Lord Chancellor's Advisory Committee on Judicial Case Management in Public Law Children Act Cases

Final Report

May 2003

1. Introduction

1.1. This is the final report of the Lord Chancellor's Advisory Committee on Judicial Case Management in Public Law Children Act Cases ("the committee"). It has been chaired by the Hon. Mr Justice Munby and The Hon. Mr Justice Coleridge. A list of the Committee members and other consultees is given in the Annex.

1.2. The committee was established in May 2002 by the Lord Chancellor at the instigation of the President of the Family Division. Its purpose was to consider the whole question of case management in Public Law Children Act cases (PLCACs). Its specific terms of reference were:

> *"to consider and approve a draft protocol based on the models of best practice collated from Care Centres and Family Proceedings Courts and agree on target time-scales for each stage of the Public Law Children Act process"*

1.3. The committee had four plenary sessions (beginning in November 2002) but sub-groups representing particular interests met on a number of other occasions as did the core judicial group concerned with detailed drafting.

1.4. As can be seen from the list of represented organisations and consultees, this large committee drew on the experience and expertise of all those agencies which participate at any stage in PLCACs which, by their nature, often involve many parties and are complex. At all times the intention has been to achieve complete consensus amongst participants to ensure the maximum level of voluntary and whole–hearted co-operation after implementation.

1.5. We are very happy to record the overwhelming and enthusiastic support which this project and the resulting Protocol has attracted from all participants. This degree of support undoubtedly reflects the dedication of each individual organisation to doing the best for the children involved in the process and the desire to make improvements whenever possible and within the constraints created by lack of public resources (for which, of course, there is predictably an incessant demand) in a number of related areas.

2. Background

2.1. Section 1(2) of the Children Act 1989 requires the Court to *"have regard to the general principle that any delay in determining any question is likely to prejudice the welfare of the child"*.

2.2. Decisions of the European Court of Human Rights emphasise the need under article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms for *"exceptional diligence"* in this context: see *Johansen v Norway* (1996) 23 EHRR 33, para [88]

2.3. The problem of delay in care cases has long been recognised and specifically considered on previous occasions including:

(a) by Dame Margaret Booth in her report in July 1996 *'Avoiding Delay in Children Act Cases'*;

(b) by the Lord Chancellor's Department in its March 2002 *'Scoping Study on the Causes of Delay'*.

2.4. The Lord Chancellor's Department has been pursuing a programme of work to reduce delay in these cases since the publication of the *Scoping Study*. That study identified case management as an area which, if improved, could have a substantial impact on delay. And all members of the Committee are agreed that one of the surest means by which unnecessary delay can be avoided in PLCACs is by the proper management and control of cases by a specialist judiciary.

2.5. Many Care Centres around the country and the Family Division of the High Court in London have, over the last few years, established protocols/best practice guides/practice directions for improving case management. They have emerged partly as a result of a need to tackle serious issues of localised delay and partly as a result of the national civil case management protocols (following the introduction of the CPR reforms). Similarly, the successful introduction of the new Family Proceedings Rules governing the procedure for ancillary relief cases has demonstrated how court-led case management can alleviate delay and make significant savings in both court time and cost per case.

2.6. The protocol (agreed by the Advisory Committee at its final meeting on 6 March 2003) represents a collation of the best practice from around the country and is the first National statement of common practice and solutions. The annexes have, in addition, been drafted partly by those with specialised experience in particular areas.

2.7. It is proposed that the protocol will be introduced by attachment to a *President's Practice Direction* in May or June 2003 with a view to National implementation on 1 November 2003. The period between May/June and November has been provided to enable familiarisation and training to be achieved amongst all potential users.

3. Format and content

3.1. The format of the protocol is designed to be as simple and user friendly as possible recognising the fact that it will be used by staff in all agencies (legal and non legal) and at all levels of the process. It is the culmination of a process of reduction to six essential steps covering all the stages of a case, from issue of the application to conclusion of the final hearing.

3.2. The time periods for each stage are expressed as *"target times"* to reflect the fact that some degree of limited flexibility is necessary and desirable and also that resource limitations in certain areas, at present, do not admit of the imposition of a more stringently enforceable timetable. However, it is hoped and expected that every reasonable effort will be made not to exceed them and wherever possible to improve upon them.

4. Paramount objective

4.1. **The paramount objective** of the protocol has been to **improve the outcomes for children by reducing unnecessary delay** in PLCACs and, to this end, to achieve the completion of all cases within an overall timetable of **not more than 40 weeks** (save in exceptional or unforeseen circumstances).

4.2. The following **key elements** have been identified to the achievement of that paramount objective:

4.2.1. The highest practical level of **judicial continuity and case management** by one or not more than two judges per case. The precise achievement of this key element will be by:

- **Care Centre Plans** drafted by individual Designated Family Judges in consultation with all local judiciary and local agencies. These plans will be finally approved by Family Division Liason Judges and then lodged with the President. The plans will be periodically reviewed to ensure they remain current.
- **Family Proceedings Court Plans** similarly drafted by the Justices Chief Executive in consultation with Family Panels, Justices Clerks and other local agencies and also lodged with the President.
- **Improved listing arrangements**

4.2.2. **Consistency** of all aspects of case management at all levels of court together with identification of cases requiring "transfer up" at the earliest opportunity.

4.2.3. **Time-tabling to final hearing** at the earliest practical stage and the reduction of intermediate hearings to no more than four (First Hearing, Allocation Hearing, Case Management Conference and Pre Hearing Review) save in exceptional or unforeseen circumstances.

4.2.4. A more **rigorous control of the use of experts**.

4.2.5. A more rigorous **control of the content and quantity of Court documentation** including standardisation where possible.

4.3. The Protocol has been produced to assist all participants in the process (including judges, lawyers, guardians, social workers and other experts) by providing them with a common, timed framework for the case management of every case at every stage and every level. To this end, it sets out the "Six Steps" that every PLCAC should go through and includes guidance on and documentation for the conduct of each of the steps. As is apparent the protocol does not radically change the procedure (no rule changes are required), rather it seeks to distil and streamline the process to its essentials and change the culture within which the proceedings takes place.

4.4. Although the paramount objective of the protocol has been to improve outcomes for children by reducing delay, the Committee believes also that it has a very real potential for reducing the cost (per case) to the public purse. Certain figures were shown to us during the period when the Committee was deliberating. These figures suggested that there might be (on a worst case basis) a small increase in overall cost. However, on a best case basis the savings were evidently very considerable. Our experience of the High Court London Practice Direction is that it is already

delivering higher settlement rates (and at an earlier stage in the process) and shorter final hearings. If this is replicated nationwide, savings of both time and money will follow. For our part we are unable to envisage a situation where better managed cases could cost more than the present less formalised, drawn out procedures. Similarly, our experience in the parallel ancillary relief field is entirely supportive of the assertion that savings of time and money result from a properly managed and disciplined system of case handling.

4.5. Apart from direct cost savings, there is also potential for indirect savings where cases take less time and children are eg. retained for less time within the care system.

5. Major obstacles to success

5.1. PLCACs are complex and involve many agencies, all of them publicly funded in one way or another. The Committee was able to resolve many current concerns and other issues that arose during its deliberations from different quarters on its way to achieving consensus. However, there remains an overarching concern that better outcomes for children and further reductions in delay require further work and investment to complement and reinforce the efficacy of the Protocol.

5.2. The Protocol is an essential step forward, but the Committee would like to record the following major obstacles to real success in this area:

5.2.1. **Social services departments** continue to be seriously understaffed, suffering both recruitment and retention of staff problems. This critically limits their ability to speed up the pre-application stages in the care process. It also has the effect that, were they to focus more of their precious human resources on the actual litigation stage, their other roles in care, prevention and education would be likely to be compromised

5.2.2. **CAFCASS** has a shortage of guardians which, in parts of the country, remains significant. Effective case management within the Courts and Cafcass will alleviate some of the pressure. Increased funding for the next financial year is obviously welcome and helpful. However, until guardians can be promptly allocated at the start of each case throughout England and Wales neither the children nor the Courts will be receiving the essential and proper service.

5.2.3. **Publicly funded remuneration** for the legal profession must reflect the fact that PLCACs require the full input and co-operation of experienced, specialist practitioners. Without such practitioners the protocol will not work to its best advantage. Underpayment of the practitioners who do this work will inevitably lead to a shortage of such specialist lawyers (and accordingly in the future to a shortage of specialist judges, both part and full time) as the brightest and best turn to better remunerated fields of practice. Remuneration must also be structured to reflect the fact that the Protocol requires advocates to do considerably more work at the early stages of a case to ensure the early identification and narrowing of issues.

5.2.4. The need for significantly more **family sitting days** in some areas

5.2.5. A **shortage of experts** in a number of fields prevents the swift hearing of cases in some areas. The Protocol should help but the problem persists.

5.2.6. **Local listing practices** in some places call for a radical change of culture. Specialist judges are at the heart of the Protocol's success but even those judges cannot case manage effectively if the listing arrangements do not accommodate the need for continuity and also allow for a sensible amount of reading time prior to hearings. In less busy courts and rural areas this is sometimes hard to achieve and requires special attention. The proper exploitation, at the case management stage, of the available expertise of many District Judges is also sometimes overlooked. Finally, proper training and support from all departments of the Lord Chancellor's Department and the Court Service is essential.

6. The introduction of the protocol should lead to better use of available resources and so reduction of unnecessary delay. However, it must be remembered and emphasised that PLCACs, by their very nature, sometimes call for flexibility and delay. The target in every case is to get the best possible outcome for the child concerned. There will always remain cases where there is a need for adapting or prolonging the procedure to fit changing circumstances or allow for constructive delay. The right answer cannot be sacrificed on the altar of speed and efficiency.

7. Conclusion

7.1. The work of the Committee has been facilitated by an exceptional level of commitment to the cause of improving the use of available resources, reducing delay and an overwhelming consensus on the need for better and more effective continuous case management by specialist judges. The Committee is confident that this consensus and commitment will be transmitted through the organisations represented on the Committee, through the Court system and through Government and that this will result in real reductions in delay and corresponding cost savings.

7.2. We have from time to time expressed anxiety at the suggestion that the Protocol might be introduced initially on a pilot basis. We repeat that we believe that to be an unnecessary and retrograde step. We strongly recommend that the Protocol be implemented nationally in accordance with the timetable set out in para 2.7 of this report. At the same time on-going careful but simple monitoring by the Care Centres and FPCs to measure the effect of the Protocol should be put in place (as is already happening in the High Court in London).

7.3. We would like to express our most sincere gratitude to all the members of the Committee for the enormous amounts of both time and effort they have invested in this project. Many of them are from the private sector and gave much precious time without reward. In this regard Ernest Ryder QC calls for special mention. He has been the "drafter-in-chief" without whose encyclopaedic knowledge and dedication to the cause this Protocol would not have finally emerged. His Honour Judge Cryan's input on the Care Centre and FPC Plans and other ancillary documents has also been particularly demanding of time and sensitivity.

Hon Mr Justice Munby
Hon Mr Justice Coleridge