When first identified, this was meant to be something of a flexible session primarily focused on where we would take this very successful organisation next. Sadly, (for me at least), my departing speech has been hijacked by the head of the Kafka Academy, Ivan Initiative. I am obliged therefore to focus once again on the external challenges facing us and the community that we serve.

Actually that may be no bad thing – it does at least give Alistair MacDonald a quite separate chance to gain his spurs by addressing you later on the ALC’s strategic focus.

It scarcely seems believable in the climate of ‘Every Child Matters’ that, in recent months, we have faced one of the most fundamental challenges to the ground breaking Children Act and its principles since its inception. You have all read about the Public Law Review in the ALC Newsletter. I don’t propose to repeat the history that led to the setting up of the DCA/DFES Advisory Group - somewhat belatedly, and only after strong protest from us, Resolution and others – and you should by now be very familiar with the Review’s Terms of Reference. But it is worth reminding ourselves that the DCA team set up to conduct the Review was made up of people wholly inexperienced in this field of work: therefore they had to spend two months of a seven month schedule ‘reading themselves in’ to what they were supposed to be doing.

Let us also just remind ourselves of the Cabinet Office Rules on consultation.

These Rules, although they do not have any legal force, are binding on government departments and are generally regarded as such unless Ministers conclude that exceptional circumstances require departure from them. The key principles of the Code are that departments should consult widely throughout the process allowing a minimum of 12 weeks of written consultation at least once during the development of the policy.

The Code also states

• that consultation is a continuous process that needs to be started early in the policy development process.
• there needs to be clarity about what the proposals are, who may be affected, what questions are being asked and what the timescales for response are.
• consultation should be completely open with no options ruled out
• responses are likely to be more useful and focused if the respondents know where to concentrate their efforts.
• consultation should be clear, concise and widely accessible.
• particular attention should be paid to possible new approaches to the question consulted on, further evidence of the impact of the proposals and the strength of feeling among particular groups (an interesting concept in this field no doubt!)

It specifies that the information provided in response will be dealt with in accordance with the Freedom of Information Act 2000 (amongst other pieces of legislation) and that there should also be a regulatory impact assessment. Furthermore the principles of good regulation should be followed whenever possible. These are proportionality, accountability, consistency, transparency and targeting.

And what of the future?
Adoption
The Modern Procedure

HHJ Heather Swindells QC
Clive Heaton, Barrister, Zenith Chambers, Leeds

This invaluable new practice work is a companion to the successful title Adoption: The Modern Law by Caroline Bridge and Heather Swindells. The work contains a summary of the new law and an accessible and detailed examination of the new procedural regime governing applications under the Adoption and Children Act 2002 which came into force on 30 December 2005.

Appendices contain the text of ACA 2002, all key statutory regulations, forms and guidance, including the Family Procedure (Adoption) Rules 2005 and supplementary Practice Directions.

Adoption: The Modern Procedure is an indispensable guide to procedure for all lawyers and other professionals involved in adoption work.

March 2006 Papercover £50.00 inc mainland UK p&p ISBN 0 85308 969 8

Children Act Private Law Proceedings
A Handbook

2nd Edition

“excellent ... covers not only the law, but also practice issues”
Association of Lawyers for Children

“topical, clearly set out and extremely readable”
New Law Journal

This work has become an invaluable companion for all practitioners involved in private law proceedings under the Children Act 1989. It provides both a detailed analysis of substantive law and a clear guide to the relevant procedure.

This new edition has been thoroughly revised throughout and takes account of recent case-law and important procedural developments.

March 2006 Papercover £40.00 inc mainland UK p&p ISBN 0 85308 997 3
Letter to ALC Members

I do not consider it right to give it the name Editorial but I thought that ALC Members should know that I wrote to the Lord Chancellor in November 2005, stating that I was withdrawing from consultation with the Department of Constitutional Affairs. I wrote in my letter:

“Since this Government first came to power we have seen policies on public funding lead to a deterioration of legal services for the most vulnerable in our society. The Government review of care proceedings is the latest in a succession of damaging policies. It is not difficult to see the underlying agenda, given the clear statement that there is no more funding for legal aid. The review is being conducted by people who have no experience of working with child law let alone care proceedings, based on material produced in secret by inexperienced consultants. Meanwhile my colleagues working in the legal aid system are treated by your Department as if irresponsible, self interested and ignorant. Consultation has been offered belatedly and reluctantly and without making available the proper data on which any reasonable decisions could be made.”

I have accordingly, though most reluctantly, decided to withdraw from consultation with your Department. I consider that it has become a waste of my time and energy, which could be put to use elsewhere. I shall be continuing my work as a legal aid solicitor as best I can for the time being and with my writing and teaching on children’s law.

Having given some publicity to my original letter, in particular at the Southampton conference, I feel I should now put on record that I have received a personal reply which includes the following:

“As you will be aware the Fairer Deal for Legal Aid launched a coordinated, continuing legal aid reform programme to achieve an appropriate long term settlement for legal aid that we can build on in coming years. The legal aid budget is necessarily limited and we want those resources spent in the most effective way possible and those in greatest need. The work being undertaken in the Child Care Review, as part of that programme, is being developed rapidly and involving experienced practitioners. I am sorry you no longer feel able to be part of that.”

Unsurprisingly the letter is brief in response to the criticisms I was making of the process of the Department’s Review of Care Proceedings. It gives no clue as to whether the Lord Chancellor knew what was going on last year as described in the lead article in this issue by Liz Goldthorpe or whether any senior political figure knows what is going on now.

Liz properly identifies the need to continue to work with the Government on the Review of Care Proceedings. For the Association that must be right; indeed without it who knows where we might be. For an individual who, after 30 years of working with a series of people with whom one has been able ‘to do business’, can no longer place any trust in the civil servants responsible for developing current policy, the argument is different. One can only hope that protest focussed some brain somewhere in the bura-bura.

Alistair MacDonald is carrying on the fight, not least with an article in Family Law in March 2006, which members should study carefully. There will, as there have been over several decades now, be major changes in the management of child law in the next few years. One can only hope that the Government has at last recognised the need to consult those who understand the work rather than, as we have seen in other areas, simply impose their ill conceived philosophies.

Richard White
We were extremely concerned about this Review and the way in which it was set up, given the not so hidden financial agenda. With somewhat emotive Terms of Reference in the context of a cost driven agenda, it has not proved to be quite the exercise you would expect (or would want, given the complexities of the subject area).

With such a bad start, the omens were not good. But all the obvious indications were that we should participate in the process, with all the risks that that posed. We were all too well aware that, in an attempt to blind us with science, there was clearly going to be something of a documentary diarrhoea. We also knew there would be the danger of the time honoured political tactic of overkill – as in, if someone threatens to shoot you, you will eventually end up thanking them for just amputating a leg and might even acknowledge the benefits of learning to hop….

It has hardly been a fair or effective process and one in which some highly biased and inadequate information has been presented. To briefly recap, the process of ‘consultation’ followed these steps:

- on 18th July 2005 the Family Justice Council were told that the Review Team would be setting up an Advisory Group…
- we were subsequently told this would not happen, and on 4th August we were merely told in writing that there would be bilateral small group consultation…
- we subsequently wrote a joint letter with Resolution, to the Lord Chancellor to protest at the wholesale lack of consultation
- and lo and behold an Advisory Group was suddenly set up.

A couple of meetings followed, in the course of which we told the Review Team that they were proceeding upon the basis of inadequate data and insufficient research…. in short, a complete lack of the kind of management information, which could, would or should inform appropriate decision making.

During this period a long planned event took place – the ALC/Resolution Study Weekend in Cheltenham. This was originally aimed at an examination of the issue of experts and their use in proceedings and professionals from other jurisdictions were present. The event got slightly hijacked by the Public Law Review – it was clearly necessary to look at some elements which might impact on that Review. Therefore, mindful of the Terms of Reference, we considered issues such as practice and procedure in other jurisdictions, family group conferences, ADR, mediation and pre-proceedings information and representation as well as the issues of “over representation” (whatever that was supposed to mean).

The final Cheltenham paper is not yet available so I can’t give you the details of our conclusions, but suffice it to say that a number of areas, apart from the pre-proceedings process, were deemed to be considerable, separate pieces of work in themselves. This was seen as particularly true for any examination of what happens in other jurisdictions, for example Scotland and France. However interesting some of the areas under consideration may appear, there is clearly a dearth of adequate research to provide reliable information on detail and outcomes, and especially so where other jurisdictions are considered.

I should also add that, for reasons I will leave you to contemplate, ADR and/or mediation in public law was not a favoured option.

However, the main focus of our concentration at Cheltenham was the amount of advice and information parties got prior to the issue of proceedings. A pre-proceedings protocol was seen as a critical part of the process to address this.

We had been given a Key Issues paper as a result of the consultation process up until that point. That paper talked in favourable terms about the Judicial Case Management Protocol – the way in which this process had been set up and run, its clear focus and the amount of work carried out to create the Protocol. A Stakeholder Event on 10th November, arranged by the DCA for a range of invited professionals in the field, considered proposals from the President of the Family Division that included a Pre-proceedings Protocol. There were also presentations on other issues such as family group conferences and other jurisdictions, despite warnings from the Advisory Group that this Event was really a very large, unfocused and ill thought out process, which continued to promote data that had been discredited.

The Advisory Group meetings have carried on, but with very tight timescales to meet. There are two further meetings scheduled for November and one in December, each of which have been allocated precisely two hours to consider pre-proceedings, proceedings and post proceedings issues respectively. I leave you to imagine the feelings of some of the practitioner representatives on the Advisory Group.

When I look at some of the language and terminology used during this process, I’m reminded somewhat of a mangling of...
meaning and mangling of definitions. The Terms of Reference alone give pause for thought on that score. On that note, I should declare a particular interest in some of the wonderful words other languages use to encompass whole concepts:

- the Caribbean / Spanish word ‘buchipluma’ which means one who promises but doesn’t deliver
- the Indonesian ‘neko-neko’, meaning one who has a creative idea that only makes things worse, and
- the German word ‘Radfahrer’ meaning one who flatters superiors and browbeats subordinates…..

I also find the Japanese phrase ‘bura bura’ attractive too – it means to wander around aimlessly looking at sites with no fixed destination in mind. I can’t think why I thought any of these were relevant, of course.

You have heard the President outline the proposed Pre-proceedings Protocol, consisting of these stages; pre proceedings protocol; children’s dispute resolution hearing, case plan and case timetable. Whatever your reaction was to those proposals can I suggest this to you – there has been an enormous amount of work going on behind the scenes of this Review and an enormous amount of cooperation between the relevant bodies including the judiciary.

My view is that it is this work we need to focus on now. It is obvious that the President supports the view that work on the Pre-proceedings Protocol needs to be judiciary and practitioner led. That is the only way we are (a) going to get the necessary work done, and done properly and (b) the only way we are going to get it out of the hands of civil servants who have shown that they simply do not know what they are doing. So that is the focus – the details of those proposals will be available shortly, which provides us with the opportunity for a real debate about the key elements of that Protocol.

Can I stress this to you – the issue that seems extremely important to us is the notion of having a meeting that sets the agenda for the parents very clearly, at which they are represented and the child is represented, (and properly represented), which tells the parents what the issues are that are facing them and how they can address them. That is the goals and components element to which the President referred.

So what do we do now? It will have seemed, and still seems given our experience over recent months that it is all too tempting to step away from the process. Indeed, some of you may be aware that one very, very long standing practitioner, and member of the ALC, Richard White, has become so disillusioned with this process, the attitude towards us and the skewing of proper consultation that he has stepped away. It has been very tempting to follow him. However, I think we still need to stick in there – the ALC and Resolution will continue to pursue the issues through meetings with Ministers and civil servants, as well as the Advisory Group.

But we also need to concentrate on the critical piece of work that needs to take place apart from that. The Pre-proceedings Protocol is not within the remit of the DCA and, I repeat, needs to be pursued in a judiciary and practitioner led process.

Can I remind you that the President also mentioned earlier the effect of the Adoption and Children Act 2002. We need to continue to sound those warnings. It seems unbelievable that the Review Team didn’t listen when, at the outset, we stated clearly that there was a major piece of new legislation they had overlooked. It seems they have only now just latched on to that – the strong possibility that there are a few headless chickens running around in government departments seems a tempting image….

There are other consultations directly related to this Review, and extremely relevant to public law. One was mentioned previously, namely the Carter Review, and we have already had one meeting with that team so far. This, I have to say, seems to be a much more open and transparent process. In addition, there is also a consultation focusing on the use of judicial resources and a CAFCASS paper Every Day Matters. Both of these are important and need careful and considered responses. This is particularly so with Every Day Matters as it contains several proposals for the future of that vital service, which pose considerable challenges.

And a NEWS FLASH, as if this wasn’t enough, this government is intending to back track on the representation of children in private law. This is despite the commencement order being signed off back in April and the fact that the whole of the Adoption and Children Act 2002 comes into effect on 31st December. The current proposal is not to implement s.122, even though this will almost certainly need to be put before Parliament to obtain the necessary permission to renego on its implementation. This does raise the question does every child really matter? Without legislative backing and joined up thinking the Every Child Matters agenda seems flimsy at best, and, on the ground, will mean little in reality. It hardly creates confidence in an open and transparent process…..

I was asked ‘you’re not really going in November are you?’, to which I answered “Yes”. But then someone said “what if your ticket to South America for next week has been replaced by a ticket to sit on one of the deck chairs on the Titanic…?” I am going to South America, but I have agreed to return (for a short while) to jointly chair the ALC with Alistair MacDonald, in order to see this challenging process through to its conclusion.

Liz Goldthorpe
ALC Chair
Earlier this week, I addressed the British Association for Adoption and Fostering concerning the Adoption and Children Act 2002, the major provisions of which are due to come into force at the end of this year. The evolution of adoption law is an engrossing topic. We have moved from a position where the model of Adoption, first appearing on the statute book in the 1920s, was very much parent-focused. Although the 1926 Adoption of Children Act permitted a permanent and legal transfer of the child to the custody of the adopters, the adopted child gained no rights of property or succession. The focus of the policy and the legislation appeared to be the future happiness of childless couples or those shamed by illegitimacy.

A comparatively rapid period of social change over the second half of the 20th century has produced a marked change in attitude towards single, unmarried, and now same-sex parents, and towards illegitimacy generally. Contraception is now generally effective, and abortion no longer a back street activity. These social changes are now reflected in the modern policy behind adoption. The child and his rights are very much the focus of the new legislation, and the model of adoption, the policy behind it, and the current social climate are light years removed from those prevailing at the time of the first Adoption Act in 1926.

The changes in Adoption law and policy reflect changes in child law in general. The child-focused legislation embodied in the ground breaking Children Act 1989 required that the welfare of the child be the court’s paramount consideration when determining any question concerning the upbringing of the child. Welfare of the child as the paramount consideration has now been incorporated in to the new adoption legislation.

Despite these developments and changes in social attitude there remain areas of concern. On the one hand we have legislation and policy striving to protect children up until the age of 18. We put them in to Local Authority care if they are at risk of significant harm and the current government agenda is that “Every child matters”. On the other hand we impose full criminal responsibility on children from the age of 10 upwards, which is one of the lowest ages of criminal responsibility in Europe. There have been calls to increase this age to at least 12.

As part of the Government agenda to increase collaboration and data sharing across all agencies working with children, whether in the public or private sector, we should not and do not look at child criminality in isolation. But we need to focus on the root causes of child criminality. Many, indeed most, children offend because of circumstances at home and defects in their care. They are victims or witnesses of domestic violence, stuck in the middle of acrimonious relationship breakdown, or live in areas of huge social deprivation and are exposed to drugs, prostitution and the like at too young an age. To punish these children, for what may be no more than imitative behaviour, or the inevitable product of their particular situation, seems unacceptable.

Although Local Authorities are constantly pressed for resources there seems to me little doubt that the better option in many of these cases would be to pursue a
solution through the family justice system, albeit an easier and cheaper option now available to a Local Authority is to apply for an Anti-Social Behaviour Order, or for CPS to proceed down the criminal route. But this has the potential to make matters worse rather than better, and to turn what may be a temporary phase in to a permanent condition. Unfortunately, and as usual, resources are the problem. It must also be recognised that borderline cases are difficult and social services are rightly wary of being accused of too much intervention.

But all this emphasises that government as a whole i.e. central government and local authorities, should together be “front end loading” the nation’s resources to protect and nurture children who are still young, and to restore them to the right track when things go wrong. It has to be said that some of our current legislation and policies lack foresight and depth of analysis. If children are unable to function and participate in society then they will most likely be unable to do so as adults. If we recognise this and act accordingly, some of the “back end loading”, in the form of the immense resources consumed in relation to adult crime and mental health might in future be saved.

But before we pour more pressure on to an already overburdened family justice system, what is being done to improve that system and the experience of the parties involved in it? Before turning to a number of initiatives, directed at the ever-present problems of delay and cost, it is useful just to outline the future structure of the system in which they will operate.

In the Government consultation paper “A Single Civil Court?” the first question posed was: Do you think there should be a single Family Court incorporating current FPC business? The joint answer of myself and Dame Elizabeth Butler-Sloss (who had for some time advocated such a court) was:

“Yes. The Family Proceedings courts should operate as part of the Family Court regardless of how the criminal side of magistrates’ work in future may be administered.”

The Government’s recently published initial conclusion, after having considered the responses to the consultation paper, is that reform to create single Civil and Family courts with unified jurisdictions would be “feasible and beneficial”. Ministers have therefore decided to adopt this as a long-term objective, with the ultimate aim of passing primary legislation to create single Civil and Family courts when “parliamentary time allows”. Notwithstanding that recent announcement, my predecessor and I, and now the Judicial Resources Review (which arose partly as a result of the Lord Chancellor’s announcement that there will be no increase in the overall numbers of High Court Judges, therefore requiring a process of so called “cascading down” of work) has proceeded on the assumption of a single “Family Court” operating with three tiers of judges deployed from the current judicial structure i.e. High Court Judges, for the most complicated and substantial cases in public care and private work, as well as the various areas where jurisdiction lies with them alone; Circuit Judges hearing the complex cases just below that level; and a third tier of largely co-ordinate jurisdiction consisting of District Judges and Magistrates.

Furthermore, we have for some time now been working on detailed proposals for more effective and efficient business allocation in the family justice system, and how best to integrate the Family Proceedings Courts and county courts in order to make the current system as user-friendly and seamless as possible. Pilot projects are now under way in Birmingham and Barnet as the first step in assessing and achieving effective and efficient business allocation and we are fast progressing to a unified family court in all but name.

In the overall structure envisaged, increased acceptance and use of the Family Proceedings Courts will have to take place. In many areas very capable Family Magistrates are not getting enough work despite their willingness and their training.

I am also aware that a number of factors have contributed to the current under-utilisation of FPCs, especially in private law matters. These are principally (but not limited to): (a) a lack of confidence in the dispatch and expertise of many benches when compared with the full time judiciary; and (b) differences in the remuneration structure in publicly funded cases on which the Legal Services Commission is currently working. This has led to a culture in the professions and the judiciary which undervalues the FPCs and fails to utilise the spare capacity to be found there in terms of courtroom space as well as Magistrate time and expertise.

Pilot projects with the aim of distributing cases more evenly between the County Courts and the Family Proceedings Courts have taken place in Chester in relation to transfer of so-called ‘straightforward’ section 8 Children Act cases, and in Medway in respect of applications under Part IV of the Family Law Act 1996. They have shown good results with a high degree of satisfaction. A short-term substantial increase in FPC private law work is therefore achievable. However, the pilot projects proceeded with special dispensation from the LSC in respect of fees. With the current legal aid crisis remaining unresolved a national solution is not so straightforward, but I am optimistic that one will be achieved. Wherever feasible, I would like to see all such work, which is realistically estimated to take no more than a day, dealt with by FPCs.
So far as care proceedings are concerned, quite apart from issues of complexity, the problem of assembling and keeping together a bench for cases of substantial length will remain.

In order to achieve improvements at FPC level I am very much in favour of the idea of Magistrates specialising in Family work, if they so wish, after they have completed a suitable period sitting in crime. Confident, qualified and specialist chairs of FPCs are the key to the profession regarding FPCs as an alternative forum of choice. With extra training and greater experience among FPC chairs they will be enabled not simply to listen to the evidence and submissions advanced before them, but to play a more searching and proactive role in the proceedings as the judges do in the County Court. Halting the general decline of family work in the Magistrates’ Courts requires real support from the professions as well as the judiciary if – as I am determined shall happen – a turn around is to be achieved. We have a huge resource in the FPCs that we will lose if we do not halt the decline in work.

I should now like to discuss some of the initiatives currently under way in more detail.

**Private Law Programme**

Hitherto, our focus, understandably, has been on reducing delay in Public law cases. We should not, however, let this be at the expense of private law cases, many of which are just as complicated and distressing for the parties and in particular for children the subject of disputed contact. “Contact” and “enforcement” where the primary carer is recalcitrant are hot political topics, now receiving the attention of Ministers. It is this area which the Private Law Programme aims to improve. It is 10 months since the final Private Law Programme guidance was issued to Designated Family Judges. The overall package promoted by the Programme (i.e. Conciliation at the First Hearing, Effective court control including judicial continuity and close cooperation with CAFCASS; and flexible facilitation, referrals and monitoring of outcomes) represents a fundamental change in the way private law cases are handled. It requires the cooperation of the judiciary, CAFCASS, the legal profession and even the litigants themselves.

In this last respect, part of this culture change is to encourage the litigants and the legal profession to avoid the courts and to accept that extended battles through the courts should be the last resort. We are all aware of the adverse effects contested court cases can have on children, in addition to the effects of the relationship breakdown. Where parties do reach the courts, the Private Law Programme sets out a number of principles and key elements which it is hoped will improve both the court process and the parties’ experience. The intention is that increased use of Alternative Dispute Resolution and conciliation schemes should provide an alternative to a fully contested hearing. The Programme is, of course, set in the context of the child’s best interests being the paramount consideration and that any attendance at conciliation schemes occurs only where it is appropriate and safe to do so. However, that is the position in a very high proportion of cases.

The Programme proceeds on the fundamental principle of collaborative working. Again, I hope that the professions will engage with local judiciary, HMCS, and the local family justice councils who are now in the process of seeking to agree local conciliation schemes before the end of the year.

While such collaborative relationships have existed in a number of areas for a number of years it is intended that this approach should become routine across the country. It is vitally important that local schemes make use of the wide range of views and experience of all the professionals concerned and the local Family Justice Councils, properly run, will be the appropriate forum for that purpose.

In this respect, I am disappointed to say that the early intervention Family Resolution Pilot Projects set up and run since September last year at Wells Street, Brighton and Sunderland have received poor take-up and general lack of support for whatever reasons (and I shall briefly turn to those reasons in a moment). This is particularly unfortunate because they were set up as a substantial advance from previous practice in conceptual terms, following recommendations from a Working Party under District Judge Nicholas Crichton as a result of a joint judicial and departmental initiative. A research element was built in for the purpose of developing the initiative according to what the projects revealed.

It was hoped that the project should handle some 500 cases. In fact no more than 60 have been dealt with because of the lack of take up from the parties and their advisors. The preliminary indications are, however, that for those cases which have gone through, the outcome has been mostly successful. Informal inquiries, prior to the research results, suggest that the disappointing response has been due to a number of reasons:

1) For some reason, not consulted upon, the DFES changed the name from Early Interventions to Family Resolutions which led many of those interested, and pressure groups who had been involved in the Working Party, to think that the nature of the project had changed.

2) The schemes commenced at the insistence of the DFES on the date originally announced, despite the fact that by that time there had been insufficient opportunity to engage the professions locally and gain their support.
3) There was a problem with Legal Aid funding. As I understand it, it is a requirement that solicitors refer clients to a mediator before a certificate is granted. Having decided that they did not think mediation was for them, it appears that practitioners thought what they were being offered was simply more of the same.

4) As a result of poor take-up, critical mass was not achieved for the group session work which is an important and integral aspect of the scheme.

5) There was a lack of support from RELATE which takes a very rigid view on issues of domestic violence, believing in effect that any instance of domestic violence should disqualify parties from the scheme, whereas the project, more realistically, sought only to screen out cases of substantial domestic violence.

Notwithstanding the limited participation so far, the successes were such that Senior District Judge Waller and his colleagues indicated to the Department that, if the project could be funded to continue at Wells Street for another year, the judges of the PRFD would be willing to transfer suitable cases from the PRFD to Wells Street in order to boost the number of eligible cases. Sadly, this will not be done.

Nonetheless, a number of issues have been usefully highlighted by the projects so far as in-court conciliation is concerned. In relation to cases concerning children – the principal concern of this conference – the question arises of how young children’s voices may best be heard so that their views may be before the court and revealed to the parties at an early stage (an issue I will speak about shortly); also how to develop the first conciliation hearing into a more thorough and sophisticated piece of work involving the whole family. Both questions will be heavily reliant on the work of CAFCASS, though I can only repeat that practitioners will be pivotal in the overall success of the Private Law Programme.

You are due to hear more on developments at CAFCASS this afternoon but I would refer briefly to its changed role in relation to the Private Law Programme. CAFCASS’s involvement in the Programme focuses on its practitioners’ social work skills. That is not to say that these skills have not been available in the past, but I am aware that, hitherto, a lot of CAFCASS time has been spent on writing numerous reports.

Where possible, CAFCASS practitioners, along with case-dedicated judges, are encouraged to manage each case from beginning to end. This will require skilful listing of cases and continuous communication between CAFCASS managers and listing officers. Parties will become familiar with the court officers and judges if their cases come back, and the CAFCASS practitioners and judges will in turn be familiar with the cases, dispensing with the need to read lengthy case histories or to be briefed by advocates. In between court hearings it is envisaged that practitioners will undertake a monitoring role, communicating with families to ensure orders have been adhered to, and, if not, to be in speedy communication with the courts so that the case is brought back before the same judge at short notice.

On the subject of report writing, as I stated earlier, I am aware that a lot of time is spent doing this. Judges and CAFCASS practitioners should now be working towards producing more focused reports which go to the heart of the issues facing a particular child. Current reports are in many cases too long, and duplicate text or information which is available to the court and parties in other ways. In order to achieve shorter reports, I have encouraged courts, where appropriate, to direct focused reports, and to be clear about the precise points of information, analysis and judgement they are looking for. The need to produce long reports should be rare, and reserved for the most complex of situations.

For example, in private law cases, where a s.7 welfare report is directed, that report should generally be limited to the issues identified by court direction, unless, unusually, other more serious issues arise in the course of investigating the family. In some cases where there is a return to court before the same judge, an oral report or a short email should often be sufficient.

This new focus should, in turn, help to free up CAFCASS practitioners to undertake their newer roles as envisaged by the Programme and to adopt a far more flexible approach. Work will be carried out proportionately allowing more time to be spent on the harder, more intractable cases. Even in these cases I would envisage that the focus will be on clarifying areas of disagreement.

Practitioners can then use their social work skills to encourage parents to work with each other and their children to find solutions; to promote arrangements that are in the child’s interests; and to preserve or re-establish relationships with both parents and wider family members. Our new focus and task in the year ahead is to facilitate the resolution of contact and family issues, the new buzz word being ‘facilitation’.

As I have said, and as Anthony Douglas agrees, practical support to make arrangements work is far more useful than a lengthy report that explores the issues but which achieves little in changing the child’s situation. It is in comparatively rare cases, that children should actually be made a party to the proceedings. That should only happen where it is likely to achieve an outcome that a s.7 report cannot. We are currently reviewing the use of Rule 9.5
with CAFCASS. There are strong arguments for a more sophisticated approach i.e. for courts and CAFCASS to identify what needs to be done that is beyond a CAFCASS practitioner’s core work, why it needs to be done by someone else, and who.

Plainly, there is a practical question of the resources available to CAFCASS to enable these initiatives to be successfully implemented. More funds will be needed if the time spent by CAFCASS workers in respect of their conciliation role exceeds the time hitherto spent in report writing. Funds will also have to be deployed to rectify staff shortages in problem areas and there is a desperate shortage of such funds unless additional provision is made. The Private Law Programme will be reviewed after one year of operation in January 2006 with the aim of producing a set of best practice guidelines and to sort out any teething problems. It will also be formally extended to Family Proceedings Courts at this time.

Voice of the Child
The Private Law Programme provides that, where a local conciliation scheme caters for it, and where resources exist, children aged 9 and over may attend. The involvement of children in the conciliation exercise is a procedure on which views differ among some judges and many CAFCASS officers. My personal view is that the attendance of the child at court, or at least inviting the child to attend, empowers the child. Should he or she accept the invitation then there are untold benefits. It is often the first time in many months or even years that both parents listen to the child in an objective setting. On many occasions, the parents are shocked to hear what the child actually wants. Not only can this bring home a harsh reality to a mother or father encouraging them to settle or discontinue proceedings, but court time and CAFCASS time is saved.

Providing a voice to the child outside the Private Law Programme is a challenging topic. The advent of the ECHR into UK law has undoubtedly strengthened human rights. Although the rights of children are nowhere referred to in the Convention, the European Court of Human Rights has interpreted the articles to include children.

There are occasions where a child’s rights will conflict directly with an adult’s. This is something that has been illustrated by recent European case law involving contact proceedings in Germany. Interestingly, German constitutional law requires the judge in most cases to see the child, however young. Sahin v Germany involved a child who was about 5 years of age at the time of the proceedings. There was a report from a psychologist but the court did not see the child because the psychologist recommended against it. The case came before a Chamber at the European Court of Human Rights1 which held that the failure to hear the child in court gave insufficient protection to her father’s interests under Article 8. This case was appealed to the Grand Chamber which overturned the lower Chamber’s decision2. The Grand Chamber held that the lower courts had not overstepped the margin of appreciation by relying on the psychologist’s report without the voice of the child and that “it would be going too far” to say that the national court was always required to hear the child in court. Lady Hale’s view of this3 and a related case4 was this:

What seems extraordinary to me about these cases is not that they examined, however superficially, the sorts of measures that national courts should take in order to ascertain the wishes and feelings of the child and their relationship with their parents, but that the foundation of these procedural requirements, whatever they are, are the rights of applicant parents. We would regard it as the right of the child, would we not?

Well – I certainly would.

Although, as I pointed out at the beginning of this talk, we are now in an age of children’s rights and children’s welfare we have yet to work out the extent and effect of those rights and to move from a largely adult-centred view of rights.

It is worth reminding ourselves of Article 12 of the UN Convention which provides:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

In relation to the first paragraph of article 12 you will note that the child’s views are not paramount but must be given due weight. And that in the second the child need only be given the opportunity to be heard without specifying the means by which that requirement may be satisfied.

1 [2002] 1 FLR 119
2 [2003] 2 FLR 671
3 “It’s my life your practising with” Speech to ALC conference, November 2003.
4 Sommerfeld v Germany
It is not therefore a particularly onerous provision for national governments to adopt and incorporate.

Section 1 of the Children Act 1989 does provide that a court shall have regard to “the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)” but research tends to suggest that, at least from the child’s point of view, their wishes and feelings are not yet getting across.

In 2003 the NSPCC published a survey entitled “Your shout” which asked the views of 706 children and young people in public care. The survey asked whether the children had ever attended court. 22% responded “yes”, 56% “no”, 13% “would have liked to”, 8% did not want to. Of those children who did attend court 57% did not get an opportunity to speak to the judge but would have liked to.

“...I would have wanted my opinion to be listened to rather than just my carer’s. The social workers should have been listening to me instead of just the opinion of the carer”.

“Having a say in things will make me a lot pleased”

In Private Law Proceedings the court ascertains the children’s wishes and feelings usually from evidence and arguments from the parties and/or through the CAFCASS officer's report. It is probable that this is enough to satisfy Article 12 of the Convention. Certainly, the change in focus from Report writing to social working, and inviting the child to attend in-court conciliation, should contribute to providing the child with a more audible voice.

The appointment of a guardian under Rule 9.5 is the main mechanism utilised where a court reaches the view that a child’s interests cannot adequately be identified or served through the parties’ evidence or through the CAFCASS officer’s report. Separate representation under r9.5 has the benefit of enabling the court “to produce a ‘better’, more informed decision” and has benefits to the CAFCASS officer “in enabling him or her to work more effectively in the proceedings” or to the child “in enabling the child to influence the court’s decision or to feel that he or she has been respected as a person and involved in the decision”. In an ideal world I would advocate more separate representation of children in private law proceedings, but to do so is highly resource intensive; it also builds delay in to proceedings such that it is just not feasible. Indeed, as a result of my predecessor’s Practice Direction of April 2004 concerning r 9.5 appointments there was such a dramatic increase in such appointments in certain areas that it was necessary to produce further guidance to curtail the increase.

As always we need to work within the constraints of current fiscal policy and so I wonder what other measures we can take to ensure that children’s welfare is served at the same time as providing them with a meaningful voice. Perhaps this conference will provide some useful suggestions.

It has to be a concern that, in public law proceedings, the court is overflowing with the parties and their representatives, building up costs along the way. I wonder whether it really is necessary for the advocate, the solicitor, the guardian, the CAFCASS officer and the party all to be present at every hearing. Is it not time to have a rationalisation of these roles? Should we not encourage and train more solicitor-advocates who can act as the child’s guardian? Some of these thoughts may be controversial but we need seriously to consider the debate and to come up with solutions ourselves before we are forced into a system imposed by government. Resources, after all, are finite.

The Care Review

Carrying on this theme, in the wake of the Fundamental Legal Aid Review the recent Government Consultation Paper “A Fairer Deal for Legal Aid” put forward the case for a cross-government review of the child care proceedings system in England and Wales. As many of you will know, that care review is currently underway and is expected to report to Ministers early next year. The review will be considering (and I quote from the Annex to the consultation paper, which sets out the terms of reference, an extract from those terms):

(1) investigating the possibility of early low-level judicial interventions (including Early Neutral Interventions) to encourage parents to resolve problems themselves thus avoiding the need for full court proceedings whenever possible and appropriate; and,

(2) examining whether the two stages of the court process in child protection cases (establishing the facts and determining the care plan) could be more formally separated with different attendees, procedures and levels of legal representation, and precisely where, and in what way, lawyers should be involved.

(1) Is not controversial. So far as (2) is concerned, it seems clear to me that the radical surgery which appears to be contemplated would be likely to involve the necessity for primary or secondary legislation and would need careful consideration from a Human Rights point of view. However, recent presentations by the Care Review team seem to make clear that such radical surgery is NOT contemplated.

At the recent stakeholders seminar in London on 10 November it was made clear that the judges from the Family Division tasked with reviewing the Public Law Protocol would submit detailed proposals to the Care Proceedings Review for the expansion of the provisions of the Protocol by building on the successes achieved in the last 10 months under the
Private Law Programme, most notably with the early in-court conciliation appointment. In outline, the proposals to be submitted are as follows:

1. There should be a **Pre-Proceedings Protocol**, which in essence is the reintroduction of a proposal made to the Lord Chancellor’s Advisory Committee in 2002 to enhance existing guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970, by means of a detailed Protocol or Practice Direction which describes best practice prior to an application being made with the intention of:

   a) avoiding proceedings in appropriate cases where issues can be resolved in an ADR environment of a family conference, and

   b) concurrently preparing for proceedings by identifying key issues, goals and their components, to minimise delay and costs should proceedings ensue.

2. The introduction of a judicially led initial stage in all care proceedings in the form of a **Children’s Dispute Resolution Appointment** which brings together the 3 concepts of:

   i) ‘early neutral evaluation’,

   ii) inter-disciplinary professional advice to the court on key issue identification, case management and assessment (itself mirroring recent proposals made by the Chief Executive of CAFCASS in the consultation document: ‘Every Day Matters’) and

   iii) case planning

The introduction of a Children’s Dispute Resolution Appointment should substantially reduce delay by serving to combine or eliminate steps 1, 2 and 3 (and in some cases step 4) of the Protocol.

3. The introduction of the concept of a ‘case plan’ to be produced at the outset by the Local Authority, as the agenda for the initial appointment, which describes in words that are comprehensible to the parties:

   a) The identified key issues

   b) The goals that need to be achieved for the child to receive the standard of care that he or she requires

   c) The components of the goals: i.e. clear and unambiguous inter-disciplinary advice on the steps that are necessary to achieve the goals

   d) A child centred timetable for the achievement of the goals and decisions in the proceedings

   e) Accountability for delivery of the plan and its parts

   f) A mechanism for re-evaluation to take account of any changes of circumstance during the plan.

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

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

Indeed, it is the provisional view of the Protocol Review Team that if ‘treatment evaluation’ and case planning were adopted by social and health care professionals and the courts, much of what is suggested to be ‘wrong’ with care proceedings could be improved. For example, the ‘medicalisation’ of proceedings would be replaced by an enhanced inter-disciplinary emphasis which would be more comprehensible to parents and children alike and adversarial disputes about key issues would be clarified, and where possible, minimised. Of course there will always be a core of serious allegations and welfare issues which if unacknowledged have to be determined by a court. However, as a logical precursor to a Care Plan, the use of the Case Plan mechanism should serve to reduce protracted welfare disputes which frequently arise out of inadequately thought through care planning.

I would add a word here by reference again to the Adoption and Children Act 2002. Earlier this week, I had brought home to me a point on which I – and I fear the Care Review had not previously focused, namely the implications of the new legislation for the resources of local authorities in relation to their new duties and responsibilities under the Act. With care and adoption proceedings inter-related and running in parallel, the local authorities and the court may be faced with deciding issues, for instance on the question of continuing contact with both parents under Special Guardianship and Adoption Orders, productive of additional
costs in the later stages. It will be unfortunate if the considerable potential for saving of costs in the care proceedings considered on their own were to be cancelled out by the potential for increased costs later in relation to adoption issues.

**Court Fees**

A recent cloud has appeared on the horizon in respect of proceedings before the FPCs. Until now magistrates’ courts and county courts have operated on a different court fee structure with far lower fees in the magistrates’ court, but that is set to change. Another government consultation paper circulated recently proposes to harmonise fees in the Family Proceedings Courts with the equivalent fees in the county courts, which are themselves to be increased. This will mean a huge percentage increase for proceedings in the magistrates’ courts. The necessity for the increases in order to further the Treasury aim of full cost recovery is taken as a given in the paper. The only issue for consultation is whether the particular increases proposed are most apt to meet the need to cover costs. I have made crystal clear to ministers my concern in this context that a proper “safety net” for exemption from the fee requirement should be available and uniformly applied so as to ensure that no Private Law family claim or claim in respect of Domestic Violence is prevented or delayed and have received assurances that that will be so.

Similarly, it is vital that the increased fee payable by local authorities in respect of applications for care orders should cover all subsequent interim applications; otherwise the cumulative liability for repeated fees at the new level will represent a crippling burden on local authority resources. The general point has also been made that to increase family court fees so dramatically in the FPCs scarcely encourages parties to start private law proceedings there.

**Local FJC**

On a more positive note, the creation of the Family Justice Council and the setting up of local Family Justice Councils is in full swing. With the advent of the local FJC I am hoping that a collaborative and collectively responsible culture of working will develop. As I mentioned before there are many bodies interesting themselves in family justice. We need to ensure that there is communication across the board in order to minimise duplication of work and to create an effective system which fully debates proposals and follows them through to completion. I see local FJC as a real opportunity for all involved in the family justice system to work collaboratively, to effect recommendations for change, to maximise communication and to encourage and develop multi-disciplinary training projects locally. Family Justice Councils may well prove key to the bright new integrated future.

It will thus be very important for each representative body to choose members for their local FJC who have influence not only on the FJC but within their own organisation. A major problem for London will be Local Authority representation. With over 30 London Boroughs, all of which have different demographics and priorities, effective representation and communication through just one or two individuals may prove to be a problem. I am confident, however, that a workable solution will be found.

I hope that you all know who your local representative is and how you can communicate your views to the local FJC. Practitioner views and co-operation will be essential to success.

Sir Mark Potter  
President of the Family Division
Enforcement of contact: implications of the Children & Adoption Bill

After several days of debate in the Lords, the Children and Adoption Bill was passed and sent to the House of Commons on 30 November 2005. A brief summary of the clauses in the Bill is set out below.

Children Panel solicitors will be familiar with the arguments and proposals about post-separation contact advanced throughout the DfES Parental Separation consultation. There are however two new matters which may be of interest when following the Bill's progress through the Commons. Following lobbying by the NSPCC and Women's Aid, and a particularly critical inspection report on CAFCASS, a new clause has been added requiring risk assessments in section 8 applications. Also, a new enforceable obligation on non-resident parents to comply with contact orders has been introduced.

Clause 1 – Contact activities and directions

There are two new powers for courts to facilitate contact. A contact activity direction (CAD) can be made during the proceedings and a contact activity condition (CAC) can be made as part of a contact order.

- Where there is a dispute between the parties, and the court is considering making a Section 8 contact order, it can make a CAD against a party in the proceedings. A CAD cannot be made at the final hearing stage.
- A CAC can be made in the final order against the person with whom the child lives, or against the applicant, or anyone with PR.
- The ‘activity’ (whether a CAD or CAC) can be programmes, classes, counselling or guidance which might promote contact either by assisting the party in some way, or by addressing his/her violent behaviour. Activities can also be information sessions which can include information about mediation but the CAD cannot require a party to undergo mediation. (This is because compulsory mediation might breach Art 6 ECHR). Referral to medical or psychiatric examination, assessment or treatment is not allowed. A CAD or CAC must specify the activity and who is to provide it.
- The child’s welfare is the court’s paramount consideration when considering a CAD. A child cannot him/herself be made subject to CADs or CACs (except if s/he is a parent in the proceedings, aged under 18).
- The activity must be appropriate, provided by a suitable person, within reasonable travelling distance. The court must consider information about the effect on the individual, particularly any conflict with their religious beliefs or interference with their work or education. These matters are all to be reported on by CAFCASS.
- Financial assistance to attend an activity by an ‘approved’ provider may be available. Payment might go direct to providers (subject to regulations).
- The court can order a CAFCASS officer to monitor and report back on compliance with a CAD or CAC.

Clause 2 – Monitoring contact

- On making a contact order, the court can order a CAFCASS officer to monitor its compliance by an individual (not by the child him/herself) for a specified period up to one year, and to report back as specified.
- The court can order the person subject to a CAC to co-operate with the monitoring.

Clause 3 – Warning notices

- Any new or varied contact order will include a notice warning of the consequences of failing to comply with it.
Clause 4 – Enforcement orders

• These relate to contact orders only, and can be made where the court is satisfied of a breach beyond reasonable doubt, and there was no reasonable excuse for failure to comply. The latter is to be proved on balance of probabilities.

• The enforcement is by means of an unpaid work requirement run by NOMS, the National Offender Management Service (the new Probation Service).

• Enforcement orders can be applied for by the person with whom the child lives; the person for whom contact is provided; other individuals if they have PR; or by the child themselves with leave, and if of sufficient understanding to make the application. Although the inclusion of the child as a potential applicant may be welcome, there was no explanation in the Lords of the radical change in policy to allow a resident parent, against whom an order has been made, to apply to enforce that order. The Department has now confirmed that it is the intention of the Act to be ‘even-handed’ and make a contact order enforceable by a resident parent against a non-resident parent. Quite how this would be used, or how it can be squared legally with the wording of section 8, which places no obligation on the visiting parent, remains to be seen.

• Information on the likely effect of the enforcement order and any conflict with religious beliefs or work or education will be required. This information will be provided by the CAFCASS officer.

• The CAFCASS officer will be responsible for monitoring compliance with the work requirement and report back to the court as specified.

• The court must take the child’s welfare into account if making one of these orders.

Clause 5 – Financial compensation

• Where non-compliance has caused a party to suffer financial loss, the court can order compensation.

• The criteria are similar to those for enforcement orders.

• The person against whom an order is sought will have his/her financial circumstances taken into account.

• The child’s welfare must be taken into account.

Clause 6 – Family assistance orders

• This amends section 16 CA 1989 to withdraw the restriction that FAOs can only be made in exceptional circumstances.

• The FAO can now be made for up to 12 months instead of 6.

• A FAO can include a duty on the CAFCASS officer, where there is contact order in force, to advise and assist the establishment improvement and maintenance of contact and to report back as specified.

Clause 7 – Risk assessments

• This new clause was inserted to address concerns about current lack of awareness in relation to domestic violence, following recent findings of appalling practice (Domestic Violence, Safety and Family Proceedings: thematic review of CAFCASS and courts administration, HMICA October 2005).

• In any proceedings for a section 8 order, special guardianship or FAO, the CAFCASS officer must, if given cause to suspect that a child concerned is at risk of harm, make an assessment of that risk and provide this to the court.

• It was agreed by the two CAFCASS Board members who spoke in the Lords debate that CAFCASS officers need new training to be able to do this.

Part 2 of the Bill covers inter country adoption, the most controversial aspect of which is provision for increased charges to applicants.

Julie Doughty
Cardiff Law School

UPDATE

As the Newsletter went to press, the Bill was due for its first substantive reading in the Commons on 2nd March. Further amendments are expected to be put forward.
The LASA Welfare Benefits Specialist Support Service provides expert support and training in welfare benefits for eligible organisations.

Our aim is to support solicitors and advisers with the work that they undertake in social security law and so to develop their skills in this complex and ever changing area.

In our experience many solicitors working in other areas of law recognise that their clients need advice about their benefits but have no one to whom they can refer them. We can support you to ensure that your clients get the advice they need from you. We take on a range of work from relatively simple queries about entitlement to benefits to research in new areas of social security law and support for complex cases.

LASA and CPAG provide an advice line for solicitors and advice workers and this is usually the first way in which our users contact us.

<table>
<thead>
<tr>
<th>Day</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
<td>2 - 4.30</td>
</tr>
<tr>
<td>Tuesday</td>
<td>2 - 4.30</td>
</tr>
<tr>
<td>Wednesday</td>
<td>10.30 - 1</td>
</tr>
</tbody>
</table>

Ring CPAG on 020 7278 2100

<table>
<thead>
<tr>
<th>Day</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wednesday</td>
<td>2 - 4.30</td>
</tr>
<tr>
<td>Thursday</td>
<td>10.30 - 1</td>
</tr>
<tr>
<td>Friday</td>
<td>2 - 4.30</td>
</tr>
</tbody>
</table>

Ring LASA on 020 7247 8935

We can then talk with you about your case and agree what needs to be done to progress it effectively. Often we can answer your questions during the call but sometimes we will agree to undertake more extensive work on your behalf.

We might, for instance –

- advise you on the merits of your clients case;
- identify relevant case law or legislation;
- provide advice on a case having read all of the case papers;
- update you on new developments in social security law;
- help you with more complex cases or areas of social security law with which you are less familiar;
- work with you to draft appeal submissions to tribunals and the Social Security Commissioners.

An example of our work might clarify what we can do. A family law solicitor phoned us a while ago to ask for advice about the effect of arrears of adoption allowance on a client’s entitlement to a means tested benefit. Had the adoption allowance been paid on time it would have been treated as income. However, because it was paid as arrears it might be taken into account as capital. How the arrears were treated would determine whether or not the client had an entitlement to benefit. This is an area of social security law that is more complex than it sounds, so we agreed to research the legislation and review relevant case law for the solicitor. We provided the solicitor with a written summary of the legal options and an outline of possible tactical approaches to the problem. The solicitor was then able to take the case forward without having to refer her client to another agency.

We are funded by the Legal Service Commission until July 2006 – so ring us while you can!

Eligible organisations are those with –

- A legal services commission (LSC) general civil contract.
- A LSC general criminal contract, doing public law or mental health work.

Jean French
LASA
Outstanding Newcomer in the Field of Child Law
ALC Award 2006

Last year the ALC presented its first ‘Outstanding Newcomer in the Field of Child Law Award’ in memory of David Hershman and now we are looking for a winner for the 2006 award.

The aim of the award is to recognise the contributions of newcomer’s 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 and the worthy winner was Emma Meredith of North Yorkshire Legal Services.

So 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 Annual Child Law Event on Thursday 29th June 2006 at Birmingham University.

Eligibility:
- Nominees must be lawyers, trainees or students
- Nominees must have been working in the field of child law for less than 3 years.
- 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 three years or less.
- Entries must be received by close of business on Friday 12th May 2006
- Please send entries via email to admin@alc.org.uk

For further details or if you have any queries please do not hesitate to contact Julia Higgins on 020 8224 7071 or by email: admin@alc.org.uk
Independent Reviewing Officers – Failing The Vulnerable?

Background:

Starred care plans (Court of Appeal in Re W and B) provided a long awaited mechanism for monitoring the implementation of local authority’s care plans post care order. However, they were short lived. The House of Lords decision in Re S and Re W (Re S (Minors) (Care Order: Implementation of Care Plan); Re W (Minors) (Care Order) Adequacy of Care Plan) [2002] 1 FLR 815 held that the courts had no general power to monitor the discharge of the local authority’s functions. The judgement concluded that a local authority that failed in its duties to a child could be challenged under the Human Rights Act 1998 but that some children may not have an effective means to initiate such a challenge. It described this a ‘lacuna’.

The Statutory Scheme:

The government’s response to filling this ‘lacuna’ was to require local authorities to appoint Independent Reviewing Officers (IROs) who are responsible for monitoring local authority’s review of the care plan with the aim of ensuring that actions required to implement the care plan are carried out and outcomes monitored. IROs are also given the power to refer a case to CAFCASS Legal to take legal action on behalf of the child as a last resort where the child’s human rights are in danger of being breached.

The scheme applies to all looked after children, including e.g. children subject of care orders, all children voluntary accommodated under section 20 of the Children Act, children in secure provision and children who are in an adoptive placement prior to an adoption order. The scheme covers a much wider group of children and young people than ‘starred care plans’ as it applies to all looked after children, rather than just those who have been subject to care proceedings. There were 61,100 children looked after by local authorities at 31 March 2004, 39,400 (64%) cared for under a Care Order.

The scheme was introduced by section 118 of the Adoption and Children Act 2002 amending section 26 of Children Act 1989 together with regulations and guidance which came into force in September 2004 (equivalent regulations apply to Wales).

The Role of the IRO:

IROs must be social workers registered with the General Social Care Council (‘GSCC’) with ‘significant’ experience. The independence of IROs is clearly key to their effectiveness. The IRO must be independent of the management of the children’s case; and independent of the resources allocated to the case.

The regulations do no proscribe the position of IROs within local authorities and a number of models are being used including IROs as part of the social services quality assurance function; reciprocal arrangements with neighbouring authorities and external IROs for example from voluntary organisations. There has been some criticism that such arrangements do not provide the necessary degree of independence for the IRO, particularly where they are employed by the same local authority as those responsible for delivering the care plan.

The IROs role involves chairing the review meetings and monitoring local authority’s review of looked after children. Where an IRO identifies a problem e.g. permanency plans are not being implemented in a timely manner, they are expected to negotiate up the management chain ultimately, if necessary, to Chief Executive level. IROs will be expected to work closely with local authority’s complaints officers and independent advocates. If the IRO has not been able to resolve a problem and there is a danger of the child’s human rights being breached then legal proceedings may be a necessary last resort to achieve a remedy.
If the child is of an age and understanding to bring proceedings themselves without the need for an adult to act on their behalf, the role of the IRO is to assist the child in obtaining their own legal advice from a suitably qualified and experienced lawyer. In some cases, an adult (e.g. a parent or relative) may be willing and able to bring proceedings on behalf of the child. In those cases, the role of the IRO is to ensure that this is done. Where the child is not in a position to initiate proceedings on their own behalf and no adult is willing or able to do so on their behalf, the IRO can refer a case to CAFCASS Legal.

The Role of CAFCASS Legal:

On receipt of a referral, CAFCASS Legal makes a decision about whether or not to issue legal proceedings, usually within 14 days. There are a number of options open to CAFCASS Legal:

- return the case to the IRO if problem solving within the local authority has not been exhausted
- attempt to resolve the matter by mediation
- refer the matter to the Official Solicitor where matters are more suitably dealt by him (e.g. an older child with disabilities who may require representation beyond their 18th birthday due to mental incapacity)
- if there have been previous public law proceedings and the matter might be resolved by an order within the Children Act 1989, refer the matter back to the children’s guardian who previously acted
- bring civil proceedings against the local authority with CAFCASS Legal acting as the child’s litigation friend.

Civil proceedings may be:

- Judicial review proceedings;
- A free-standing Human Rights Act 1998 application or
- A claim for compensation.

It is anticipated that, judicial review will be the most useful remedy in the majority of cases. Such claims will be heard by one of four nominated Family Division Judges sitting in the Administrative Court.

On of the practical difficulties with the scheme is that only the IRO can refer a case to CAFCASS Legal. Until such time as a referral is made, CAFCASS cannot take steps to initiate proceedings on the child’s behalf. Children will only have the opportunity of legal redress if IROs refer in appropriate cases. There are no external checks and balances on IRO referrals. This is a source of frustration for solicitors and CAFCASS officers who may become aware of a local authorities failure to deliver a care plan, resulting in a potential breach of a child’s human rights, where there are no current proceedings but the child’s IRO is not referring the matter. In theory a child could seek a judicial review of an IROs failure to refer a case to CAFCASS but who would act as the child’s litigation friend to bring those proceedings where the child is not competent to do so?

IROs need to be acutely aware of those circumstances that may amount to a breach of a child’s convention rights. This requires them to have access to good training and arguably to good legal advice, independent of the lawyer providing advice to the child’s social worker and managers (with whom there may be a conflict). It appears that at least some IROs have no access to such independent legal advice. In addition, IROs must have the necessary confidence and independence to refer a case to CAFCASS Legal when they may be under pressure from the local authority not to do so.

The CAFCASS Practice Note on cases referred by IROs is attached as an appendix.

Conclusion:

IROs were intended to act as a check and balance on the local authority at all stages of planning for looked after children. Although legal action remains an important step of last resort to protect a child’s human rights, the guidance notes that the additional delay associated with legal proceedings is not in the interests of the child and every effort should be made to resolve the problem before such action is taken. However, with the scheme covering more than 60,000 children, it might reasonably be expected that there will be some cases in which a referral needs to be made to CAFCASS, all other avenues have been exhausted by the IRO without achieving redress for the child.

The scheme for IROs to refer cases to CAFCASS came into force in September 2004. However, nearly 18 months on, no referrals have been made. This can be interpreted in a number of ways:

- Local authority practices have improved across the board and none of the 60,000 plus looked after children are at risk of their human rights being breached;
- IROs are effectively championing children’s rights and persuading local authorities to deliver on children’s Care Plans;
- the children have advocates or legal representation who are obtaining redress without cases needing to be referred to CAFCASS;
- 18 months has been insufficient time for IROs to fully investigate the circumstances and /or exhaust internal remedies within the local authority;
- the system is failing and local authorities are breaching children’s human rights irrespective of the IROs role and the IRO is not referring such cases to CAFCASS to obtain a remedy on behalf of the child.
IROs have a crucial role to play in preventing ‘drift’ in planning for looked after children and in ensuring that the focus remains on meeting the child’s needs. IROs are supposed to be champions of children’s rights. It is crucial that IROs, local authorities and the government are able to demonstrate that this scheme does provide an effective means to challenge local authorities where they are acting in such a way as to breach children’s human rights. With no referrals to date, there are those who will now say that looked after children whose human rights are being breached by a local authority remain without an effective remedy and the lacuna identified by the House of Lords in Re: S and Re: W remains.

CAFCASS are aware of the concerns relating to the lack of referrals and are working with the DfES on the issues.

Further Reading:

Useful guidance and background information:


William Simmonds*
Solicitor
February 2006
*Views expressed are not necessarily those of the author’s employer
Our profession has for many years worked very hard at creating a system which allows for a child to be separately represented in Care Proceedings. The child has his/her own solicitor throughout the process. However, once that process is over it becomes increasingly difficult for young people in the care system to obtain their own independent legal advice.

Looked after children, children in care and children in need are often estranged from family/careers, have complex social backgrounds and may have a limited ability due to social, financial or just physical reasons to know where to or how to seek advice. This of course can be said for young people needing legal advice on a whole range of issues. The whole process from identifying the need for legal advice, to finding a lawyer with the right experience who is regarded as approachable, can be highly daunting. Many young people will not even start the process.

It is crucial that vulnerable young people, such as young people in the care system, have easily accessible independent advice so that they can access services, understand their rights and responsibilities, and at a fundamental level, have a say in matters affecting them or involving them.

Fisher Jones Greenwood LLP in Colchester, Essex have now set up a new specialist service for children and young people called Lawyers for Young People (“LFYP”). The service will provide direct access to legal advice for young people on issues affecting looked after children, children in care, those leaving care or children in need. The service will operate on an “outreach” basis so that young people are seen in venues comfortable and convenient to them. Young peoples’ problems are often complex, involving many overlapping areas of law. By virtue of this new service a young person can now access information and advice from the LFYP solicitor themselves, or from other solicitors at Fisher Jones Greenwood LLP dealing with housing, welfare benefits, employment, human rights, crime, personal injury and general family law, or solicitors/services elsewhere, as appropriate.

The service is a national pilot. It is the first time that the Legal Services Commission has funded a Not-For-Profit Contract from within a commercial law firm. Both LFYP and the LSC have recognised the need to promote the provision of legal services to this particularly vulnerable group of individuals.

This creative model of funding is firmly placing social welfare legal services to children and young people in the commercial legal sector. This may well mean that there is an understanding that law firms engaged in publicly funded social welfare work are recognised as being a “social enterprise” and should not be treated in the same ways as purely commercial profit making law firms.

The service is at its very early stages. However clearly there are a huge number of vulnerable young people out there who would benefit from independent legal advice.

The immediate priority is to ensure that work is done to make the law more accessible to young people. If young people are able to obtain advice at a very early stage, many fairly minor problems may not develop into larger issues which become very difficult to resolve. Young people are a particularly difficult group to reach and maybe now is the time for the profession as a whole to be thinking hard about evolving communication methods and improving access to this client group on the basis that both early intervention and problem resolution is the way forward.

Liz Frank
Lawyers for Young People
Fisher Jones Greenwood LLP

Lawyers for Young People can be contacted on:

Direct Line: 01206 217517
Mobile: 07946 799465
Email: info@lfyp.org.uk
The Placement Order –
Emerging Practices

The theory behind the new placement regime under Adoption and Children Act 2002 is difficult to criticise. By deciding whether to dispense with consent early in the adoption process there will be greater stability for the children and reduced anxieties for those who seek to adopt. It was generally considered that this process would be quick – that local authorities would be in a position to make Placement Order applications in good time before the care order hearing – allowing for simultaneous final hearings.

Already it is emerging the practice across the country is varying greatly for those cases that started before the new Act came into force.

Some courts are known to have taken the view that if a care plan of adoption is approved at the time of making a care order that a placement order should be made contemporaneously. Conversely, some courts are seeking evidence from local authorities that a definite placement with prospective adopters is at least proposed – if not actually requiring a placement decision by the Agency.

My authority has already had experience of the first approach by obtaining both a care and placement order and the conclusion of a contested hearing that considered both applications. The court had family finding evidence before it, but due to the timing of the Placement Order application, there was no direction to file a report by the local authority.

There has to be some logic in this approach. If the court has enough evidence to approve a care plan of adoption then why not make a placement order simultaneously? This frees up social work resources in the preparation of yet another court report – the bulk of the information already being before the court in another format. And need I comment on the further resources employed by the court, lawyers, guardians if the placement order is determined at a later date?

Moreover, it prevents delay – if the hearings are not heard at the same time then the child is not available for a move to his forever home. It is not an uncommon argument that only limited definite progress in family finding can be done when the child is not subject to a final care order – the same will apply to a child with a pending Placement order. The grim reality is that children subject of pending proceedings are not as desirable to those who seek to adopt.

But whilst the adopters may be scared off by the uncertainty, that would only be if they were able to be located in the first place. There is a moot point about what advertising for families can take place before the Placement Order is made. This has a logical argument – how can the local authority advertise for an adoptive placement when it does not have the legal right to place the child for adoption? The Every Child Matters website – under FAQ – states that no advertising should take place without authority to place – but this bare statement is not corroborated by the legislation or the guidance. This does not help the cases where children with adoption plans are subject of Care Orders pre-ACA02 who are not yet subject of pending Placement Order proceedings – by the ECM approach all advertising should cease now.

In the few instances that I am aware of, the courts have taken a rather timid approach to the local authority’s possibly superfluous application for leave to advertise. Instead of making decisions, the applications have been adjourned to the final Placement Order hearing.

The approach of requiring definite information about a proposed placement before making the Placement Order is not specified within the Family Procedure (Adoption) Rules 2005 or the Practice Direction (Part 5C). This approach in my view can only cause further delay in finding adoptive homes for children who so desperately need permanency. It is a vicious circle – the local authority is restricted from advertising, prospective adopters are put off by the pending court case and the court does not finally determine the proceedings without a family identified.

It would also seem to be contrary to the views expressed by Hedley J in the soon to be reported case Re R (Care: Plan for Adoption: Best Interests). Whilst decided before the Placement Order was an option, Hedley J clearly espouses the view within the context of care proceedings that the court only needs to be satisfied that there are prospects of an adoptive placement. The match is a matter to be left to the discretion of the local authority and does not require judicial oversight.

I would suggest that if the court can be so satisfied as to approve a care plan in care proceedings (now known as the s31A plan) for adoption that it should always go on to consider a simultaneous Placement Order application at the same hearing. In the majority of cases, there will be no advantages to the child in any further delay.

We are all in the early stages of seeing how ACA02 will pan out. There are no reported cases on appeal about the failure or otherwise to make a Placement Order. The challenge for us all is how do we achieve the balance without judicial guidance? What approach best meets the needs of the child? Unfortunately, time will tell. Let’s just hope that the time is used in a planned and purposeful way.

Helen White
Principal Solicitor
London Borough of Harrow
Chair’s Annual Report – November 2005

Introduction
In this my final annual report in my last full year as ALC Chair, I want to thank all those of you who have made the last four years so productive and so memorable. It is through your continued commitment and support during some difficult and challenging times that the ALC makes and continues to make a key contribution to improving children and young people’s access to justice and to high standards of practice.

The ALC has come a long way from its early beginnings and should be justifiably proud of what it has achieved to date. Nevertheless, there is a great deal more to be done - as the Review of care proceedings has shown, we cannot afford to relax our vigilance on behalf of all those involved in the child law system.

Much of the work over the last 12 months has laid firm foundations for the ALC’s future. I am enormously pleased (and relieved!) that we now have a strategy, which will allow the committee to move forward under new leadership. I am very grateful indeed to those colleagues whose continued contribution and commitment have made this possible. As the strategy paper is in your Conference Packs, this report is confined to other issues. If I have left anyone or anything out, my apologies, but there is now so much going on in the ALC it is becoming somewhat difficult to condense everything into a short report...

1. Activity 2004/2005

For those unwise enough to believe that the government’s focus on ‘Every Child Matters’ reinforced the firm foundations of child law, the announcement of the review of care proceedings in July this year must have looked singularly ill timed. The usual unrelenting pace of work ratcheted up as a result, and the review came to dominate much of our work in recent months, draining much time, effort and commitment that arguably could have been put to far better use. Members will have read about progress in the Newsletter, but whilst we may now have staved off a policy disaster, we are at a critical juncture at the time of writing that will require further update.

But this should not be allowed to overshadow much of the other valuable work that has been done and continues to be done by ALC committee members.

Liaison
The regular links with partner organisations such as Resolution (formerly SFLA), NAGALRO and the Law Society have been further developed and strengthened, particularly in the field of policy development and training. We have also made new links with Children Law UK, and have the potential to establish some useful links with other organisations, especially through the new Children and Young People’s subcommittee.

We continue the dialogue with the Legal Services Commission and government departments, Committee members attend relevant meetings of the All Parliamentary Party Group on Children, and as many other events as professional time commitments will allow.

Consultations and Reviews
It has increasingly seemed as though every aspect of child law is under scrutiny at present. Bizarrely, as the government continues to promote its focus on making every child matter, its approach to child law and legal services for children and young people and their families seems more likely to foster a climate of pessimism and bitterness amongst highly committed practitioners. It seems hard not to draw the conclusion that the moment the going gets tough, the most vulnerable are seen as a soft target…

The way in which the public law review was set up needs no detailed or complicated analysis to support this view, but the pressures are still on from other quarters. The independent Carter Review is considering public law from the perspective of procurement of legal services with recommendations due in early 2006. Karen Mackay, Chief Executive of Resolution and I have had an initial meeting with the Carter Review team and anticipate more work will be necessary on this. Current proposals by CAFCASS in ‘Every Day Matters’ to address its continuing resource difficulties also need careful scrutiny, and the Consultation on Focussing Judicial Resources requires a measured and detailed response.

We have contributed to the Review of the Judicial Case Management Protocol and the Review of the Statement of Good Practice on the Appointment of Solicitors Without a Guardian and are awaiting reports on both. We have filed responses to various consultations including disclosure in family proceedings, implementation of the Adoption and Children Act 2002, and the re-drafting of Working Together under the Every Child Matters.

Training & PR
This year has seen the creation of an excellent base on which to build an extensive programme of training for 2005-2006. The appointment of Dr Julia Brophy as National Training and Research Co-ordinator has rapidly paid dividends, taking our training programme to new
levels. We are very fortunate indeed to have her as well Gaye Moran of Southbank University. Their energy and inspiration have fuelled a series of highly successful events, several of which have been held in conjunction with partner organisations and in line with our firm philosophy that training should be practitioner-led. These events, which will stimulate the core of our training activities for the future, have included:

- Child Law for Nearly Adults, Brunel University, February 2005
- Hershman and Levy Memorial Event, June 2005
- Study Weekend on Experts, Cheltenham, October 2005
- Adoption and Children Act 2002 Training, London, October & November

Many thanks also to our student co-ordinator Claire O’Rourke who was responsible for the very successful joint event with Brunel. The Memorial Event, already reported in the Newsletter, far exceeded our expectations, justifying the view that this is set to become an important annual event, alternating between Birmingham and London. We were delighted to present Emma Meredith of North Yorkshire Legal Services with the first ever award for outstanding newcomer, in memory of David Hershman, and with the very generous sponsorship of St. Philips chambers in Birmingham. Thanks are more than due to the combination of Stephen Switalski, Gaye Moran, Julia Higgins and Karen Goldthorpe for their teamwork in staging this event.

Busy practitioners rarely have the opportunity to stand back from the pressures of every day work and examine current practice issues with colleagues from other disciplines, so the recent Cheltenham study weekend proved extremely valuable, despite the sudden pressure placed on us by the Review of public law. It is a long overdue revival of our previous practice of such events to provide a focus for those experienced in the field to make direct recommendations to policymakers.

One of the undoubted bonuses of being Chair is the opportunity to attend a variety of other conferences by invitation – it does absolutely nothing for the waistline, but at least provides gymnastics for an ageing brain. Many of these events serve not only to reinforce and develop established networks, but also provide a cross-fertilisation of ideas and material and an important focus for developing future initiatives. These have included the Present’s Interdisciplinary Conference at Dartington and the Michael Sieff Foundation Conference in London in September 2005, the Resolution Annual Conference and several NAGALRO conferences, as well as a number of other events hosted by charities working in the field.

I am pleased that we continue to attract generous sponsorship from Jordans for the Annual Conference and the Newsletter. Under the very able editorship of Richard White and Claire O’Rourke, the Newsletter continues to raise its game. Supported by the ALC’s developing website coordinated by Christine Dean and Julia Higgins, I believe we have a very soundly focused communication strategy that will support the needs of the ALC’s membership, its core aims and its future development.

2. Executive Committee

As promised, we have focused on attracting newer members to enable some longstanding members to take a well-deserved respite. Julia Brophy and Gaye Moran have been joined by Helen White (London Borough of Harrow) and George Eddon (North Yorkshire County Council), Barbara Corbett (Rugby), and Alistair Macdonald (St Philips, Birmingham). The fact that Tim O’Regan and Mark Powell have stepped down during the year does not mean we have lost them altogether as both remain available for work on individual projects and subcommittees. Sadly we have lost Fiona Chiu, Caroline O’Donnnell and Thea Henley to the demands of practice and Tanya Zabihi on her return to the Bar.

Work on the structure of the ALC in its sub-committees continues, but it is the Children and Young People’s Committee that has provided a real boost. Chaired by District Judge Crichton and made up of representatives from organisations such as Resolution (Nina Hansen), Children Law UK (Glyn Farrow), the office of the English Children’s Commissioner (Claire Phillips), NAGALRO (Carol Edwards), CAFCASS, the Children’s Legal Centre and NYAS, I believe this committee is already proving to be one of the most exciting initiatives we have started this year.

3. Administration

I could not be more grateful to Julia Higgins, our Administrator – she manages, with considerable skill, wit and wisdom, to steer us through all sorts of events and issues that would defeat a lesser person. I have had cause to be personally in her debt on more than one occasion and am deeply grateful that the challenge of running a fast growing organisation has not driven her to escape a job that has become far greater than she can have anticipated. Her good humour and personal skills make a huge contribution to the ALC’s reputation and credibility.

My thanks to Caroline Little for her very hard work in the overall conference planning and to Karen Goldthorpe and her team for maintaining their consistently high standards in organising the ALC’s largest ever annual conference.

On a personal level, I have been enormously privileged to chair the ALC for a wholly unanticipated four years (despite frustrations I leave to your imagination!). It has brought me much pleasure, a rich diversity of experiences, and very many valued friends. But I am delighted that I am handing over to such talented and committed colleagues who, I am absolutely sure, will take the ALC on to much greater things. I look forward to this unique organisation continuing to make, and to develop, its vital role and its voice in the field of child law and policy – not least because it is no less than children and young people and their families need and deserve, particularly in such challenging times.

Liz Goldthorpe
 AL Chair
2006 looks like being a very busy year for the ALC and here is a breakdown of just some of the objectives. This list is by no means finite but should give you an idea of the things that the Committee are currently considering.

1. The ALC will continue to work towards positively influencing the outcome of the Public Law Review. There is likely to be a hiatus following 13th December 2005 whilst the DCA Review Team considers and makes recommendations to Ministers.

2. The ALC will continue to work with Resolution on the Carter Review on the provision of legal aid services.

3. The ALC will continue to draft responses in respect of as many relevant consultations as possible and will provide these responses to members via the website.

4. The personal duties of Guardians are going to be considered in co-operation with NAGALRO.

5. Work will continue on the disclosure/greater openness in Family Proceedings project.

6. The Hershman/Levy Annual Child Law Event will take place on Thursday 29th June 2006 at Birmingham University and further information will be available shortly.

7. The ALC Annual Conference 2006 will take place in Leeds from 2nd to 4th November. Given the growing numbers attending the Annual Conference it is recommended that you book your place as soon as further information is available.

8. The ALC Annual Study Weekend will be organised.

9. The ALC hopes to campaign for family law to be a core subject of a qualifying law degree.

10. The Children and Young Persons Sub-Committee are going to organise an ALC Children and Young Persons Event and will consider organising a National Conference on Legal Services Provision for Children and Young People.

11. The ALC is going to consider and try to secure a National Commission on Legal Services Provision for Children and Young People.

12. A Business Plan incorporating a Strategic Plan for the short, medium and long term will be put together.

13. A concise operational guidance/policy document will be compiled for the ALC.

14. The Chair of each sub-committee will, in consultation with sub-committee members, compile a document clarifying the membership of, and set objectives and strategic plan for, each sub-committee.

15. An effective and efficient e-mail tree for the ALC/Monthly Chair’s E-mail to be sent to all members will be developed and implemented.

16. Draft proposals for developing the ALC Website in order to incorporate greater resources capable of being accessed by links to the Monthly Chair’s Newsletter will be investigated.

17. The formal amendments of the constitution will be incorporated and the amended constitution will be printed and distributed to all members.

18. The ALC will try to obtain a demographic assessment of its membership and increase membership of the ALC generally and from the Bar.

19. The ALC will consider the appropriate position of the organisation in relation to the treatment of children of asylum seekers including, the most efficacious way of advancing that position and any training and education issues arising.

20. The ALC will continue to organise training events including training for lawyers regarding expert witnesses and medical training.

21. The ALC will be considering options for increasing the profile of the ALC within the media and to the public at large.

In general we will not be including all the consultation responses in the Newsletter anymore as they are now available online at the ALC website www.alc.org.uk so please continually check the website for up-to-date information. The website has developed substantially over the last year and is a great resource.

If you have any suggestions, would like to get involved, or would like to make a contribution to any area of the ALC’s work then please get in touch with the ALC Administrator Julia Higgins via email admin@alc.org.uk or phone 020 8224 7071.
Every Child Matters…
But at What Cost?
The ALC’s 16th Annual Conference

“As usual, tremendous. A testament to the fantastic leadership of Liz is the size and quality of conf.”

“THE conference for all child care lawyers who wish to have their views regarded by Parliament.”

The ALC’s 16th Annual Conference took place at the De Vere Grand Harbour Hotel in Southampton from the 17th – 19th November 2005. The conference was the biggest yet and with DJ Nick Crichton chairing with great skill and humour, and Caroline Little’s quick thinking as organiser the conference was a huge success.

The conference opened with a ‘captivating and inspiring’ address from Camila Batmanghelidjh, Director of the Kids Company and a quiz to get people thinking and talking. The programme offered a range of good quality speakers and ‘thought provoking’, ‘lively and challenging’ workshops and an ‘excellent’ panel discussion. Liz Goldthorpe offered a ‘moving and meaningful’ speech, the transcript of which is our leading article.

At the conference dinner Mark Powell extended many thanks to Liz Goldthorpe on behalf of the Association for all her hard work as Chair of the ALC. Liz received a standing ovation as she said her farewells (although she won’t be stepping down until a little later in the year).

Once again Barbara Hopkin entertained us with her marvellous voice before the conference dinner and the after dinner entertainment band was enjoyed by all. When the band took a break the spirit was kept alive with bhangra dancing.

Mark Powell thanked Liz Goldthorpe on behalf of the Association for all her hard work over the years.
"An inspiriting conference at such times of uncertainty and threat for each child involved in public law litigation."

The conference raised a substantial amount of money for charities, Kids Company and the Sunningdale Park Romania Appeal. Fund raising took place during the quiz on the first night, a signed copy of Liz Goldthorpe and Pat Monro’s Child Law Handbook was auctioned off and then there was the raffle at the conference dinner.

Thanks once again to Caroline Little, Julia Higgins and Karen Goldthorpe and her team who made the conference such a success.

"Informative and well organised. Great fun and looking forward to next one already."

Marzena Konarzewska of Aston Clark - the very generous successful bidder for a signed copy of Liz Goldthorpe and Pat Monro’s 'Child Law Handbook'

A standing ovation for Liz Goldthorpe

Dancing and enjoying the great band at the conference dinner
Book Reviews
From Family Law a number of new titles:


Cost £45.00 including p&p
Pages 493
Paperback
ISBN 0-85308-978-7

A Practical Guide to Family Proceedings is a book of procedure, written by District Judge Robert Bloomfield and Helen Brooks, with District Judge James Taylor. The authors are all highly experienced - Helen Brooks is the Training Officer of the Principal Registry of the Family Division. The book offers clear and concise step-by-step guidance on the conduct of family law applications.

The book is intended to run alongside *Family Law Practice* and *Rayden and Jackson on Divorce and Family Matters*. It is not a substitute. As always, it is laid out, well indexed with a good contents list and comprehensive. I did not have to work hard to find specific information required. There are even the relevant addresses and telephone numbers, for example if you wish to enforce a writ of fieri facias (fi fa) – just go to pages 215-6 and there it all is. If you want to enforce an order for periodical payments, then the procedure for attachment of earnings is clearly set out, with all the relevant legislation, the necessary CCR and FPR references, the form names and numbers and the requirements of the order. The authors tell you what has to go into the forms and the only thing you have to look up elsewhere is the fee payable.

The Hon Mrs Justice Bracewell, Editor in Chief of Family Court Practice, writes in her foreword to *A Practical Guide to Family Proceedings* that the book ‘is to be welcomed as a useful and helpful practical addition to the library of family law publications’. I could not put it better.

Bird, R., (2005), *Ancillary relief Handbook (Fifth Edition)*. Bristol; Family Law

424 pages
Paperback
£49.50
ISBN 0-85308-970-1

Roger Bird, now a solicitor and formerly a District Judge, is now so well known that this new edition of his book probably needs no introduction. He has been a member of the Lord Chancellor’s Ancillary Relief Advisory Group since its inception. The book is up to date as at June 2005, very well indexed with a good contents list, and set out in a way which makes everything easy to locate. The author gives clear explanations, commentary and vignettes from cited cases to illustrate his points and to enliven the text.

Whether for students, or for busy practitioners, the book is invaluable.


551 pages
Paperback
£30

We all remember the late David Hershman QC with much regard and, for me, seeing his name alongside that of his co-author Andrew McFarlane in *Children Law and Practice* and in *Children Act Handbook* is an enduring tribute to his memory. What could be said about David Hershman and Andrew McFarlane that practitioners will not already know? Their *Children Law and Practice* is probably on most practitioners’ bookshelves, if not, it should be. This handbook (first brought out in 2001) fulfils an additional role in its provision of the statutory material in a separate, more portable book to take to court. It contains selected parts of the Adoption and Children Act 2002, the Children Act 1989, the Family Proceedings Rules 1991, and the Family Proceedings Courts (Children Act 1989) Rules 1991, the Children (Allocation of Proceedings) Order 1991, the Children (Allocation of Proceedings) (Appeals) Order 1991, various Protocols, President’s Directions, the President’s Guidance (Private Law Programme), the Protocol for Judicial Case Management in Public Law Children Cases, CAAC Best Practice Guidance, calendars and interestingly, weights and measures conversion tables.

The book is useful, and that is precisely its intention.
Goldthorpe, L and Monro, P (2005)

437 pages
Paperback
ISBN 1-85328-712-1

Liz Goldthorpe and Pat Monro are both very well known practitioners in child law. Liz Goldthorpe is currently Chair of the Association of Lawyers for Children. They have put together a collection of contributions from leading practitioners. The topics in the book are all intended to develop or consolidate practitioners’ knowledge in the field of child law and include: fundamental principles and good practice, professional conduct and good management, child development and communication issues, safeguarding, multi-agency child protection, emergency powers, secure accommodation, assessments, contact, care plans, leaving care, adoption, education, experts, disclosure, housing and more.

The book is clearly written and informative. Working together, one would expect Liz Goldthorpe and Pat Monro to produce a really good and useful book. They have justified those expectations.


240 pages
Paperback
ISBN 0-7619 7106- 8

This book is not brand new, but I have only just come across it and it is so useful for ALC members that I want to include it here in the reviews. It is a multi author work, written by eminent academics, Audrey Mullender from UEA, Gill Hague and Ellen Malos of the University of Bristol, Umme Farvah Imam from the University of Durham and Liz Kelly and Linda Regan from the London Metropolitan University. This book examines the impact of various aspects of domestic violence on children and families and unusually, it represents the perspective of the children concerned. Domestic violence is an issue in so many public law child protection cases and private family law cases. It is a factor in many disputed contact cases and so very difficult to deal with in mediation because of the imbalance of power. Children are often left out of the debate and yet the impact on children of witnessing domestic violence or being caught up in it, is immense.

This book gives children a voice. It looks at children’s perceptions of how it is to live in a family with domestic violence, what they understand about it and what they need and want. One chapter, for example is ‘Life with a violent father’. It sets out children’s coping strategies, suggests useful resources and considers strategies for the way ahead. It is packed full of useful information which will assist in understanding this situation better and in evaluating social work and other assessments from new perspectives. It may help, too in finding new ways to help children deal with memories and move on from the experience of living in a family with violence.

For lawyers, mediators, social workers, volunteer helpers and others working with children and their families, it is a really useful book.

Ghose, K., (2005)
Beyond the courtroom. London, LAG.

393 pages
Paperback
£20
ISBN-10 1-9033078-35 X

This book is great value for its very reasonable cost. It is written for the lawyers who want to campaign. Vera Baird QC in her Foreword says that the book ‘provides a comprehensive, detailed and accurate road map for the new starter to campaigning and a handy reference book for all’.

The book describes the Whitehall procedures, lobbying in the UK Parliament and the EU institutions. It finally describes how to work with the media. The book is not only knowledgeable, it is inspiring. By its publication, LAG is potentially empowering many lawyers and others to campaign effectively for the rights of those who need support. I hope that they succeed and they are more likely to be heard with the help of this book.
Quayle, E and Taylor, M (Eds) (2005)
*Viewing Child Pornography on the Internet.*
London, Russell House Publishing.

160 pages
Paperback
ISBN 1-903855-69-1

This is another really useful book. It is designed to help practitioners to understand the offence, manage the offenders and help the victims. It is a multi-authored work, written by experts.

The chapters cover topics including general approaches to tackling child pornography in England Wales and in Australia and the varieties of child pornography production. It looks at the offence from the perspective of the child victims, the psychological impact on children, understanding how they may be helped and recover from their experiences.

This is not a new offence. In the UK it can be dated back at least to 1847 with erotic postcard images including children. The first police raid was in 1874 when 130,000 photographs were seized from a London studio. The authors consider the investigation of the series of modern offences related to the use of pornographic images of children on the internet- varying from the summary only offence under s 43 of the Telecommunications Act 1983, S 1 of the Protection of Children Act 1978 as amended and ss 7(2), 12, 48-50 of the Sexual Offences Act 2003.

The authors also write about the tracing and identification of offenders, psychological profiles of offenders and the use of Interpol and global co-operation in tracing and apprehending offenders. This book is informative and sadly, it is highly relevant to our present day child law practice. It is a very useful addition to the practitioner’s reference library.

Barbara Mitchels
The Association of Lawyers for Children today expressed its concern over proposals for health professionals to be legally obliged to report to the police young people under the age of 16 who reveal that they are sexually active.

The Association is concerned that placing such a mandatory duty on health professionals would act to destroy the confidence that children and young people place in healthcare professionals, cutting them off from what is often the only adult support they are prepared to accept.

A representative of the Association said that although the stated aim of identifying and dealing with those adults having sexual relations with children under 16 is both laudable and essential, seeking to achieve this using a policy of obligatory reporting would be counter-productive in that it would result in young people failing to access their general practitioner, sexual health clinics, antenatal services and contraceptive advice.

Acknowledging that there are clearly circumstances in which professionals would be obliged to inform the police or social services of abusive situations, the Association noted that health professionals are trained to assist young people to deal with the consequences of early sexual activity and that this includes seeking to persuade them to notify the authorities in cases where a situation is abusive and poses a risk to themselves or others.

The Association of Lawyers for Children believes that health professionals should be trusted to use their judgment in order that they can assure a young person of the confidentiality of their consultation, subject to exceptions involving situations of serious risk to the child or young person.

Note from Editor:
All press releases are available on the ALC website www.alc.org.uk under latest news link.
NOTICE TO ALL USERS OF THE ADOPTION SECTION – PRINCIPAL REGISTRY OF THE FAMILY DIVISION

You will be aware that the Adoption and Children Act 2002 comes into force at the end of this year.

We write to notify you that Adoption Section staff have been informed that the computer system needed for staff to process and progress applications under the A&CA 2002 will not be available until August 2006 at the earliest. You will understand that this will have an enormous impact on the speed and efficiency with which we are able to process our work.

For example

A) Phone calls

At present if you phone with a simple query – perhaps about a Court date or whether a report has been filed, we will be able to check on the computer and respond immediately. This will no longer be possible. We will need to consult the paper file, which may of course not be on the Section.

Therefore when you phone us, please be prepared that we may not be able to answer even the simplest query immediately and will need to take details and phone you back once the paper file is located.

B. Issuing applications and progressing cases

We will not be able to draw notices, standard letters, orders etc as we do at present. Each document will have to be produced individually and manually. Inevitably this will take more time and may cause delay.

The Adoption Section faces a very challenging time as we try to cope with the impact of the new legislation, without the support of the appropriate computer system. We will do our best to continue to provide you with a good service, but hope you will bear with us during this transitional period. If the situation changes we will keep you informed.

Adoption Section
Principal Registry
Dear Editor

Re: Information for the ALC Newsletter

I thought I would write to you about a Legal Aid point as we have been having a long running battle with the Legal Services Commission over the rate of payment for attendance at Court at the Family Proceedings Court or the County Court.

We have regularly been arguing with the Legal Services Commission that the whole attendance at Court (whether as hearing or as conference) should be claimed at the rate of £71.50 as the Schedule simply refers to attendance at Court with or without Counsel.

We have regularly been having our bills reduced so that they were only allowing the hearing time at £71.50 with our conference time at £68.20. As you will appreciate the majority of the time at Court is spent in conference rather than in hearing.

We have been regularly appealing those successfully. At long last we actually had written confirmation from the Legal Services Commission that they are accepting that attendance at Court should be claimed at the rate of £71.50 for the whole time at Court if you are in hearing or in conference. I anticipate that this would not apply to actual waiting time but in my experience it is extremely rarely to be involved in any waiting in care cases.

It may be that everyone else is already aware of this. However I suspect not and I thought in those circumstances it may be helpful to let other members know as I very much doubt that the Legal Services Commission is going to be publicising this.

Yours sincerely

Jerry Bull
Atkins Hope Solicitors

Should you have any articles you wish to submit to the newsletter, please do not hesitate to contact the Editor at admin@alc.org.uk. The Chair and Committee always welcome any thoughts, ideas or contributions to the development and running of the Association.
Julia Higgins
Association of Lawyers
PO Box 283
East Molesey
KT8 0WH

17 January 2006

Dear Julia and all at ALC,

I wanted to thank you for your donation which helped make Christmas so special for our children. Some 400 made their way to us for lunch, presents and human warmth. The staff gave up their time to be there, helping cushion the children against any pain they may have been feeling. We were so glad to be open as many children were clearly upset as well as excited.

An 11 year old boy and his 9 year old sister arrived freezing without a jacket and looking exhausted. A few years earlier, their mother had walked out on them and they never saw her again. On Christmas eve, their father did the same and they haven’t heard from him since.

I was able on the 27th December to take them clothes shopping. The little girl wanted me to take her to Asda “like her mother used to”. Your donation meant that I could buy her clothes which she desperately needed. She delighted in picking everything in pink and lilac, especially a pair of fluffy pink slippers! After her shopping she wanted McDonalds. For the boy, we bought sports tracksuits. The children had a sense of pride when they wore their new clothes and were taken by our team along with another 50 children to a Christmas pantomime.

Your kindness enabled us to return some basic dignity to these two youngsters and many more other children. But above all, their delight in being together receiving presents and feeling looked after was very moving.

The staff at Kids Company are deeply grateful for the help you have given us in making Christmas special for children who risked being forgotten. Thank you for your compassion.

With love and best wishes,

Camilla Batmanghelidjh
Director
Kids Company

P.S. The little boy and girl are now in foster care in Bedfordshire while Social Services look for their father. They are in touch with us every day.
Dates for your Diary

NAGALRO TRAINING 2006

ADOPTION AND CHILDREN ACT:
the new legislation for old hands
This course will look at recent legislation and the accompanying guidance and will introduce experienced practitioners to the new way of practising and the new legal framework. The course is an essential introduction to developments in adoption and permanency for all those who have already practised in the field.
London: Wednesday, 29 March 2006
London: Thursday, 20 April 2006
Trainer – Pat Monro, Child Care Solicitor and Ann Haigh, Children’s Guardian
£90.00 – £125.00 6 CPD credits

COMMUNICATING WITH CHILDREN
Ascertaining children’s wishes and feelings through a variety of techniques and with a full knowledge base of recent theoretical developments is essential in the family courts. The course has been welcomed by practitioners from many roles who need the skills and evidence-base to work directly with children. Join your colleagues for a stimulating day of skill and knowledge development.
London: Friday, 31 March 2006
Trainer – Mary Corrigan, Child Care Consultant and Play Therapist
£90.00 – £145.00 6 CPD credits

KINSHIP ASSESSMENT
Beware: S1(4)(f) Adoption and Children Act 2002
This 2½ hour evening course is a knowledge and skill building workshop for practitioners and children’s lawyers interested in promoting kinship (family and friends) assessments in line with the new requirements of Adoption and Children Act 2002. The new provisions in Section 1(4)(f) of A&C Act ’02, likely to be implemented on 31.12.05, will have a profound impact on reshaping all family court practice in relation to assessing members of family networks and other close friends of a child needing immediate or long-term placement.
London: Tuesday, 7 March 2006, 5.30 pm – 8.00 pm
Trainers – Carol Edwards, Social Work Consultant and Family Therapist and Eddie Brocklesby, Director of Parents for Children, Social Work Consultant, former Children’s Guardian
£45.00 – £55.00 2.5 CPD credits

INTRODUCTORY COURSE FOR INVESTIGATORS OF COMPLAINTS AGAINST LOCAL AUTHORITIES
Doing Something Different - Developing New Knowledge And Expertise
This 2½ hour evening course which will focus on the complaints process in a local authority and the expertise required to investigate complaints made against a social service department. The course is aimed at those who wish to extend their portfolio and acquire a new perspective and relevant knowledge. It will use case studies, some formal teaching and discussion as a basic programme.
London: Wednesday, 29 March 2006, 5.30 pm – 8.00 pm
Trainers – Carol Edwards, Social Work Consultant and Family Therapist and Eva Gregory, Children’s Guardian
£45.00 – £55.00 2.5 CPD credits

ASSESSING ATTACHMENT
This day will present a framework for assessing attachment between children and their carers for court proceedings. It is designed for experienced practitioners who already have a good working knowledge of attachment theory.
Newcastle: Monday, 3 April 2006
London: Tuesday, 25 April 2006
£95.00 – £145.00 6 CPD credits

13 March 2006 – NAGALRO SPRING CONFERENCE OXFORD
Children’s Voices: Represented? Eclipsed? Ignored?
Children are better represented now than ever before – but they can still lack a voice when important decisions are made about their lives. This conference will discuss the impact of new legislation and practice on children’s involvement in public and private law family proceedings and consider remedies.
Association of Lawyers for Children and Brunel University Joint Conference

CHILD LAW IN THE 21ST CENTURY
DATE: SATURDAY 29TH APRIL 2006
Venue: Brunel University, Uxbridge

Annual Child Law Event
Hershman/Levy Memorial Lecture
DATE: THURSDAY 29TH JUNE 2006
Venue: Birmingham University

Association of Lawyers for Children
17th Annual Conference
‘HOW MUCH CHANGE FOR CHILDREN?’
DATE: THURSDAY 2ND NOVEMBER
– SATURDAY 4TH NOVEMBER 2006
Venue: Queens Hotel in Leeds
Keynote Speaker: Mr Justice Ryder TD

Further information about the venue is available at www.qhotels.co.uk

Further information about all these ALC events will be circulated shortly.