children cases. He had however also noted the reference to the need for further consideration and that this was a medium-term objective, and had, understandably, taken no action at that stage;
- The next that anyone in the local authority heard was when, on 21st December 2007, a colleague in another authority drew the attention of the senior child care lawyer to the present consultation paper, which had been issued two days earlier;
- There then followed some detective work, as the Head of Legal Services and financial staff tried to discover whether the Council's share

of the money had been paid and, if so, how much had been paid. Enquiries revealed that the transfer had "been taken into account" in fixing the amount of the settlement, but not how much was involved or how the amount had been calculated. This was the first that financial staff had heard about the transfer, so no provision had been made as part of the 2008/9 budget process.

- The Head of Legal Services then had to submit a late bid as part of the 2008/9 budget round for a sum of money, calculated with reference to historical data for numbers of proceedings, to cover predicted expenditure on court fees.
- In late January, some time after the budget for 2008/9 had been set, this particular local authority was finally able to ascertain the amount that it had received. It is however understood that not all local authorities received this information so promptly. We note that it was found necessary, as late as 22nd February, to issue a letter to local authorities telling them where the information could be found<sup>1</sup>.

## 3. Problems with the financial distribution

We understand that the distribution formula was based on Standard Spending Assessments (SSAs) rather than the number of proceedings actually issued by each authority. Authorities differ in relation to the number of proceedings that they issue, so some authorities will gain and some will lose under these proposals. In fact, our enquiries of a number of authorities have not produced any that expect to gain and some authorities report expected shortfalls exceeding £250 000. Authorities with relatively high numbers of proceedings may find it difficult to divert sufficient funds to cover the shortfall without affecting other services.

The tying of the distribution formula to the SSA means that some local authorities will automatically receive less money than they need because of the 'floor-damping' process. This is a process whereby the Government guarantees a "funding floor", which is the minimum amount that each local authority is to receive. In order to ensure that all local authorities receive at least that minimum amount, the amounts allocated to those local authorities that are due to receive more than the minimum will be reduced. By way of example, we understand that one authority was supposed to receive an additional £229,000

but will, as a result of 'floor damping' receive only about £153,000. This authority will therefore experience a further shortfall, in addition to any shortfall that it will experience as a result of the use of the SSA rather than historic caseloads.

It may be said that the proposed new scheme is designed to incentivise local authorities to pursue alternatives to care proceedings by enabling them to use the money received from HMCS for preventive work, instead of simply recycling it into court fees. This may be true and if it is, then the total amount required for court fees will decline in the medium term. There is however no evidence for this in the consultation paper. In any event, any change of approach will take time and, in the meantime, the court fees will still have to be paid. If the higher fees result in funds being diverted from preventive work, the number of proceedings may actually increase.

Finally, a small point, but an illustration nonetheless of the dangers of rushed implementation. Local authorities, like central government, are required to have tightly controlled financial procedures. We are aware of authorities that have never needed, and therefore do not have, procedures in place for paying fees of this size at short notice, as is required in urgent care cases. No doubt the proposed new payment system (page 30 of the paper) will address this problem in the long run, but for the time being fees are to be collected in advance, so the local authority will need urgently to modify its financial procedures. If payments cannot be made quickly, then there is a risk that proceedings will not be issued at the time that they are needed. We are also told that not all FPCs are in a position to process the larger payments that they will receive.

Currently, courts generally return applications to the applicant if they are accompanied by an insufficient fee. This does not cause difficulty in the case of care proceedings because the fee is always the same, but the introduction of variable fees will make this more likely. This problem will be particularly acute during the first few months of the new fees, because the new figures will only be circulated shortly before implementation. If applications are returned, delay is inevitable. We therefore urge that, if implementation is pushed through on the proposed timescale, courts are directed to issue applications promptly and make arrangements to collect additional fees afterwards.

It is also not clear whether the proposed fees will be per child or per case. The existing fees are levied per case, irrespective of the number of children involved, but previous fee regimes have imposed fees payable per child. It can reasonably be inferred that the proposed new fees are to be levied per case, but it would be helpful for this to be spelled out.

#### **4. The Effect on Authorised Persons**

The NSPCC is not mentioned in the consultation paper and is not included in the list of bodies to which the paper has been sent (page 5 of the paper). By virtue of section 31(9) Children Act 1989, the NSPCC is authorised to bring care proceedings. It will therefore be doubly affected by the proposed increases, having to pay the greatly increased fees but not receiving any of the money transferred from HMCS. The practical effect is likely to be minimal, as it is understood that the NSPCC no longer exercises its right to bring care proceedings, but the right is enshrined in primary legislation and is no doubt important to that organisation. The NSPCC should therefore be included in the consultation. Also, the Evidence Base section of the paper contains an error at page 29 in that the changes will have an impact on fees payable by the NSPCC, which is a third-sector body.

#### **5. How will local authorities respond in practice?**

Fee increases on this scale will undoubtedly act as an incentive to local authorities to change their behaviour in some way, but it is much less clear how this will work in practice.

- The aim is to improve the quality of case preparation, but it is not clear by what criteria this is being measured, so it is difficult to predict whether there will be any measurable effect. If 'quality' is to be measured by the presence or absence of certain documents, then this does not guarantee that the content of the documents will actually help the court to progress the case. On the other hand, if the content and helpfulness of these documents is the criterion, how is this to be measured objectively? Also, each court has its own expectations, so the new requirements may prove more onerous for some local authorities than others and particularly onerous for those local authorities that deal with several courts.
- It will be possible in principle for a local authority to decide to use some of the money transferred from HMCS to fund alternatives

to court proceedings, but there are several difficulties with this:

- a) There is confusion as to how much money many local authorities have received, so they cannot make effective plans to use it;
- b) Creating credible alternatives to court proceedings takes time, much more than the few weeks that are available in this case, even if implementation is postponed into May 2008;
- c) If the numbers of public law proceedings are reduced, the fixed costs of running the courts system will not decline, the cost to HMCS of dealing with each case will rise. It is therefore likely that the court fees payable per case will have to increase to recover the cost. This will reduce the sums available to local authorities to fund alternatives to proceedings, possibly leading in turn to an increase in the number of proceedings<sup>2</sup>.

#### **6. The inappropriate use of private law remedies**

Where a child has been removed from home and is placed with friends or members of the extended family, the local authority has a choice between commencing care proceedings and supporting the carer to bring a private law application for either residence or special guardianship. There are some cases where private law proceedings are appropriate, but there are other cases where the safeguards inherent in public law proceedings, such as the need to satisfy the threshold criteria, public funding for parents and the appointment of a Children's Guardian, are vital.

The proposed fee structure will encourage local authorities to rely more on private law, and less on public law, procedures, but the likely consequences of this have not been considered in the consultation paper. For example, a parent who is a respondent to a section 8 application will not automatically qualify for public funding and may therefore have to appear in person, taking up more of the court's time than would be taken up if they were represented. The use by local authorities of private law processes has been criticised by the courts<sup>3</sup>, which consider that local authorities should be required to satisfy the section 31 threshold criteria before being

permitted to intervene in family life. This safeguard for families has become even more important following the implementation of the Human Rights Act, in particular Article 8 of the Convention<sup>4</sup>. By encouraging local authorities to rely on private law remedies when they should be taking public law proceedings, these proposals are likely to undermine this important safeguard for children and families.

#### **7. The danger of creating a perverse incentive for local authorities**

There is a danger that, rather than reducing the need for proceedings by finding alternatives, hard-pressed local authorities will respond to the greatly-increased cost by simply not issuing proceedings, or more likely by deciding to wait and see for a little longer, in cases where proceedings would hitherto have been issued promptly. The potential for increased risk is obvious.

The available evidence suggests that local authorities do not issue care proceedings inappropriately:

Available research over a thirteen year period following the introduction of the Children Act 1989 indicates only the most serious cases are brought to court. Researchers did not identify low or borderline cases so far as the threshold of significant harm is concerned. Research identifies that most families who became the subject of care proceedings had been struggling along the bottom rung of acceptable parenting for some time...history of child protection concerns), with a particular event, decline in parenting or ending of agreements between parents and social workers resulting in proceedings to protect and safeguard children.

Research review: Child care proceedings under the Children Act 1989  
DCA Research Series 5/06

This suggests that an initiative that is designed to reduce reliance on proceedings is a solution for a problem that is not proven to exist and may in fact make the problem worse. Courts and Children's Guardians dealing with care cases often complain about local authorities waiting too long before issuing proceedings. For example District Judge Crichton of the Inner London Family Proceedings Court, speaking on the BBC

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2 In economic terms, care proceedings could be said to be a "Giffen good" for a local authority i.e. because money is invariably tight, if the cost of care proceedings goes up, a greater proportion of the available money has to be spent on care proceedings rather than on alternatives such as intensive family support, leading to a greater demand for care proceedings.

3 See e.g.. Nottinghamshire County Council v P [1993] 2 FLR 134, CA

4 Right to respect for private and family life.

Today programme on 28th January 2008, remarked that he frequently lamented the failure of local authorities to commence proceedings in chronic neglect cases until the effects of the neglect upon the children had become irreversible. Lord Laming spoke in the Climbié report of a ‘rule of optimism’, which causes social workers to avoid or delay taking decisive action to safeguard children. Even our members who represent parents believe that, in many cases, it would have been preferable for proceedings to be issued sooner than they were. The consultation paper, in stating that it would be unlawful for local authorities to decide not to issue proceedings on financial grounds, ignores the extent to which local authorities have a discretion as to whether, and if so when, to issue proceedings.

Only in the most extreme cases, for example those involving serious injury, can it be said that proceedings must inevitably be issued. Most cases arise from multiple concerns about issues such as parental mental health problems or substance misuse. In these more typical cases the local authority has considerable discretion as to whether or not to make an application to the court. If, for example, the parents can be persuaded to agree to the child being voluntarily accommodated by the local authority under

section 20 Children Act 1989, the local authority may well decide that proceedings are not necessary. This, however, carries several risks:

- The parents and, more importantly, the child will not have proper access to legal advice and representation as they would have in care proceedings;
- There will normally be no Children’s Guardian appointed to protect the interests of the child;
- Without a clear timetable being set for the child, there is a risk that plans will not be made, or will not be fully implemented, causing the child to drift in care. The Independent Reviewing Officer system should help to alleviate this, but it is too early for there to be clear evidence that it is working;
- If the parents decide at any time to exercise their right to remove the child from accommodation, the local authority will be forced in to emergency action, which is disruptive for the court and the child and results in a hastily-prepared application, the very antithesis of the aims of the Public Law Outline.

## C. Responses to Consultation Questions

**NOTE: We have responded to the questions on the basis set out in the Consultation Paper i.e. that full cost fees are to be implemented. We draw attention to our view, expressed above, that full-cost fees are wrong in principle.**

**Question 1.** Given that fees need to be set to cover the full cost, do you agree that a single application fee is not the best approach?

If not, why not?

### **Comments:**

Local authorities will find it easier to budget for a one-off fee than for a series of fees, the timing of which will be outside their control.

A single application fee would also have the advantage of providing an incentive to the Court Service to maximise efficiency in the way in which it deals with cases. We note in this connection that the earlier consultation paper on civil fees (Annex B, para 3) says that:

*“It is important to view costs and income in the round – it should not be a matter of taking cost as given and setting (increasing) fees to match. Indeed the requirement to fund most of the business from users’ fees creates a strong onus to maximise efficiency.”*

*“Successful delivery of the fees strategy is therefore closely connected with plans in the HMCS business strategy for re-structuring the business in a modern and far more efficient way (e.g. through administrative back-offices, IT improvements including e-channels for court users, better use of the estate). The benefits of a more efficient system will be reflected in the level of fees in the medium and longer-term.”*

There is no reference in the present document to this interaction. A system of pay-as-you-go fees would provide a lesser incentive for the courts to improve efficiency than a one-off fee.

**Question 2.** Do you agree that a variable fee based on assessed quality of case preparation is unlikely to be practicable?

If not, please explain why?

**Comments:**

We agree that this is unlikely to be practicable, given the varying expectations of courts as to what constitutes a properly prepared application. There is no objective, measurable, definition of what a well-prepared application should look like. The checklist in the Public Law Outline will help to improve consistency as to which documents are required, but there will continue to be variation (i.e. judicial discretion) as to what the courts expect the documents to contain. The local authority will be unable to tell with confidence whether the court is likely to consider the application to be properly prepared and, therefore, what level of fee it will be charged. The same difficulty arises where the local authority has to decide whether to issue an incomplete application in an urgent case – if the court, reviewing the matter with the benefit of hindsight, does not agree that the application was urgent, the local authority will be unfairly penalised.

There is no clear evidence that lack of preparation is a significant driver of delay. As we have stated above, there is no objective standard against which quality of case preparation can be measured, so it is not clear to us what is considered in this context to be a poorly prepared application.

The courts have always had the power to make orders for costs where preparatory work has not been done. That power has rarely been exercised. If there is a need for a sanction, we suggest that it lies in greater use of those existing powers. This would also enable sanctions to be focussed on those local authorities who are failing to prepare properly, rather than penalising every authority for the failings of a minority.

**Question 3.** Do you agree that there should be a 'pay-as-you-go' structure for care proceedings fees?

**Comments:**

We do not agree with this approach. If full-cost fees are to be introduced, we think that a one-off fee would be more transparent.

There is no evidence in the document, even in the section headed "Evidence Base", to support the calculation of the proposed stage fees. Given that the Public Law Outline has not yet been implemented, it is impossible confidently to predict how many cases will conclude at each stage, especially the Issues Resolution Hearing, which has no equivalent in the existing Protocol. If it is not known how many cases will finish at each stage, and what it will cost to take a case to each stage (if this is known, it is not shown in the paper), then the levels of the stage fees will be no more than guesswork. We accept that it is reasonable to plan on the basis estimated figures, but the working should still be shown. We suspect that, even with the implementation of the PLO, a high proportion of cases will run through all the stages and attract the full fee. If this occurs in a greater proportion of cases than expected, there will be over-recovery from local authorities.

The Consultation Paper also does not contain any evidence that well-prepared cases tend to conclude at an earlier stage. In reality, the likelihood of a case needing to proceed to final hearing is determined by the position of the parents, not the quality of the local authority's preparation. The Practice Direction underpinning the Public Law Outline states that:

*"15.5 The expectation is that the method of resolving the key issues which cannot be agreed will be at a hearing (ordinarily the Final hearing) where there is an opportunity for the relevant oral evidence to be heard and challenged."*

This suggests that the authors of the Practice Direction expect that most cases where the parents do not agree will need a final hearing, and therefore a final hearing fee will be payable. We can see that a well-prepared application, followed by good case management, may result in a final hearing that is shorter and more focussed, but the local authority will not be rewarded for its diligence because it will still be required to pay the full final hearing fee.

There is no mention of how the proposed fees will be applied in those cases where the local authority has issued section 31 proceedings in response to a section 37 direction issued by the court. Such cases are sometimes issued at a late stage in the private law proceedings and do not necessarily follow all of the

procedural stages set out in the current Protocol. It is reasonable to predict that the same will apply when the new Public Law Outline comes into force. We suggest that, if a pay-as-you-go system is to be introduced, it will be necessary to make special provision for section 37 cases.

**Question 4.** Do you agree that the proposed structure strikes the right balance between simplicity and ensuring that paying authorities only pay for what they get?  
If you do not agree, please explain why and indicate what alternative structure you would propose.

**Comments:**

We believe that the proposed fee structure is unnecessarily elaborate. A one-off fixed fee would be preferable, given our expectation that most cases will run the full course.

We are concerned that the consultation document does not explain how the amount of the fee payable at each stage is calculated. There does not appear to be any research as to how many cases will end at each stage. In particular, Issues Resolution Hearings are a new creature and it is impossible to predict how many cases will end at that stage. Given the nature of what is at stake in care proceedings, parents are unlikely to take the kind of rational approach to settlement of proceedings that could be expected in, say, commercial or personal injury litigation. Even in the presence of compelling evidence, parents are understandably likely to be reluctant to 'throw in the towel' at a preliminary stage. We believe therefore that most cases will proceed to a final hearing. The paper does not, however, provide the analysis to demonstrate that the fee levels accurately reflect the number of cases projected to conclude at each stage and, therefore, whether the proposed figures will meet the requirement for full cost recovery.

Any consideration of staged fees should be postponed until the Public Law Outline is established and the numbers of cases concluding at each stage can be assessed.

**Question 5.** Do you agree with the proposals on additional fees? If not, why not?

**Comments:**

We agree that the additional fees payable by local authorities, especially those relating to renewal of interim orders, should be subsumed into the new fees.

The fees for care proceedings appear to have been calculated with reference to the cost of providing the court service for those proceedings. There is no evidence that the same exercise has been undertaken in relation to the other fees. We accept that some applications (e.g. child assessment, placement abroad) are uncommon, making it difficult to assess average cost, but others (e.g. emergency protection order) are much more common and could be treated in the same way.

We are concerned that it is being assumed that all applications for discharge of care orders and all applications relating to contact with a child in care are made by local authorities. These applications can also be made by parents and, in some cases, children. Most of these applications are supported by Public Funding. Why is it not being proposed that the Legal Services Commission should bear the full cost of those applications that it funds? We refer again to the consultation on Civil Fees (Annex B, footnote 3):

*"Internal budgeting within the department must recognise that part of the projected income from any fee increase will be offset by increased legal aid spending. But it is preferable for the legal aid system to pay fees, rather than waive them altogether in legally-aided cases, for reasons of transparency and because some of the cost will be recovered in costs against the other side, contributions or the statutory charge."*

We accept that the statutory charge and costs orders are unlikely to apply in children cases, but public funding for these cases is sometimes subject to a contribution and the issue of transparency is still relevant. We would add that, in the absence of good reason to the contrary, there should be consistency of approach between the various fee-payers, whereas these proposals would treat the LSC differently from local authorities.

**Question 6.** Do you agree with the proposal to retain a single application fee, rather than a pay-as-you-go structure, in adoption cases?

If not, please explain why and indicate what alternative you would propose.

**Comments:**

We agree that a typical adoption case follows a more straightforward procedural path than a typical care case, so there is little purpose in having a pay-as-you-go structure, even if that approach can be justified in care cases.

It is not clear whether there is any difference in cost between a placement application that is considered at the same time as the care proceedings and one that is issued later, requiring separate proceedings. If so, then this raises the possibility of having a lower fee for the former category of case. We consider however that this would be inappropriate, because it creates an incentive for local authorities, in cases where it is not yet clear that adoption is the appropriate plan, to apply prematurely for a placement order, to avoid paying a higher fee later. We would expect that courts and Guardians would be alert to such practice, but it is better to avoid creating a problem in the first place than to rely on others to deal with it.

## D. Conclusion

This consultation is expressed to be about the implementation of a policy that has already been decided. That may be so, but:

- The decision has not been the subject of consultation or debate, despite the need for this having been acknowledged only last year;
- The likely consequences of the proposed change have not been properly thought through and cannot be foreseen with confidence until the Public Law Outline has been up and running for some time;
- The financial basis has not been set out and is questionable;
- Implementation is being rushed.

The consultation paper speaks of avoiding perverse incentives. We believe that these changes, which are intended to encourage local authorities to consider alternatives to proceedings, may in fact leave them with little choice but to commence proceedings in some cases. Truly a perverse incentive. Even if we are wrong in this, there is no evidence that the alternatives chosen will be appropriate (e.g. intensive family support) as opposed to inappropriate ones such as excessive use of private law procedures and/or section 20 accommodation.

We urge Government to take a step back from implementing these changes, carry out proper research into the likely effect and conduct a meaningful consultation in relation to the principle of full cost recovery.

Government is planning to legislate in haste. We fear that it will be vulnerable children and their parents who, on its behalf, will repent at leisure.

**Note from the Editor:** As we went to press the Family Proceedings Fees Order 2008 (SI 2008/1052) and the Magistrates' Courts Fees Order 2008 (SI 2008/1054) were issued broadly giving effect to the proposals set out in the consultation paper. Bridget Prentice, Parliamentary Under Secretary of State at the Ministry of Justice, MP for Lewisham, wrote in a letter to the Law Society Gazette on 28 January 2008 that it was an open consultation. We can find no support for the measure outside the Ministry of Justice and widespread opposition has been expressed. So much for consultation?

# Giving families in need a break:

## The work of the Family Holiday Association and how you can help

**The Family Holiday Association is a registered charity, based in London, but working UK-wide. The Association of Lawyers for Children very kindly support the charity at its Annual Conference last year. The money raised at the Association's raffle will enable up to five families with young children to have a holiday during 2008. These will be families on a very low income who are desperately in need of a break away from home.**

For families managing on a low-income, and often also facing other problems such as long-term illness, addiction, recent bereavement or domestic violence, a short break away from home can be of immense value. Unfortunately for many families a break is economically impossible.

This is where the FHA comes in. For over 30 years the FHA has raised funds to enable families in such a position to have a break away from home. All of the families we help have not had a holiday for at least

four years. In practice, for the majority, their FHA-supported holiday will be their first ever family break.

The chance for children to play in the sand, and paddle in the sea for the first time, and for their parents or carers to share in the experience is something very precious. But a break of this kind is so much more than a simple treat for the kids.

Since its foundation in 1975, the FHA has collected a vast body of feedback in order to understand the effects of a break on families in need. Holidays have a profound effect on family life – they help build stronger bonds, improve self-esteem (particularly among children), broaden horizons and can have a marked positive effect on mental and physical health.

That holidays are more than “just a treat” was understood right from the outset. The FHA's founders, Patrick and Joan Laurance, had first-hand experience of what it was like to go without a break.





In the 1950s they found themselves in a difficult situation – unemployed, depressed, and with one of their daughters suffering from a bronchial complaint. They needed to “get away from it all”, but were unable to do so until a friend lent them a flat at the seaside. Their short holiday left them stronger, more positive and better able to cope. Founding the FHA was their way of helping others to benefit in the same way that they had.

Seaside holidays are something that the majority of us were able to take for granted as we grew up, so it often comes as a surprise to learn just how many UK families are unable to afford even a basic seaside break – some two million according to government statistics. The FHA is able to help many of these directly (we aim to help over 1,600 families in 2008), but we also work to raise awareness of the importance of leisure breaks among opinion formers, policy makers and the general public. That so many people are unable to take part in leisure activities has profound implications – for individuals, families and the broader community, and the FHA, with partner organisations such as the Youth Hostel Association, the Family Fund and UNISON Welfare, is spearheading research and awareness-raising into this issue.

The FHA is very grateful for the support that the ALC has given, and we’d welcome involvement in our work from any ALC members. If you’d like to know more about our work please see our website [www.fhaonline.org.uk](http://www.fhaonline.org.uk). If you feel that you’d enjoy a challenge and would like to help us raise some more funds you might like to take part in one of our running events this year:

- **Edinburgh Marathon – 25th May 2008**
- **British 10k London – 6th July 2008**
- **Women’s 5k Challenge (London, Birmingham, Liverpool) – 7th September 2008**

If you join one of our teams, you’ll get your own FHA running vest as well as training and fundraising assistance. For more information on the FHA or about joining one of our events, please email [jacqulyn@fhaonline.org.uk](mailto:jacqulyn@fhaonline.org.uk) or phone 020 7323 7292. We’d be delighted to hear from you.

# Sex offender service expands

## **A specialist team working with sex offenders and their victims is expanding its services across the England and Wales.**

The Integrated Family Team (IFT), part of the child protection charity The Lucy Faithfull Foundation, carries out in-depth assessments on people convicted of or suspected of sexually abusing children. The team can then, if required, provide treatment programmes to those individuals designed to manage and reduce the risk of them re-offending.

With referrals coming from a number of agencies including civil and criminal courts, statutory child protection agencies, probation and prison services and the legal profession, the team also works with the parents of sexually abused children to make sure non-offending parents are able to protect their youngsters in the future and where necessary the IFT will provide further advice and treatment.

IFT also offers a unique service which involves the assessment and treatment of the whole family. The team adopts an integrated approach which allows them to provide the clearest picture of the family and how it functions along with all the implications for safety and child welfare that that brings.

In charge of the team, Michael Sheath says the staff delivers an excellent service. "The integrated assessment approach avoids duplicating work, reduces the pressure put on children to disclose, is cost effective for the referring agency and it also undermines the power of adults to keep secrets.

"Both our work and independent research has shown that with appropriate intervention many offenders can adopt abuse free lifestyles which affords greater child protection," he added.

Chief Executive of The Lucy Faithfull Foundation, Hilary Eldridge says the safety and welfare of children is the charity's main consideration and goal. "Our work with convicted and admitted sex offenders informs our practice and lets us relate what we know about this type of offending to the work we do with children and parents.

"The focused and skilful assessments carried out by Lucy Faithfull staff on sex offenders can assist our interventions with both the offender and his or her victim and family," she added.

IFT workers are based throughout England and Wales and will travel to the client's home area to undertake assessment. There is also a facility to meet with clients at The Lucy Faithfull headquarters near Birmingham. All IFT services are administered and referred via the head office. The team will carry out single assessments and single case consultancies where required.

Anyone wishing to access the IFT services can call the Referrals Manager, Debbie Barlow on 01527 406901 or e-mail [dbarlow@lucyfaithfull.org](mailto:dbarlow@lucyfaithfull.org) for further information and a clinical services pack. More information is also available on the website at <http://www.lucyfaithfull.org>.

## **Notes for information**

1. Named after its founder, Baroness Lucy Faithfull of Wolvercote, the Foundation is a child protection charity operating UK-wide and specialising in safeguarding children from sexual abuse. To this end, staff assess and treat people perpetrating and affected by child sexual abuse and contribute to research into developing effective interventions. The Foundation's policy is to collaborate with individuals and agencies internationally to develop a more child sensitive and offender aware culture in our societies. The Foundation contributes to legislation and to policy and procedure reviews concerned with safeguarding children in faith communities, in schools, in leisure facilities, on the Internet and living away from home.

2. For further information on The Lucy Faithfull Foundation please contact Carol Geere, Media and Communications Manager on 01527 591922.

# Book Reviews

**Johnson, C. and Willers, M. (Eds) (2007).**

**Gypsy and Family Law.**

London, LAG

523 pages Paperback ISBN 978-1-903307-52-6 (paperback)

Many practitioners in child and family law work with the children and families of travellers and gypsy families and communities. Perhaps because of their intrinsic impermanence, these communities have long suffered from ostracism, along with deprivation and unequal treatment in many spheres, including housing, education and health care.

Chris Johnson, solicitor from the Community Law Partnership in Birmingham, and Mark Willers, barrister at Garden Court chambers, London, were originally inspired to put together the first edition in 2004 by a training day and the request of a Romani Gypsy, but it is also designed for lawyers, local authority staff, advice centres, and all those who may need to know their way round the complex law relevant to travelling families. The latest edition was necessitated by many legal changes, and is up to date as at 1 August 2007.

Homelessness is a major issue for Gypsy or Traveller families. When they are homeless, the local authority must do its best to find them a lawful site, if that is what they want. At the moment, most sites are unlawful, and over 20% live in unauthorised encampments without planning permission, although, as Eric Avebury points out in his Foreword, after 2011 when the new planning revolution comes into full operation, things may change.

This multi-authored book includes chapters on human rights for Gypsies and Travellers, rented traveller sites, planning law, evictions from unauthorised encampments, homelessness, education and healthcare and race discrimination. There is also a wealth of information about procedures, statutes, guidance, and useful organisations.

As a reference book, it brings together all the necessary information to advise and represent Gypsies and Travellers, or to help them to understand and implement their rights and responsibilities.

**Barbara Mitchels**

**Hopper, L. (2007).**

**Counselling and psychotherapy with children and adolescents.**

London, Palgrave Macmillan

166 pages Paperback ISBN 978-1-4039-9791-3 (paperback)

This book provides a very helpful overview of counselling and psychotherapy with children and adolescents, and is useful for therapists and for legal practitioners and others working with children and families. To many non-therapists, the terms 'counselling and psychotherapy' describe a relatively mysterious profession within which even the definition of these terms is unclear, and within which the modality involved for direct client work may vary greatly.

The *Ethical Framework for Good Practice in Counselling and Psychotherapy* produced by the British Association for Counselling and Psychotherapy (BACP) makes it clear that counsellors should only work within their area of expertise and training. This author, who has considerable experience both in practice and in training, makes it crystal clear that working with children and adolescents is very different from working with adults, and that insufficient attention is directed to ensuring that counsellors and therapists working with children receive an appropriate training and provide a well-supervised service.

The book covers emotional development, an understanding of children's problems from a psychodynamic perspective, the use of creative opportunities in play therapy, diversity, ethical issues, the process of counselling a child, and the child seen in the context of relevant family and social systems.

This book provides a good introduction to the topic which is easily assimilated for the non-therapist, and makes a very useful addition to the reference shelf for practitioners wishing to understand the basic theoretical underpinnings and practical aspects of this very important and specialised work.

**Barbara Mitchels**

**Luckock, B and Lefevre, M. (Eds) (2007).**  
**Direct work with children and young people in care.**  
London, British Association for Adoption and Fostering.

313 pages Paperback Price £14.95 + £4 p&p ISBN 978-1-905664-29-0 (paperback)

This book was written for social workers with responsibility for children and young people in public care. It derives from a wide variety of sources, including many seminal earlier publications on direct work with children, the BAAF training pack *In Touch with Children*, the White Paper *Care Matters* (2006, 2007), and subsequent legislation and guidance. The authors are all experienced practitioners who are able to write with considerable authority from their experience.

The editors point out that although the emphasis of the book is on the *social work* relationship with the child, it is both facilitative of other relationships, and transitory, therefore they do not suggest that other professional relationships with children in care are less important. The direct role of parents and others is also vital in supporting children to make sense of and manage their care experiences and to realise their hopes for their own lives. For example, the chapters recognise the roles of therapists, pedagogues, residential workers and advocates.

Of particular interest to me were the chapters on working with disabled children living away from home by Ruth Marchant; two chapters by Michelle Lefevre – one on core qualities and skills, and the other on communicating and engaging with children in care through play and the creative arts; observation and its role in direct work by Danielle Turney; attachment perspectives by Gillian Schofield; unaccompanied asylum-seeking children and refugee children and their transition into care by Ravi KS Kohli; Ane Freed-Kernis' chapter on working with lesbian, gay, bisexual and transgender young people in care; group work with adopted children by Lorraine Wallis; ascertaining the wishes and feelings of the child by Anna Gupta and much more.

This multi-authored book has so much useful information in it that it is impossible to list all the contents here, but perhaps the short list above may go some way towards indicating the breadth of scope of this comprehensive work, and the reader may justifiably assume that the remainder of the book is equally interesting, authoritative and relevant.

**Barbara Mitchels**

**Wall, N. (Ed) (2007).**  
**A handbook for expert witnesses in Children Act cases.**  
(2nd Edition) Bristol, Family Law.

211 pages Paperback Price £30 ISBN 978-1-84661-034-9

This book by the Rt Hon Lord Justice Wall needs no introduction. This new revised edition also includes a CD-ROM with the *Expert Witness Pack*, revised by Dr Eileen Vizard child and adolescent psychiatrist with the NSPCC and Penny Cooper, barrister and Associate Dean of the City Law School and the Inns of Court School of Law.

The book begins with a summary of the case of *Meadow v GMC*, and reports the decision in full. Since this was a case that has concerned many professionals who are potential expert witnesses in family cases, it was felt appropriate to include it. The message for all expert witnesses reading the book is clear. In reports and evidence do not stray beyond the remit of your expertise. If asked to do so in instructions to advise or in evidence, decline, or make it very clear to the judge that the area on which you are being invited to comment is not one to which your expertise extends.

This book is very helpful for experts in understanding the needs of the courts and particularly, in compliance with best practice and procedure. The Public Law Protocol is explained, along with relevant rules.

The book covers confidentiality and disclosure of documents, the role of the expert, parameters of evidence, the enquiries preceding the expert report, experts meetings, joint instructions, tandem care and criminal cases, report writing, giving evidence, fees and a list of courts and care centres. The CD-ROM has examples for correspondence and documents.

On the thorny matter of experts' fees, Peggy Ray, explains the nature and form of the legal contract between the expert and the instructing solicitor. She explains that the partners in the instructing solicitor's firm are legally bound to pay reasonable charges for the expert's work, irrespective of how the case is funded. In other words, it is the duty of the solicitor to ensure that publicly funded cases have cover for the work involved, or that in privately funded cases they have funds in hand, so that they themselves are covered. Many solicitors seem to ignore this excellent advice, and there are experts around the country who are owed thousands of pounds by lawyers who fail to pay on time, or at all.

Peggy Ray also points out that, under the Protocol (in public law cases) once the necessary details are supplied by the expert, 'it is the court itself, rather than the LSC, which should specify your fees, both in terms of the hourly rate and the overall global limit. Once this is done, the solicitor can apply for your fees 'on account' from the LSC in the knowledge that the court has, in effect, sanctioned the payment and there should be no risk that either you or the solicitor will be faced with an overpayment when the costs are considered at the conclusion of the case. There should be no need for the solicitor to apply for a 'prior authority' from the LSC, nor for you to insist on such an authority, although in law, only such an authority will bind the costs assessing body, (whether it is the court or a regional office of the LSC).'

However, if the work exceeds the limits agreed by the court, the fees are then subject to 'detailed assessment' meaning that at the end of the case, the LSC or the court may reduce the sum allowed and the expert would then be bound by that reduction. In other situations, experts may also be asked in advance to accept instructions on the basis that payment of their fees is 'subject to detailed assessment'. However, the expert has the right to refuse to accept instructions on that basis or to refuse to agree to this term.

Experts need a clear explanation of the difference between private and public funding, and between public and private law cases, and the ensuing complexities of the Protocol, which applies only in public law cases. It is, for example, helpful to them to know that the Protocol, in dealing with joint instructions, permits the lead solicitor to make a unified claim for all instructing parties (save for the local authority) following experts' interim or final bills. The court, at the CMC, can allocate the responsibility for payment of the expert's fees to the lead solicitor, who would then have to recoup the funds from the other instructing parties. The draft direction in Chapter 25 (at section 25.25) is probably the safest option for the expert.

The situation in private law cases is different, and potentially confusing for experts because the Protocol does not apply, the court cannot regulate the expert's payment in the same way.

The issue of experts' fees is complex and would benefit from further clarification for experts, lawyers and the LSC for situations where the Protocol does not apply, and reflected in the draft pro-forma letters in the CD-ROM. Peggy Ray's advice is helpful for those experts who need to be well informed and clear about the parameters of the advice sought, the terms upon which they are instructed, the time frame for payment, the responsibility of the instructing solicitor to pay the agreed fees, whether the fees payable are from public or private funds, and whether the expert is being asked to agree in advance to payment 'subject to detailed assessment'.

Experts will find this book very useful in so many ways.

**Barbara Mitchels**

**Sinclair, I., Baker, C., Lee, J. and Gibbs, I. (2007).  
The Pursuit of Permanence: A Study of the English Care System.**

Jessica Kingsley Publishers

320 pages Paperback ISBN 978-1-84310-595-4 (paperback)

This is the latest publication to emerge from the government's 'Quality Protects' research initiative. From the outset it stakes a claim to explore behind the superficial statistics of looked after children and to address some of the key questions that shape and frame the system we have for looking after children who cannot live with their birth families. Key questions include *philosophy* – should we assume that children are best off with their own parents and is what children want; *need* and the role played by the care system in children's lives; *process* and how different decisions are made for and about children; and what influences the outcomes for different children.

The book reports on what is probably the most extensive study of the children in the care system, their movements, their placements and the people who work with them. Building on previous research it involves quantitative analysis of new data (over 4000 cases) and secondary analysis of existing data (over 7000 cases), of over 300 residential establishments and over 1500 foster care placements, as well as 95 detailed case studies of children in different situations and circumstances.

The centrality of children's relationships with birth families, professionals and carers as they move through the care system is identified at the start of the book and remains a theme as we read about the children, the decisions that affect them, the places where they are looked after and the outcomes they experience. When the 'jewel beyond price' – an excellent relationship between children and carers – exists it should be secured with careful and flexible planning and decision making.

The authors frankly admit that this book is not an 'easy read' and they offer various ways of approaching the book. Nonetheless a detailed reading proves fascinating. The methods and analysis of the study are articulated with the utmost transparency, providing, as a subtext, a guide to managing a research exercise of this scale and complexity. For any professional involved in making or supporting decisions about children the book provides both evidence and inspiration to develop quality placements, decisions and staffing to ensure that care matters.

**Anne Hollows** is Principal Lecturer in Social Work at Sheffield Hallam University and directs the MA in Therapeutic Work with Children and Young People.

# I never thought I would need to know that....

## George Eddon

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I was sitting at my local County Court on the Wednesday before Easter, when a clerk brought in an urgent letter from the father in contact proceedings:

### **“Dear Judge**

**I have a contact order that says that the child should stay with me on alternate bank holidays. The mother had the children at New Year, so I expected to have my son on Good Friday. She is now saying that I can't, because Good Friday isn't a Bank Holiday. Please help”**

Being a pedantic sort (although I wonder whether pedantic is quite the right word), I decided to check. Bank holidays are defined in Schedule 1 to the Banking and Financial Dealings Act 1971. She was

right. Good Friday is not a Bank Holiday and, for that matter, neither is Christmas Day – they were both already-established public holidays when Bank Holidays were created. It was clear from the file that the Judge who made the order had meant it to apply to Good Friday, so I wrote a short note that “Good Friday is to be treated as a Bank Holiday for the purpose of interpretation of orders made in these proceedings”.

Not a common problem, but perhaps a point worth bearing in mind when drafting contact orders in highly-contentious cases.

I realised afterwards that my note should have said “Good Friday and Christmas Day are to be treated....”. No doubt the court will receive another letter shortly before Christmas... .



Association of **Lawyers for Children**

Promoting justice for children and young people

# Outstanding Newcomer in the Field of Child Law

## ALC Award 2008

Now in its fourth year the ALC 'Outstanding Newcomer in the Field of Child Law Award' in memory of David Hershman QC is looking for its 2008 winner. The aim of the award is to recognise the contributions of newcomers to the field of child law and to encourage them to continue to play an active role in shaping the future. Last year's nominations included University Students, Barristers and Solicitors alike. Previous winners are Emma Meredith of North Yorkshire Legal Services, Deidre Fottrell of Coram Chambers, Charlotte Rhodes of John Bromfield & Co and Sophia Khan from NYAS.

If you know someone who you think is an exceptional newcomer to the field of child law then please nominate them NOW. Maybe they have demonstrated an ability for supporting clients, have researched points of law, have helped with training, developed new ideas and initiatives or represented parties in a particularly noteworthy case.

The winner will be presented with the award at the Hershman/Levy Memorial Lecture on Thursday 26 June 2008 at St Philip's Chambers, Birmingham.

### Eligibility:

- Nominees must be solicitors, barristers, trainees, pupils or students
- Nominees must have been working in the field of child law for 5 years or less.
- The proposer must feel that the nominee has made a contribution to good practice, facilitating children's voices or the development of the field of child law.

### How to nominate someone:

- Entries must be in the form of 250 – 1000 words identifying relevant achievements and/or characteristics.
- Nominations must include full contact details for both the nominee and their proposer.
- Nominations must make it clear that the nominee has been working in the field of child law for 5 years or less.
- Entries must be received by close of business on Friday 13 June 2008
- Please send entries via email to [admin@alc.org.uk](mailto:admin@alc.org.uk)

For further details or if you have any queries please do not hesitate to contact Julia Higgins on 0208 224 7071 or by email [admin@alc.org.uk](mailto:admin@alc.org.uk)

# Dates for your Diary

## **EFFECTIVE CHAIRING OF MEETINGS**

Children's guardians and lawyers are expected to chair a wide variety of often very complex meetings. This highly practical and participatory workshop will address how best to manage meetings in order to achieve positive outcomes within limited timescales. Questions of emotional stress, diversity and culture will be integrated throughout.

**London: Wednesday, 16th July 2008 5.30-8.00pm**

Trainer: Alister Prince, Independent Social Work Consultant, Trainer, Expert Witness.

£50.00 – £75.00

2.5 CPD credits

## **ASSESSING ADULT ATTACHMENT FOR FAMILY COURTS**

This course will attempt to assist practitioners in using recent research and theoretical developments relating to adult attachment to inform their assessments of parents, prospective foster carers and adopters, and other adults who wish to care for a child subject to family court proceedings. The course aims to give practitioners the tools to use knowledge of adult attachment to extend their understanding of the adults whom they assess, and see how this impacts upon dependent children. It will be relevant to anyone involved in undertaking or evaluating social work assessments, for example, Independent Social Workers, Children's Guardians, Family Court Advisors, and solicitors interested in how this field can assist the Court.

**London: Thursday, 24 April 2008, 9.30 am – 4.30 pm**

**London: Tuesday, 23 September 2008, 9.30 am – 4.30 pm**

**Manchester: Thursday, 6 November 2008, 9.30 am – 4.30 pm**

Trainers: Ben Grey, Independent Social Worker and Children's Guardian, and Dr Stephen Farnfield, lecturer in Social Work at Reading University and a former Play therapist and Social Worker.

£95.00 – £145.00

6 CPD credits

## **KINSHIP PLACEMENTS: Policy, Practice and the Law**

This course is a knowledge and skill building day for practitioners and children's lawyers interested in promoting kinship assessments of family or friends in line with the requirements of the Adoption and Children Act 2002. The provisions in Section 1(4)(f) of the Act are having a profound impact on reshaping all family court practice in relation to assessing members of family networks or close friends of a child who needs immediate or long-term placement. This course will assist you in making or evaluating the kinship assessment and the legal options for securing permanency.

**Bristol: Friday, 14 November 2008, 09.30 am – 4.30 pm**

**London: Friday, 06 February 2009, 09.30 am – 4.30 pm**

Trainers: Carol Edwards, Social Work Consultant and Family Therapist and Leonie Jordan, Child Care Solicitor

£95.00 – £145.00

6 CPD credits

## **IMMIGRATION AND ASYLUM ISSUES IN CHILDREN CASES**

A course designed for solicitors, social workers, children's guardians and others involved in public and private court proceedings relating to children, where issues of status in the United Kingdom is a factor.

**London: Thursday, 30 October 2008, 09.30 am – 4.30 pm**

Trainers: Pat Monro, solicitor, and Julia Hughes, Children's Guardian

£95.00 – £145.00

6 CPD credits

## **VIABILITY, RISK AND CAPABILITY ASSESSMENTS**

The course will seek to address the issues raised when urgent provision of a Family or Friends placement is required, or an opinion regarding the viability of birth parents resuming care of a child following changed circumstances. It will take account of different stages and depth of assessment depending on the time scale for the work and the requirements. The needs of the child will be paramount and techniques included for discovering the child's perspective. The assessment of potential carers will take account of their experience, history and attachment profile, including research on the benefits and complexities of family placements.

**London: Thursday, 8 May 2008, 9.30 am – 4.30 pm**

Trainers: Carol Platteuw, Play Therapist and Independent Social Worker and Kathy Butcher, Children's Guardian and Independent Social Worker

£95.00 – £145.00

6 CPD credits

## **IMPROVING PRACTICE IN ASSESSING FAMILIES AFFECTED BY DISABILITY**

This course will examine practice issues in the assessment of disabled parents, both physical impairment and learning disabilities. Consideration will also be given to assessing disabled children, particularly establishing what constitutes 'good enough' care for children's complex needs. One of the co-trainers is a disabled parent herself as well as a leader in the field of disability and child protection.

**London: Wednesday, 14 May 2008, 09.30 am – 4.30 pm**

Trainers: Gretchen Precey, Independent Social Worker, Trainer and Consultant with a background in child protection practice and management and Merry Cross, Social Worker and Trainer.

£95.00 – £145.00

6 CPD credits

### **WORKING WITHIN THE NEW PUBLIC LAW REQUIREMENTS**

This course will assist practitioners to become familiar with the new requirements prior to and within proceedings in order to address not only their own practice but also the implications for safeguarding the child through the process. It will be relevant to Children's Guardians, Family Court Advisers, Solicitors, Local Authority Workers, Independent Social Workers and Independent Reviewing Officers.

**London: Friday, 27 June 2008, 09.30 am – 4.30 pm**

Trainers: Pat Monro, Solicitor and Ann Haigh, Children's Guardian

£95.00 – £145.00                      6 CPD credits

### **RISK ASSESSMENT IN CASES OF DISPUTED EXPLANATIONS FOR SERIOUS INJURIES**

Assessing explanations for serious injuries to babies and very young children is an extremely stressful experience for child protection practitioners. This course will consider some of the parameters of risk assessment and decision making generally but with special reference to the work of Peter Dale and his colleagues in considering cases which feature Serious Injuries with Discrepant Explanations (S.I.D.E.) involving infants and toddlers.

**London: Monday, 15 September 2008, 09.30 am – 4.30 pm**

**London: Thursday 15 January 2009, 9.30 am – 4.30 pm**

Trainer: Gretchen Precey, Independent Social Worker, Trainer and Consultant with a background in child protection practice and management.

£95.00 – £145.00                      6 CPD credits

**For application forms and further details please contact NAGALRO:  
01372 818504 or [nagalro@globalnet.co.uk](mailto:nagalro@globalnet.co.uk) [www.nagalro.com](http://www.nagalro.com)**

# Dates for your Diary

## **THE HERSHMAN/LEVY MEMORIAL LECTURE 2008** **In memory of David Hershman QC and Allan Levy QC**

**Date: THURSDAY 26th June 2008 5.30PM to 8.30PM**  
**Venue: St Philips Chambers, Birmingham**

Keynote Speaker: Lord Justice Hughes  
Presentation of the ALC award for 'Outstanding Newcomer in the Field of Child Law'  
There will be an opportunity for Delegates to put questions to a Panel of Experts

## **THE ASSOCIATION OF LAWYERS FOR CHILDREN 19th NATIONAL ANNUAL CONFERENCE**

**Date: THURSDAY 13th - 15th November 2008**  
**Venue: The De Vere Grand Harbour Hotel, Southampton**

Further details available soon

## **STOP, LISTEN, LEARN** **UNDERSTANDING GOOD PRACTICE FROM CHILDREN AND YOUNG PEOPLE**

**Date: FRIDAY 2nd May 2008 1.00PM to 6.00PM**  
**Venue: The new Manchester Civil Justice Centre 1 Bridge Street West, Manchester M60 9DJ**

Young People's Participation and Experience of the Judicial System  
Communication with Children and Young People  
Workshops on key themes presented by Children and Young People

- Disability & special educational needs
- Looked after children
- Asylum & unaccompanied minors

**For further information on the above courses please contact:**  
**ALC, PO Box 283, EAST MOLESEY, KT8 0WH.**  
**admin@alc.org.uk**  
**Tel: 020 8224 7071**



Association of **Lawyers for Children**

Promoting justice for children and young people

# The Annual Joint ALC and Brunel University Conference

## **Family Courts: The Challenges Ahead**

Saturday 10 May 2008

10:00am – 4:30pm

Brunel University, Uxbridge

5 Hours CPD/Bar accredited

### *Speakers include:*

**Uma Mehta**, London Borough of Islington –

“A Survival Guide to the PLO: What’s it all about?”

**Malcolm Chisholm**, One Garden Court –

“The interface between criminal and care proceedings”

**Julia Hughes**, Children’s Guardian –

“Race and Identity: considerations for placement and adoption”

This is an intimate conference of both practical and academic interest, offering an invaluable opportunity for networking, discussion and debate.

*For further information, or to book a place please contact:*

Association of Lawyers for Children, PO Box 283,

East Molesey, KT8 0WH

Queries to: [admin@alc.org.uk](mailto:admin@alc.org.uk)

Tel: 020 8224 7071