

## **Family Justice Review**

This paper is a follow up to the informal evidence given by ADCS representatives to the Family Justice Review on the 21<sup>st</sup> September 2010. The Association of Directors of Children's Services Ltd (ADCS) is the national leadership organisation in England for directors of children's services appointed under the provisions of the *Children Act 2004* and for other children's services professional in leadership roles. The Association provides a national voice as a champion for children, with local and central government, and with the public.

### **Recommendations:**

- 1. The system must be revised to enable it to listen better to children and young people, and ensure their active participation in the decision making process.**
- 2. Strengthen the role of Family Group Conferences as a means to promote family owned solutions to the provision of support and where necessary alternative care. This could be in place of Child Protection Conferences and prior to local authority placing child in alternative care arrangements such as foster care of residential care, or as a required step prior to initiating care proceedings.**
- 3. Remove all public and private law cases from Court and transfer to a newly developed Tribunal system.**
- 4. Amalgamate the role of the Guardian with that of the IRO and revise to become a role which advocates for the child and scrutinises and challenges the care plan based on the views, wishes and best interests of the child.**
- 5. Improve the way in which social workers use and have access to knowledge and research to support the preparation of care plans and statements by increasing capacity within the workforce.**
- 6. Any change to public law proceedings should also be reflected in private law proceedings.**

### **1.0 Introduction**

1.1 The issues and problems within the current family justice system are well documented; they include:

- Excessive delay, which adds significantly to overall costs and is detrimental to the child's sense of security and chance of attachment
- Requests for unnecessary assessments, which also add to delays and increased costs
- The role of advocates and personnel who provide views on the wishes and welfare of the child including future plans for the child
- How the system currently listens to the child
- Detailed case management by the Judiciary which impinges on the ability of local authorities to plan and allocate resources.

1.2 Change is necessary and any new system has to be based on the following key features:

- The family justice system should provide a framework to analyse and examine the evidence offered by parties. This information should be primarily about the decision to remove children from their families in situations where they are at risk of harm
- The role of the court or any alternative should be to draw conclusions based on this information and in doing so scrutinise key decisions for the child, especially around thresholds being met, and decisions about permanency. It should not take over detailed care planning matters.

1.3 It should also be underpinned by the following principles:

- The child's needs, welfare, views and wishes must be at the heart of any system, process or decision
- The child must be listened to and their wishes fed into any revised system. The reasons, activities and decisions must be carefully explained to the child
- The child must be free to participate if they so wish or have an advocate acting on their behalf
- Any process, decision or assessment must be carried out in a timely way that fits with the developmental pathway of the child.

1.4 To achieve and embed these principles requires serious consideration to be given to fundamental systemic change to the existing family justice system. Below are some possible alternatives which could address some of the concerns and problems in the current system. It is important to accept that any changes to the system must take account of proposals that come out of the Munro Review.

## **2.0 The Voice of the Child**

2.1 The most important element of any system is making sure the child feels involved and included in the decisions which are being made about their lives. They tell us that at times they are not told about why they came into care, why they are no longer allowed to see the mum or dad or why their contact with family is only allowed to happen on certain days. They are also largely excluded from participating in proceedings because of the way in which courts time is allocated.

2.2 Improving the system's ability to listen to children requires change in order to allow the time necessary to listen and learn about the child.

2.3 Listening to the child also means taking into account the impact of delay on their future chances of achieving permanence and on their potential. This requires a more joined up approach between the mechanisms within the local authority for finding and approving placements for foster carers and adopters with the mechanisms in Court/Tribunal. The Court and the local authority also appear to wait for each other to make decisions about placement, (local authority decision making on placements is constrained by the Courts). The local authority knows what it wants to do, but cannot proceed because of issues such as further assessments of extended family members who only come forward late in the process e.g. adopter, disposal of order,

etc and consequently there is a great deal of waiting time within the system as each procedure runs at its own pace, while the child sits outside the system waiting to be told what their future will look like.

2.4 Possibilities are:

- Increase the use of concurrent planning
- Increase the dual approval of placement, so carers are assessed and accredited as both foster carers and potential adopters
- System becomes less tolerant of efforts to delay by challenging more frequently requests for additional assessments
- If court remains the venue of choice, extend court times so children and young people are able to attend and participate. For example evenings, after school, Saturday mornings etc
- Take the court into chambers, remove some of the ceremony particularly in County/High Court.
- Remove these arrangements for Court altogether and implement a Tribunal system.

2.5 In addition to these points the combined effect of all the options offered in this document will impact significantly on the ability of the system to, not only listen to children, but to be more efficient in reaching decisions and securing permanence (where this is seen to be in the best interests of the child) or in identifying the best conditions for care/support within the extended family for the child.

**Recommendation 1: System must be revised to enable it to listen better to children and young people, and ensure their active participation in the decision making process.**

### **3.0 The Role of Family Group Conferences**

3.1 Family Group Conferences (FGCs) are increasingly viewed as a way to support families to identify their own solutions, including alternative care and support arrangements which will safeguard and protect the welfare of the child.

3.2 It is suggested this could be used as a preventative tool prior to proceedings being initiated (they should already be undertaken as part of the PLO). The approach could also be used in place of child protection conferencing as a means of early intervention to address presenting difficulties much earlier and before local areas consider it necessary to take more serious action. This would offer a consistent family based approach to supporting families at times of stress and difficulty. It would be underpinned by an evolving assessment of the needs of the families as they become apparent through the FGC preparation process. A defining feature of FGC, is that any plans developed by the family are supported by the local authority unless these plans place the child at risk of significant harm and/or do not meet their needs.

3.3 It is suggested that refusal to participate in these arrangements could be used to demonstrate an unwillingness to work with the local authority or with the extended family to meet the needs of the child. This unwillingness to participate would be

shared with Court/Tribunal which in turn affects the final disposal of the Court/Tribunal.

3.4 FGCs can improve the balance of decision making between the local authority and families and would give the child a much greater role (where appropriate) in being involved in decision making.

3.5 The preparation for FGC is extensive in terms of identifying extended family members and working with them to explore their capacity to providing alternative care or support for the child(ren). This will provide an even greater knowledge of the family structure and function which in turn supports a more detailed assessment as to wider family function in addition to preventing 'late shows' at proceedings as can currently happen. Families need to understand that failure to participate fully in this process may be detrimental to their case should they at a later stage in the Court process decide they wish to be assessed as a carer for the child.

3.6 The primary purpose of FGCs is for families to identify the issues and solutions for their family. This work is done with the support of the local authority. This approach may significantly reduce the demand for statutory intervention which in turn may reduce the numbers of children becoming looked after.

3.7 There are some limitations to this approach. FGCs may not be an appropriate mechanism for some cases involving domestic abuse or sexual abuse.

**Recommendation 2: Strengthen the role of Family Group Conferences as a means to promote family owned solutions to the provision of support and where necessary alternative care. This could be in place of Child Protection Conferences and prior to local authority placing child in alternative care arrangements such as foster care of residential care, or as a required step prior to initiating care proceedings.**

#### **4.0 Removing Decision Making from Court**

4.1 It is worth considering removing family proceedings out of the Court altogether and replacing it with a Tribunal approach which is inquisitive in nature. Rather than being an adversarial system it would instead provide a greater focus on the needs and wishes of the child.

4.2 A tribunal approach offers similar principles to that provided by FGC. It is a collective, inclusive endeavour where families are involved in decision making and where they are able to understand what is happening, in a less formal and less intimidating setting.

4.3 There would be a Panel which could be chaired by a judge and supported by an independent expert, a mental health practitioner/medical expert and/or an experienced social worker. The Panel would then listen to the views of participants and determine the most appropriate plan for the child. The Tribunal could also have its own budget from which any additional assessments would be funded. Detailed

elements of the care plan and contact arrangements should take place outside the Tribunal and be scrutinised by an independent person (see Section 5).

4.4 If emergency measures are required e.g. Emergency Protection Order, the chair of the Panel could be approached, as now, for an interim meeting to be arranged as soon as is practicable to determine next steps for the child in protecting their welfare.

4.5 However the process prior to Tribunal would support greater analysis and assessment of the dynamics and capacity of the family through the use of FGC, where this has been used.

4.6 ADCS is concerned about the volume of private law proceedings that local authorities are being drawn into, adding again to costs, workload pressures and delays for children.

4.7 If this proposal is not supported we would want to see a more minimal role for the Court in respect of key decisions only, i.e. Full Care Order and Adoption.

**Recommendation 3: Remove all public and private law cases from Court and transfer to a newly developed Tribunal system.**

### **5.0 Bring Together the Role of CAFCASS Guardians and IROs**

5.1 Children and young people tell us they have to repeat their story to too many people, they also tell us they do not like so many people knowing their story and being party to private information about their lives. Children subject to these measures have little if any privacy.

5.2 The challenge then is to make sure the child does have independent representation, one person who follows them through whatever process, is able to review the local authority plan for the child, but who is then also able to present their view to Court/Tribunal. This would offer a more consistent figure for the child, something that is currently missing.

5.3 The Children's Guardian and the local authority Independent Reviewing Officer are required to listen to children, make sure their needs are of paramount consideration and that the care plans proposed/made for children and young people are the right ones. The IRO scrutinises these plans during the child's statutory reviews, the Guardian offers their opinion in court. This is a duplication of effort and role that cannot be sustained in the current financial climate.

5.4 Bringing together the role of the Guardian with the role of the IRO will increase some capacity in terms of reducing some of the bureaucracy and the associated burdens and costs of procedure and compliance. Any new service should also have to take into consideration the affordability and value for money of any proposals they put before the Courts. The current lack of financial accountability in this area has led to significant increases in costs to local authorities. This would require significant revisions to existing legislation and guidance. Specifically the Adoption and Children

Act 2002 and associated guidance which made statutory the role of the IROs in addition to the IRO Handbook launched earlier this year in response to the requirements set out in the Children and Young Persons Act 2008. The remit and legislative framework associated with CAFCASS will need to be considered which requires changes to Criminal Justice and Court Services Act 2000 and with the use of Guardians *ad Litem* Children Act 1989 at the very least.

5.5 In terms of independence it is important to make sure these roles are not managed within individual local authorities. Whether they maintain the CAFCASS regional model or are hosted elsewhere and available on a call-down basis to individual local authorities is a question to consider outside this paper. Needless to say in order to have credibility, influence and status it is crucial that the function is seen as independently representing the child and their position, and that competent professionals are employed to fulfil this role.

**Recommendation 4: Amalgamate role of Guardian with IRO and revise to become a role which advocates for the child and scrutinises and challenges the care plan based on the views, wishes and best interests of the child.**

#### **6.0 Confidence and Competence of Social Workers**

6.1 The confidence and competence of social workers in court has been of increasing concern in recent years. Social workers' ability to present their case in Court, to provide high quality statements and assessments, and to promote the local authority care plan for the child to advocates outside court during case management meetings, are all highlighted as areas of weakness. This is more than a training issue.

6.2 The social work qualification curriculum, the first year in practice, the ongoing training and support workers receive in the workplace all contribute to the manner in which they represent their organisation and compile and present their assessments and analysis to court. The manner in which the employer enables the worker to develop their professional skills through training and support is also part of the solution. It is anticipated these issues will be captured through the work being undertaken by the Social Work Reform Board Programme and the Munro Review.

6.3 Social workers' use of research in preparing statements and care plans to support rationed arguments for the decision made is also an area of contention. This is not necessarily about using academic research, nor is it about using examples of good practice. It is more about having access to research synopses which highlight key findings from research that add weight to the assessment and are able to inform the decisions being made. Access to these findings is patchy. Workers' capacity and commitment to making use of these resources is also variable.

6.4 Adopting this approach will require a cultural shift to embed time for social workers to read and develop their research and knowledge skills so they are able to bring this knowledge into their assessments and statements. In order to facilitate this it would be necessary to increase social work capacity. We would regard this as a

means of improving the confidence of social workers in presenting their recommendations to Court. (This is potentially a significant additional area of work for social workers and could raise more questions and challenge. What research has been chosen and why? How robust is the research and is there any conflicting research in existence?)

6.5 There is a chain reaction to these current arrangements. Due to this perception of the capability of social workers and increasingly Guardians, and pressure from families' lawyers additional assessments are requested by the Court to fill in, what they see, as the gaps in the knowledge and information offered by the local authority. In many instances the so called "experts" undertaking these assessments may not be independently accredited or have significantly greater expertise than the social workers. Furthermore there are examples where the Court has assessments from the local authority, the Guardian and expert psychiatric and psychological assessments where conclusions and proposals for the future care of the child are in broad agreement, yet Courts are apparently still asking for further assessments often in respect of parenting capacity. This is not a good use of resources. The remedy, as previously noted would be to provide the court with their own budget and thereby make them accountable for its use of public funds, or remove the decision from the Court altogether and replace with an expert Panel which is better placed to identify gaps in the knowledge base presented, and specify in detail where any additional assessment would add value.

**Recommendation 5: Improve the way in which social workers use and have access to knowledge and research to support the preparation of care plans and statements by increasing capacity within the workforce.**

### **7.0 Public and Private Proceedings**

7.1 Too often private law encroaches onto the capacity of the public law system to meet the needs of children and young people. The detail of arrangements described above could also be applied to private law arrangements and proceedings.

**Recommendation 6: Any change to public law proceedings should also be reflected in private law proceedings.**

## The proposed FJS would then look something like this:

