

Family Justice Bulletin

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MINISTERIAL FOREWORD



CHILDREN AND FAMILIES BILL



EDWARD TIMPSON SPEECH



EXPERT WITNESSES & MEDIATION



FAMILY JUSTICE BOARD UPDATE



FOCUS ON: 1996 HAGUE CONVENTION

MINISTERIAL FOREWORD

We are honoured to have ministerial responsibility for family justice at such a pivotal time. Following the work of the Family Justice Review and with real support for change, we have a significant opportunity to make a difference to the way families – and in particular children – experience the family justice system.

Following his work on the Review, we are delighted that David Norgrove is chairing the Family Justice Board. His role is critical in helping to maintain the momentum of reform and having met with the Board we look forward to continuing to work closely with him, and with ministers at other departments, to lead the programme of change.

The welfare of children is at the heart of this government's wide-ranging reforms. We remain relentless in our commitment

to creating a system which puts children's needs first – and the Children and Families Bill, published earlier this week reflects our ambition and determination to do so.

We are already making progress. The length of time being taken to complete care cases is improving – and the Bill seeks to underpin this by introducing a 26-week time limit. We are also taking steps to improve the use and standard of expert witnesses and to improve awareness and access to mediation as an alternative to court, an option which can be less antagonistic and disruptive, particularly important where children are involved.

There is still much to do but we hope you enjoy reading this round-up of where we are now in the reform process. We have a great opportunity to make a difference to the family justice system and we look forward to working with many of you along the way.



Lord McNally,
Ministry of Justice
Minister of State for Justice



Edward Timpson MP,
Department for Education
Minister for Children & Families

Children and Families Bill – what does it mean for family justice?

Significant reforms to services for vulnerable children, and additional support to help parents balance work and family life, were announced in the Children and Families Bill, which was published on 5 February.

Provisions will lead to an overhaul of children's services including reforms to adoption, family justice, provisions for children in care, special educational needs and the role of the Children's Commissioner.

The family justice clauses in the Bill are part of our broader plans to reform the family justice system. A significant amount of work has taken place since the publication of the Family Justice Review, and the Bill's publication is an important step towards a more effective and trusted system.

Family justice clauses in the Bill are explained on the following two pages:

Public law

Public law changes in the Bill are intended to ensure the more timely progression of care and supervision proceedings in the interests of children.

Reducing delay in care and supervision cases

The Bill introduces a maximum 26-week time limit for completing care and supervision cases. The move seeks to minimise delays which can cause uncertainty and trauma for families, especially children. It requires the timetable for a case to be child-focused and case management decisions to be made with explicit reference to the needs and welfare of the child. Progress is already being made: the latest published figures show that the average duration for a care case is now 47.7 weeks (July-September 2012), down on 51.6 in April-June.

Use of expert witnesses

Measures are included to ensure that expert evidence in family proceedings concerning children is permitted only when necessary to resolve the case justly, taking account of a number of factors. These include the impact on the welfare of the child, and whether the information could be obtained from one of the parties already involved in the proceedings.

Improving the use of care plans

The Bill makes explicit that, when the court considers a care plan, it focuses on those issues essential to the decision as to whether an order should be made, namely the provisions of the care plan that set out the long term plan for the upbringing of the child.

Reducing bureaucracy on interim care and supervision orders

The Bill aims to get rid of unnecessary processes in family proceedings by removing the requirement for interim care and supervision orders to be renewed every month by the judge. It would instead allow the judge to set the length and renewal requirements of interim orders for a period which he or she considers appropriate.



Private Law

Private law provisions in the Bill are intended to promote the resolution of disputes away from court wherever possible. They also seek to ensure decisions made by the family courts reflect the benefit to the child of maintaining the ongoing involvement of both parents in their life and to streamline the court process for divorce or dissolution of a civil partnership.

Encouraging mediation

The Bill encourages separated parents to resolve their disputes out of court by making attendance at a Mediation, Information and Assessment Meeting (MIAM) a prerequisite for applying to court for certain types of proceedings. The Government is also taking further steps to encourage co-operative agreements, including better online support, access to parenting programmes and support in developing parenting agreements.

Parental involvement

The Bill highlights the principle that both parents should continue to be actively involved in their children's lives, provided there is no risk of harm, which remains the courts' paramount consideration.

Child Arrangements Orders

The Bill introduces a new "Child Arrangements Order". This will replace Residence and Contact Orders, encouraging parents to focus on their child's needs rather than what they see as their own 'rights'. The Bill also allows the courts to make full use of powers to direct parents to attend programmes that can help them make care arrangements work.

Uncontested divorce

The Bill aims to streamline court processes for uncontested divorce so that appropriately trained Justices' Clerks and their assistants can exercise judicial functions to deal with these cases, allowing judges to focus their time on more difficult cases. Where a more complex case arises, judges will be available to provide advice and guidance. The detailed arrangements will need to be developed in consultation with the judiciary.

Next steps

Before becoming law, the Bill needs to pass through a number of parliamentary stages in both Houses, before reaching Royal Assent and becoming an Act of Parliament.



Edward Timpson speech on vulnerable children

As the Children and Families Bill was published, Edward Timpson, Minister for Children and Families delivered a keynote speech, focusing on elements of the Bill to help vulnerable children, including plans to speed up care proceedings in family courts.

It was the Minister's experience of growing up with many foster children, and seeing how care could help them transcend disadvantage, that gave him the impetus to train as a family barrister representing children in care.

Whilst working as a barrister in the care system, it became abundantly clear to the Minister that timely intervention wasn't happening anywhere near enough. In his speech he said:

"By the time a case landed on my desk, the damage had, all too often, already been done and it was a matter of trying to make the best of a bad job. It was apparent that

cases were managed, all too often, for the convenience of the courts and lawyers rather than the interests of the child.

"This cannot continue. Reducing delays and promoting stability to meet the needs of vulnerable children has to be an absolute priority for everyone involved in their care. That's why we're legislating to make this happen. So, in future, there will be a six-month time limit for the family courts to decide whether a child should be taken into care. The courts will also have to make sure decision-making and timetables take into account the child's needs and the impact of delays on them."

Read the [full speech here](#).



MEET THE MINISTERS

Lord McNally

Lord McNally served as MP for Stockport South from 1979 to 1983. He was elected as the Liberal Democrat Leader of the House of Lords in October 2004. Lord McNally studied economics and social history at University College London. He was made a Fellow of the College in 1995 and awarded an Honorary Doctor of Law by the University of Hertfordshire in 2010. Following the General Election in May 2010, Lord McNally was appointed Minister of State for Justice. He was additionally appointed the Family Justice Minister in September 2012.

Edward Timpson

Edward has been Member of Parliament for Crewe and Nantwich since May 2008. Prior to entering Parliament, Edward practised as a family law barrister in Cheshire courts, specialising in the cases of vulnerable children. His parents have fostered 87 children over the last 30 years, many of whom Edward grew up with. As an MP, Edward sat on the Children, Schools and Families Select Committee and was chairman of the All Party Parliamentary Groups on Adoption & Fostering.

Cutting down on unnecessary expert reports

Changes to improve the way experts are used in family courts came into force on 31 January. The changes are to Part 25 of the Family Procedure Rules (FPR), which govern the procedures used in family courts in England and Wales.

As a result of the changes, family courts are now required to restrict expert evidence to that which is only necessary to resolve the case, and to consider certain factors when deciding whether to use expert evidence. In care cases, this includes the impact on the welfare of the child; the impact on the timetable for proceedings and whether the evidence which is needed is available from another source such as the local authority. Courts must also approve the questions that are to be put to the expert to ensure they are focused on the determinative issues for the court.

As part of further work in this area, there are plans to consult on the introduction of standards for experts involved in family proceedings relating to children.

Making mediation matter



As part of moves to encourage and make it easier for people to consider mediation and other types of out-of-court resolution, the Ministry of Justice launched a new version of the Family Mediation Information and Assessment Form (FM1) in December. The form should be completed by anyone applying to the Courts for assistance in resolving a dispute about children or finances following relationship breakdown. The Children and Families Bill seeks to make this a legal requirement.

The form shows the court that before making an application, parties involved in disputes of this nature have either attended a Mediation Information Assessment Meeting (MIAM) to learn about mediation

as an option, have attended mediation, or are exempt.

The new form highlights that any mediator signing off the form should be an accredited family mediator affiliated to one of the Member Organisations of the Family Mediation Council and trained to carry out MIAMs. The form also includes notes and information about mediation for the benefit of Litigants in Person. There are also links to the Family Mediation Service Finder, legal aid information and the recently launched [Sorting Out Separation](#) web app.

Court officers have been provided with guidance on how to deal with applications submitted without Form FM1 and the judiciary have been encouraged to ensure they make appropriate enquiries at the first hearing. We are aware that an option for mediators to select that mediation is not appropriate is omitted from in the latest edition of the form. We anticipate that this will be resolved when the form is revised again in April to reflect the changes to the legal aid domestic violence exemption criteria.

Further information on family mediation can be found on the [Family Mediation Council \(FMC\) website](#).

Family Justice Board update



The Family Justice Board (FJB) was set up in March 2012 as part of the Government's response to the Family Justice Review. The Board's role is to drive improvement

in the performance of the family justice system in order to support delivery of the best possible outcomes for children who come into contact with it.

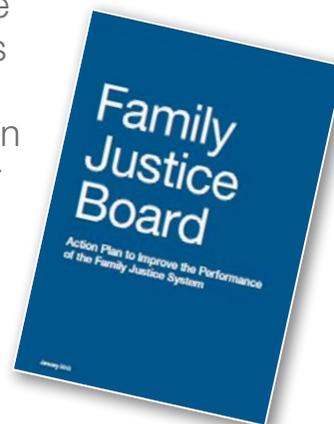
The Board, independently chaired by David Norgrove – who also led the Family Justice Review – is made up of senior figures from the family justice system and has met on a regular basis since March 2012. It reports to Ministers on its progress.

The Board recently published an Action Plan setting out its key activities and the 'Key Performance Measures' by which its performance will be assessed.

To complement and support the work of the FJB, a network of 46 Local FJBs has

been established across England and Wales.

David Norgrove said: "I am pleased to be chairing the Family Justice Board and to have the opportunity to help drive improvement across the family justice system as a whole. The level of change so far is encouraging and I feel confident that we are on track to deliver a better and faster system for everyone who comes into contact with it."



Family justice reform in Wales

As part of the Welsh Government's response to the Family Justice Review, the Family Justice Network was established to bring together core agencies in Wales. The Network seeks to deliver improvements on devolved aspects of the family justice system in Wales and supports and complements the work of the Family Justice Board for England and Wales.

The Network has met twice so far and good progress has been made in the development of an All-Wales Action Plan. This year the Network plans to hold a stakeholder event to bring together key players involved in the Welsh family justice system.

Alongside this, the proposed Social Services and Wellbeing (Wales) Bill was introduced to the National Assembly for Wales in January 2013. The Bill provides a coherent legislative framework for social services in Wales, to deliver the Welsh Government's commitment to integrate these services. This, together with UK Government legislative proposals, will lead to further changes to practice and processes in relation to family court proceedings which will underpin major reforms to the family justice system.



New LSC guidance on prior authority applications

The Legal Services Commission (LSC) has recently published [new guidance](#) on when applications for prior authority for expert costs should be made in legally aided family cases. The guidance comes as a result of work with representative bodies to assist providers in identifying when to submit an application for prior authority and when it is not necessary to do so.

The new guidance covers:

- the circumstances in which prior authority should be sought;
- examples of factors that may indicate that exceptional circumstances apply;
- benchmarks of ‘unusual’ hours below which prior authority should not be sought;
- the most frequently approved number of hours granted for psychologists and psychiatrists, which are the most commonly used expert types.

Focus on: 1996 Hague Convention

In November 2012 the 1996 Hague Convention came into force in the UK.

The Convention – with the full title “the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children” – aims to bring justice and relief to parents and children dispersed over different states.

It seeks to prevent international child abduction and provide a secure legal framework for cross-border contact between children and their parents when families separate. It establishes a framework for the co-ordination of legal systems, and for international judicial and administrative co-operation. This includes providing rules about which country’s courts should hear the case, which country’s law should be applied,

and how measures taken in one state can be enforced in another.

The [International Child Abduction and Contact Unit \(ICACU\)](#) is the central authority in England responsible for administering the work of the 1996 Hague Convention. A list of other Contracting States can be found [here](#).

