



HER MAJESTY'S
COURTS SERVICE
hmcs

Management Proposals to Develop a Unified Family Service

**Summary of comments and way forward in relation to a Position Paper
published on 17 February 2005**

[leave this page blank – back of cover page]

Contents

Introduction	5
Background	7
Current Position on the Unified Family Service programme incorporating the responses to the Position Paper	9
A summary of the comments received on the paper, including detailed responses to specific headings in the paper	37
Annex A - Position Paper Recipients	45
Annex B – List of Respondents	47

Introduction

This document is a summary of the comments received in relation to the Position Paper – “Management proposals to develop a Unified Family Service” published on 17 February 2005.

It is set out as follows:

- the background to the Position Paper;
- Current Position on the Unified Family Service Programme incorporating the responses to the Position Paper; and
- a summary of the comments received on the paper, including detailed responses to specific headings in the paper.

Further copies of this report and the position paper can be obtained by contacting **Maya Sooben** at the address below:

HMCS London Region
1st Floor
10 Maltravers Street
London
WC2R 3EU
DX 44451 Strand
Telephone: 020 7073 4874
Email: Maya.Sooben@dca.gsi.gov.uk

This report is also available on Her Majesty's Courts Service website at: http://www.hmcourts-service.gov.uk/publications/policy_strategy/index.htm

Background

The Position Paper, "Management Proposals to develop a Unified Family Service" was published on 17 February 2005. It invited comments on the following headings in the paper:

1. Introduction and Overall Strategy
2. Progress to Date
3. Evaluation Process
4. Facilities
5. Judiciary
6. Legal Services Commission
7. Application Fees
8. Court Jurisdiction
9. Management Structure
10. Specialist Staff
11. Administrative Support Functions
12. Managerial Reporting to Area Director
13. Family Proceedings Legal Representation
14. FPC / Senior Legal Adviser Representation at Area Director Level
15. Dual Tracking Career Paths for Legal Advisers

The Position Paper asked for comments on the emerging proposals, preferably by 31st March 2005. The date for comments was extended to the end of April 2005 and comments were received up to the end of June 2005.

The Position Paper was not originally published on the Internet. The HMCS Internet site was not available in February and subsequently papers were not published in the run up to the election. The Position Paper was however sent to all Family Stakeholders as identified in Annex A. A list of respondents is at Annex B.

This report summarises the comments and how they have influenced the way in which the proposals are now being taken forward.

Current Position on the Unified Family Service programme incorporating the responses to the Position Paper

This paper covers both judicial and management elements for delivery of family business and is produced jointly by the President and HMCS.

This section pulls together various areas of the Position Paper, the responses and how this area of work is being taken forward. Extracts from the Position Paper are highlighted in Italics and the area of the Position Paper that is referred to identified in each title (Position Paper & Number).

The department has recently published a post-consultation report following on from the paper, '*A Single Civil Court?*' that was issued in February 2005. The post-consultation report announced plans to unify the civil and family jurisdictions and to create new, single-tier, national and fully flexible Civil and Family Courts. But as that work will require the introduction, successful passage and implementation of primary legislation, it necessarily forms part of a longer-term and wider strategy. So with the future vision of fully unified jurisdictions in mind, the department will continue to improve the existing system using existing powers so that court users can start to feel benefits long before we are able to introduce a Bill.

The Unified Family Service Programme is paving the way for a Single Family Court. This programme incorporates the changes that can be made within current legislation to integrate work of the Family Proceedings Courts and County Courts.

Many respondents to the Position Paper found the term Specialist Family Centre confusing. In the longer term under '*A Single Civil Court?*' it is likely there will be Family Court Centres. HMCS has therefore decided to change the term from Specialist Family Centre to Family Courts Centres (FCCs).

1. Overview
2. Court Jurisdiction & Scope of the Unified Family Service Programme
 - 2.1. Children Act - Private Law & Public Law
 - 2.2. Adoptions
 - 2.3. Divorce, nullity, judicial separation & civil partnerships
 - 2.4. Maintenance
 - 2.5. Human Fertilisation & Embryology
 - 2.6. Injunction Applications
3. Judiciary including Magistrates - Overview
 - 3.1. County Court Judiciary - High Court Judge, Circuit Judge & District Judge
 - 3.2. District Judge (Magistrates' Court)
 - 3.3. Magistrates
 - 3.4. Gatekeeper Role
 - 3.5. Judicial Continuity
4. Current Court Structure
 - 4.1. Family Proceedings Court (FPC)
 - 4.2. County Court
 - 4.3. High Court
5. New Structure
 - 5.1. Care Centre
 - 5.2. Family Courts Centre – Options
 - 5.2.1. Local Hearings/Combined Administration
 - 5.2.2. FCC - Combined Care Centre & FPC
 - 5.2.3. FCC - Combined County Court & FPC
 - 5.2.4. Virtual FCC/Paired FCC
 - 5.2.5. Other ways of working
 - 5.3. Accessibility/FCC Outreach Arrangements
 - 5.4. National/Regional Back Offices
6. Facilities (Accommodation and IT)
 - 6.1. Accommodation
 - 6.2. IT
 - 6.3. Video Conferencing
7. HMCS Staff
 - 7.1. Administration
 - 7.2. Legal
8. Partner Agencies
9. Fees & Remuneration
 - 9.1. Court Fees
 - 9.2. Legal Services Commission – Remuneration
10. Unified Family Service Programme
 - 10.1. FCC Pilot Updates
 - 10.1.1. Birmingham
 - 10.1.2. Barnet
 - 10.2. Evaluation Criteria
 - 10.3. Cost

1. Overview

(Including Position Paper 1. Introduction & Overall Strategy)

Extracts from the Position Paper:

“The overall national strategy for family justice is part of the Government’s wider access to justice strategy and is to assist citizens to resolve family disputes without recourse to courts. Education about parental rights and responsibilities and access to mediation are part of this wider strategy. Where, however, the courts are required to resolve family issues, hearings should take place at the most appropriate tier of court. To that end County Courts and Family Proceedings Courts (FPC) would work together as one unit to achieve greater flexibility in the use of resources and the seamless transfer across of family work between FPC lay justices, District Judges and Circuit Judges. Parties should be able to use the same processes and procedures, across all tiers and where possible these tiers will sit together in the same building.”

“The President of the Family Division and DCA Ministers have set out a vision for an integrated family justice system. The emerging vision for combining Family work from County Courts and Family Proceedings Courts was set out in a policy document in June 2003 in JCE letter 123 of 2003. HMCS formally comes into existence from 1st April 2005. HMCS plans to bring together the administration of all family work in a way that will deliver a unified family service. This Position Paper is part of that work.”

Way Forward: Overall the strategy is broadly supported.

2. Court Jurisdiction & Scope of the Unified Family Service Programme (Including Position Paper 8. Court Jurisdiction)

The Unified Family Service Programme has been established to oversee the evaluation of the Family Courts Centre pilots and to take forward other projects required to test the proposals for a Unified Family Service.

The Unified Family Service Programme scope will include the following areas of law:

- 2.1. Children Act - Private Law & Public Law**
- 2.2. Adoptions**
- 2.3. Divorce, nullity, judicial separation & civil partnerships**
- 2.4. Maintenance**
- 2.5. Human Fertilisation & Embryology**
- 2.6. Injunction Applications (PP 8. Court Jurisdiction)**

Extract from the Position Paper:

“Applications made under the Family Law Act for non-molestation and occupation orders may be dealt with at SFCs which will have the advantage of having experienced family judiciary always available. Regional and Area Directors will also wish to consider whether other courts should also deal with these types of application, which are frequently applied for on an expedited emergency basis in order to provide an appropriate local responsive service and to consider what out of hours provision is appropriate for local needs.”

Way forward: Responses were mixed. Family Courts Centres will deal with injunction applications, however there is no suggestion that applications must be issued in the FCC. It may be that the initial hearing is at any County Court or Magistrates Court (not necessarily before an FPC bench or a member of the judiciary with a family ticket) and the full hearing could be transferred to the FCC before a member of the Judiciary experienced in family law and where facilities may be better.

3. Judiciary including Magistrates - Overview (Including Position Paper 5. Judiciary & 13. Family Proceedings Legal Representation)

Extract from the Position Paper:

“A change to the “Allocation to Judiciary Directions” could potentially create three tiers of judiciary able to deal with family cases allocated in accordance with the complexity of the case:

- *High Court*
- *Circuit Judge*
- *District Judge/Family Proceedings Court.*

Subject to appropriate experience and training all could potentially have concurrent private and public law jurisdiction. This would enhance the ability to transfer a family case to be heard by judiciary at the most appropriate level to deal with the issues as they emerge or are resolved during the stages of the public law protocol or under the private law framework.”

3.1. County Court Judiciary - High Court Judge, Circuit Judge & District Judge

In the County Courts the President of the Family Division has overall responsibility for the work of the Judiciary in all family cases. Each Circuit has a High Court Judge who is the Family Division Liaison Judge (FDLJ) and each Care Centre has a Circuit Judge who is the Designated Family Judge (DFJ).

More information on the Judiciary can be found on the DCA Website as follows:
<http://www.dca.gov.uk/judges.htm>

Although County Courts may have a specific jurisdiction in relation to family proceedings (as explained in 3. Current Court Structure), the Judge that is hearing the case must also have been nominated (ticketed) to hear cases from that particular part of the family jurisdiction. For example in a Care Centre the Circuit Judge hearing a Public Law case must be nominated for public family law proceedings.

The Family Proceedings (Allocation to Judiciary) Directions sets out the different ticketing arrangements for all judiciary hearing family cases in the County Court & High Court. The President of the Family Division is responsible for nominating judges for specific tickets. It should be noted that District Judges of the PRFD have additional powers to District Judges in County Courts. On 5 September 2005 the Lord Chancellor, with the concurrence of the President of the Family Division, amended the Family Proceedings (Allocation to Judiciary) Directions. This enables Recorders nominated for public law proceedings to hear care cases in the county

courts in all circumstances and there are now two tickets in relation to care work for District Judges.

3.2. District Judge (Magistrates' Court)

The Senior District Judge (Magistrates' Court) identifies which District Judges (Magistrates' Court) are ticketed to sit in FPCs. Similar to a member of the FPC bench a nominated DJ (Magistrates' Court) can then hear all cases within the jurisdiction of the FPC tier of court. As of 12 September 2005 the Lord Chancellor has delegated the authority for the family ticketing of District Judges (Magistrates' Court) to the President.

3.3. Magistrates

Within magistrates' courts, family proceedings are heard by the Family Proceedings Court (FPC). Magistrates that have been selected to sit on a FPC Bench have jurisdiction to hear **all** cases within the jurisdiction of the FPC tier of court.

Extract from the Position Paper:

"The precise arrangements for ticketing magistrates to deal with family cases once the present Family Panel elections cease, has yet to be finalised. Creation of SFCs is likely to require some family ticketed lay magistrates to have to travel to a different hearing centre in order to hear family proceedings, from the courthouse normally attended for criminal proceedings. SFCs will offer improved facilities within which to work. Travel expenses will be paid but some FPC members may be unwilling to make the journey to a different centre."

Way forward: Respondents were concerned with the ability or willingness of magistrates to travel to other courts. There was a suggestion in the position paper that the number of FPC may reduce. In rural areas this is less likely to happen. Options for FCCs explores this in more detail (5.2).

Extract from the Position Paper:

"At present to be a chair-taker in a FPC, a magistrate has first to be an approved chair-taker in the adult criminal court. If the proposal to increase the percentage of time in FPCs is supported by the President and the Lord Chancellor, then consideration could be given to appraisal and chairmanship also being amended to enable a magistrate to be a chair-taker in just family courts, if that is where most of his or her sittings take place. This will require amendment to the Magistrates' National Training Initiative (2) guidance and Bench Training and Development Committee guidance. This sort of arrangement has been in operation at Wells

Street, at present the only dedicated Family Proceedings Court. If there is agreement to an increase in the percentage of time that a lay magistrate can devote to family work, this should mitigate the effect of any family magistrates who might not wish to continue with family work at a different hearing centre.”

Way forward: The consultation papers “Authorisations to sit in family proceedings courts and youth courts” and “Specialisation of Family magistrates and the balance of sittings between the adult court and the family proceedings court and/or the youth court” are being published at the same time as this paper. These consultations incorporate all issues in relation to magistrates sitting in family proceedings courts.

3.4. Gatekeeper Role

Extract from the Position Paper:

“A District Judge at each SFC could act as a gatekeeper for private family law applications, ensuring that wherever the application was made, attempts were made to assist the parties to reach agreement without a contested court hearing, and if a hearing is required the case is transferred across to the most appropriate tier of judiciary, usually at FPC level. Legal advisers would also be able to perform a similar role for cases commenced at FPC level within a SFC. A revision of the “Allocation to Judiciary” Directions and clear guidance would assist in allocation decisions. These arrangements would dovetail with the private family law framework.”

Way forward: Respondents views were mixed on who was best positioned to undertake the Gatekeeper role. The consultation paper “Focusing judicial resources appropriately – The Right Judge for the Right Case” was published on 19 October this consultation closes on 20 January 2005. This paper makes recommendations in relation to the Gatekeeper role as follows:

- Transfer of public law cases from the FPC to the county court should be determined by the legal adviser, with the Designated Family Judge and, in turn, the Family Division Liaison Judge using their general supervisory roles to oversee the process.
- Case allocation to the High Court, including on entry, should be determined by the District Judge, with the Designated Family Judge and, in turn, the Family Division Liaison Judge using their general supervisory roles to oversee the process.
- In the Family Courts Centres, legal advisers and District Judges would work much more closely and consistently in determining the type of case suitable for relevant tiers of court. This model should be piloted in Family Courts Centres to assess its effectiveness in allocating cases to the tier of judiciary appropriate to their complexity.

The Gatekeeper role will be piloted at the Barnet & Birmingham pilot FCC sites. This will also include the Chester pilot experience where transfers between the Civil Justice Centre and neighbouring FPC have been encouraged and facilitated since October 2004.

3.5. Judicial Continuity

Extract from the Position Paper:

“It would be valuable for Family Proceedings Court members sitting at SFCs to be encouraged, through appropriate advisory guidance, to sit sufficiently frequently in family cases to enable them to maintain confidence and competence and to enable there to be judicial continuity when this is required, for example by at least one member of the original bench being listed for subsequent related hearings. The justices’ rota arrangements will have to give precedence to family sittings, especially where judicial continuity is required.”

“At present Advisory Directions require magistrates to play a full part in criminal rotas in addition to family work. In order to gain sufficient experience to be confident in family cases, and to be able to provide judicial continuity when required, it is suggested that DCA’s Judicial Policy Group should reconsider this issue, and make representations to the Lord Chancellor to change the present advisory guidance. The guidance should encourage an increase in the proportion of time a lay magistrate, ticketed in family, could devote to family issues. At present many cases are not heard at an appropriate level, often creating delay. A FPC, for example, might not be able to convene a Bench of three to sit for the required number of days and therefore transfer the case to be heard by a Circuit Judge. Subsequently, the time estimate may be found to have been over estimated, but it is rare for the case to be transferred back. Under these proposals, a District Judge with FPC jurisdiction might be able to sit for the required time and the case would be retained at FPC level. In the event, the hearing time having reduced, the original FPC Bench might be able to deal with the final hearing in the shorter number of days now required. Overall the case would be heard using less court time, with less delay and using an appropriate level of judiciary at a local venue.”

Way forward: Responses were equally split on what constitutes continuity of cases at FPCs. The Presidents view on continuity of a Bench is at least one member of the bench (preferably the Chairmen) being present at all hearings.

4. Current Court Structure (Including Position Paper 1. Introduction & Overall Strategy)

There are currently 3 tiers of court that have jurisdiction to hear family cases, Family Proceedings Courts (FPCs) in Magistrates Court, County Courts and the High Court. As you will see the current court structure and how that links with the level of Judiciary is quite complex. The Department aims to resolve these issues with “Single Civil and Family Courts” which will remove jurisdiction and leave judicial tier/ticketing as the sole basis for allocation of work.

4.1. Family Proceedings Court (FPC)

Broadly speaking all proceedings except Divorce (there are a number of ancillary relief matters, which cannot be dealt with in the magistrates courts) can be issued in any FPC. Complex cases (as defined by specific criteria) are transferred to the County Court and High Court. Magistrates and District Judges (magistrates Courts) sit in the family proceedings courts. They have jurisdiction to deal with all matters coming before the family proceedings courts.

4.2. County Court

All County Courts can deal with Family Law Act cases. County Courts then have different jurisdictions in relation to family proceedings, which are described below:

Type of County Court	Jurisdiction
Divorce	Divorce only
Family Hearing Centre	Divorce & Private Law
Adoption Centre	Divorce, Private Law & Adoptions
Care Centre	Divorce, Private Law, Public Law & Adoptions

Some Care Centres also deal with Intercountry Adoptions, 10 Courts will have jurisdiction for matters relating to Civil Partnerships. There are currently 56 care centres and 64 (56+8) adoption centres across England & Wales. The Principal Registry of the Family Division is the Care Centre for London.

It should be noted that judicial ticketing and court jurisdiction are completely separate. It is likely that a County Court could have a member of the judiciary sitting who has a ticket for public law cases. A member of the judiciary has the discretion to hear a public law case at another location however this would be viewed as x Care Centre sitting at y County Court.

4.3. High Court

Some County Courts will also have jurisdiction to hear High Court cases, generally in family cases this is the Care Centre. High Court Judges will sit periodically at Care Centres in each Region.

5. New Structure

(Including Position Paper 1. Overall Strategy, 2. Progress to Date, 8. Court Jurisdiction & 11. Administrative Support Functions)

Each HMCS Area will need to make decisions on how family business should be delivered. This will be a decision for the Judiciary and the Area Director. This part of the paper identifies some of the options that could be considered when setting up a new structure for the delivery of family business across all tiers of court.

5.1. Care Centre

Extracts from the Position Paper:

“Over time it is intended that the number of Designated Care Centres will more closely align with the HMCS Areas and act as the hub in each of the areas. High Court Judges and Circuit Judges will usually sit at Care Centres hearing both Public Law and Private Law cases of appropriate complexity. It is recognised that issues of geography and workload may mean that this model is adapted to meet the needs of some locations. For example, in a few areas there may still need to be more than one Care Centre, or a shared Care Centre with a neighbouring area. A High Court Judge might sit infrequently at some Care Centres. If the Care Centre has sufficient space, Family Proceedings Courts may also be listed at the Care Centre.”

“We need to work towards aligning local family inter agency committees, such as local Family Justice Councils and Care Centres with the 42 HMCS areas, subject to appropriate geographical coverage. The Care Centre will remain as the focal point of the area’s family activity. If the Care Centre can accommodate the full range of levels of family business then it will include Family Proceedings Courts within the building. The Designated Family Judge and senior local judges will be based at the Care Centre”

“It is not suggested that there should be any increase in the existing number of Designated Family Care Centres. Care Centres will be the hub for family issues in the area. The Designated Family Care centres would co-ordinate and oversee the hearing of public law protocol work and the private law programme in the area. This will ensure that delays are minimised, by providing guidance to allocating caseload to the appropriate local SFCs and co-ordinating the deployment of the senior family judiciary in the area. The Designated Family Care Centre could be the focus of the area’s link with the Regional administrative judicial officer responsible for judicial itineraries.”

Way forward: There were no specific comments in relation to the role of the Care Centre. However there was some confusion about how the Care Centre concept fits with the FCC. The status of the Care Centre will not change. It is likely however that a Family Courts Centre might be established at a Care Centre by

incorporating the work of a FPC. This should be viewed as a Care Centre and Family Courts Centre. The different options for Family Courts Centres is explained in more detail below.

5.2. Family Courts Centre – Options

Extracts from the Position Paper:

“The next type of family court would be part of outreach arrangements from the Care Centre, co-ordinated by the Care Centre at the hub, like the spokes of a wheel. It is proposed that HMCS in partnership with the judiciary at all levels, will work towards creating, over time, a network of “Family Courts Centres” (SFC). These would be integrated family justice hearing centres, covering all types of family disputes currently heard in County Courts and Family Proceedings Courts. SFCs should, like Care Centres, become centres of excellence with appropriate facilities and assistance in one building. Where there are sufficient courtrooms and workload, Circuit Judges, District Judges and magistrates sitting as a Family Proceedings Court will all be hearing cases at one venue. In some parts of the country, however, workload, geography or accommodation issues may mean that this has to be adapted to fit local needs and a court might only have District Judges and magistrates sitting as a Family Proceedings Court listed in the building. SFCs are likely to have work from other jurisdictions listed in other parts of the courthouse with appropriate separation of facilities.”

“Individual Judges and magistrates are likely to continue to hear both civil and family matters or crime and family matters and when sitting in a SFC including civil as well as family where appropriate.”

Way forward: Many respondents to the Position Paper were concerned that it would not always be possible to have a Family Courts Centre particularly in rural areas. This section aims to explain the different types of FCC that could be set up and the different ways of working, which could be considered for suitability depending on the profile of the Area.

A Family Courts Centre will *generally* have as a *minimum* the following tiers of court sitting in one building:

- Family Proceedings Court
- County Court (Family Hearing Centre)

With the following judiciary:

- Family Magistrates/District Judge (Magistrates’ Court)
- District Judge

- *it is anticipated that most sites will also have a Circuit Judge and therefore be able to transfer complex cases without a physical change of venue*

Extract from the Position Paper:

“At FPC level the number of venues will decrease, as many FPC courts sit very infrequently with low volumes of cases, which in some cases has not enabled FPC members to maintain sufficient experience in family cases. SFCs will enable FPCs to sit far more frequently, with the advantage for court users of ease of listing on consecutive days, suitable facilities and greater expertise and assistance from specialist administrators, as well as potentially more experienced FPC members and legal advisers due to hearing increased volumes of cases. The Designated Family Judge would provide a listing overview for the area and ensure that the gravest care proceedings were listed before senior judiciary at an appropriate venue.”

Way forward: Respondents were concerned with the ability or willingness of magistrates to travel to other courts. It is not known to what extent the number of FPCs would reduce particularly in rural areas, it is likely that courts will combine so although the number of venues will reduce the number of locations could remain the same. Service should where possible be available every day however rather than intermittently.

5.2.1. Local Hearings/Combined Administration

Before detailing the different types of Family Courts Centre that could be established it is first useful to consider whether there will be changes to both the administration and location of court hearings. Where courts are currently situated in the same vicinity the hearings are likely to be centralised at one location, the pilot in the London Region at Barnet County Court for example where Barnet FPC is moving into the County Court (as well as two other FPCs from other boroughs). However where courts are dispersed (and creation of a FCC impractical) there is always the option to centralise the administration but keep local hearings (Chelmsford). It is also likely that you could have both, Birmingham for example has hearings for what was Birmingham FPC and Birmingham County Court at one location in Birmingham at Temple Court, which is therefore a Family Courts Centre, however there are still local hearings for Sutton Coldfield and Solihull FPC's but administration is centralised at Temple Court. This might open up more options for Area's looking at location for FCC's and is particularly important when considering accessibility. Where a FCC is being established and there is a proposed change to the type of hearing at a location a court user consultation would be required.

5.2.2. FCC - Combined Care Centre & FPC

It is very likely that there will be a Magistrates Court in the same town as the Care Centre. This option is the pilot that is ongoing in Birmingham with the creation of the Birmingham Family Courts. It is also likely that the Care Centre would be the site for the FCC. This court could be known as the Care Centre and FCC.

5.2.3. FCC - Combined County Court & FPC

It is also likely that there will be magistrates courts and county courts in the same town. The FCC could be based at either site (taking into account IT infrastructure and case management system). Due to the legal framework in which we work the Care Centre Public law work could be heard at this FCC so long as it is overseen by a DFJ at the Care Centre. This option is the pilot that is due to go live at Barnet County Court. Barnet County Court has been taking work from the London Care Centre (PRFD) for over a year. This is known as the PRFD sitting at Barnet County Court and is also happening at Kingston County Court, by linking the FPC work a FCC is created. This option is more likely to be chosen in some of the more rural areas. The UFS Programme will identify a further pilot site within a rural area, to ensure this option for a FCC is fully tested.

Extract from the Position Paper:

“To provide a better service to the public it is suggested, where appropriate, applicants would lodge their application and paperwork at the most convenient SFC rather than the Designated Care Centre. Advantages include avoiding the costs and time of transferring paperwork unnecessarily to the Care Centre when the case may be more appropriately heard more locally. Appropriate systems will be used to ensure that the cases remain judicially under the oversight of the designated care centre. This type of arrangement has been used since September 2003, to facilitate local public law cases being heard by a circuit judge at Barnet County Court rather than the Principal Registry of the Family Division, which is the Care Centre in London.”

Way forward: Where this FCC option is chosen with public law work from the Care Centre being heard at the FCC, parties would be able to lodge their paperwork directly with the FCC. The judicial oversight would still be available and the convenience of the public in their ability to lodge papers locally enhanced. In the future the “Single Civil and Family Courts” along with a single IT system will enable papers to be lodged at any court location removing the geographical/physical location barriers.

5.2.4. Virtual FCC/Paired FCC

Extract from the Position Paper:

“Inevitably Care Centres and SFCs will differ in size depending on circumstances in different parts of the country. Where there is insufficient court space to

combine County Court and FPC work in the same venue consideration could be given to working closely with other court buildings in the vicinity. Courts are sometimes within easy walking distance of each other, creating “virtual” SFCs. In such cases close co-operation on management, scheduling and procedures could facilitate joint working and transfers across jurisdictions without actual co-location. This type of working arrangement is also being evaluated, for example arrangements at Chester Combined Courts Centre and Chester FPC.”

This could also be referred to as a paired site and potentially could have the same manager for family business. The administration might also be combined at one of the two neighbouring buildings but cases listed as appropriate at courtrooms across the two sites.

5.2.5. Other ways of working

The West Midlands already has a combined administration for all its FPC's based at Kidderminster with local hearings at original locations.

5.3. Accessibility/FCC Outreach Arrangements

With all these options for FCCs it is always important to consider accessibility for court users. Any changes to location of hearings will require consultation.

Extract from the Position Paper:

“Where, the available estate, level of work, or geography would not enable the combination of Care Centre and SFC to provide a reasonably accessible service for court users, individual cases could be listed on an “outreach” basis in suitable court accommodation. It is also clear that, if these proposals are accepted and piloted, the proposed network of courts will take a number of years to develop. In the interim period many of the existing arrangements whereby County Courts list only Private Family Law issues mixed with other civil work, will continue.”

Way forward: Respondents were very concerned about accessibility for court users. The different options for setting up a FCC will ensure accessibility is always considered. Some respondents were also confused about the meaning of outreach arrangements. This means having the flexibility to continue to list an individual family case at another HMCS court venue, perhaps a venue where family cases are not normally listed, to meet the needs of specific individuals.

5.4. National/Regional Back Offices

Extract from the Position Paper:

“County courts currently process many family applications that will proceed in the absence of parties, most of them divorce applications. Some of this type of work may be processed centrally electronically or even heard at a national centre if they do not require personal attendance by the parties, if appropriate IT support can be developed. Where parties do not attend the work takes up a great deal of administrative time but not a great deal of courtroom time. Teams of staff at SFCs can be smaller and more focussed on the needs of those who need to attend at court, if national support centres process this work, taking advantage of economies of scale and processes, which are less paper based. Any national or regional administrative support centres need to be located in an area where employees are easier to recruit. There are a number of current examples of this type of working arrangement within the County Court such as the County Court Bulk Centre at Northampton. Where parties are attending court, then cases would be listed locally.”

“Another type of work often outsourced to areas where staff are easier to recruit is word processing court orders such as the team processing court orders at Haywards Heath, supporting London County Courts. Subject to sufficient funding, HMCS will work to develop over time an integrated IT system which will avoid orders, some of which are already word processed by the judiciary in court, having to be re processed out of court due to incompatible systems.”

Way forward: Respondents were opposed to the use of bulk or electronic processing and have a distrust of such centres. Firstly, it is useful to point out that there will still be local hearings (where required by the parties) for cases that have been processed at a centralised administration centre. There may have been some confusion on this aspect, which referred to the potential for applications to be received on-line and other potential benefits through the use of IT. If parties wish to attend the hearing it can be listed at an appropriate local venue regardless of wherever the electronic application is received.

HMCS is considering the use of Regional Centres rather than National Centres for processing some administration. In terms of family work these could be used for areas of work such as the collection of maintenance payments and enforcement of maintenance, however applications to vary orders would still be dealt with at the FCC. In summary there could be Regional or Centralised administration of administratively intense processes with local hearings at the FCC.

An example might be the development of an ability to receive divorce applications on line which could be processed at a larger location with local hearings when required.

6. Facilities (Accommodation and IT) (Including Position Paper 4. Facilities)

6.1. Accommodation

Extracts from the Position Paper:

“The constraints sometimes presented by the existing estate are recognised and Area Directors, in partnership with the Judiciary, will be balancing the needs of all jurisdictions in making decisions about use of the estate. In most locations, whilst family cases will, wherever possible, be physically separated from other types of work, individual courthouses will accommodate a range of court business.”

“Decisions will be taken by each area about what additional family hearing centres are required locally to provide accessible services to the public. Where possible these will be SFCs which meet, as far as possible, the objectives set out in terms of facilities (including consideration of adequate security) and enable greater family specialisation by both the judiciary and supporting management and administrators.”

“The reality of the constraints that might be presented by the existing estate is recognised. Regional Directors and Area Directors will have to work within available budgets and resources. Nevertheless it is important to set out the standards HMCS are working to achieve, in particular placing the court users needs in a position of importance. HMCS’s estates managers should have available to them best practice in design of family courts gleaned from recent experience, for example the designs used for First Avenue House. This information could then be called upon to inform any decision-making on refurbishment or new estate possibilities. SFCs will be considered as part of the overall estates strategy across all jurisdictions in an area. It will be rare for there to be funds available for new buildings but opportunities may emerge for better use of the overall combined courts estate, that will be available to HMCS after April 2005, as part of a combined estates strategy. It is suggested that when considering SFCs the following requirements should be considered whenever possible:

- Informal family courts (i.e. not intimidating, whilst maintaining security), suitable for all levels of judiciary to enable maximum flexibility*
- If the courthouse is also carrying out criminal work, separate waiting and reception areas and a separate entrance*
- Appropriate security arrangements*
- Interview rooms (as close to the courts as possible)*
- Directions rooms*
- Retiring rooms*
- Additional rooms for court users, e.g. Social Services, Advocates, CAF/CASS,*

- *Refreshment facilities*
- *Children's secure room, with an entrance from outside not visible to the general public*
- *Children's playroom / waiting area – appropriate facilities for children who need to attend court proceedings*
- *Offices for the District Judges which may double as Directions Rooms*
- *Sufficient office space for the staff estimated to be needed to support SFCs*
- *Applications office for public attending to lodge applications personally.*
- *Sufficient storage space for the (often very large) files involved in each case*
- *Secure storage space (e.g. for adoption records)*
- *Conference/dining facilities to encourage the tiers of judiciary to meet together”*

Way forward: Overall the proposals for facilities were welcomed by respondents and therefore the list above remains unchanged. Some respondents however preferred the layout of FPCs rather than PRFD. HMCS's estates managers should have available to them best practice in design of family courts gleaned from recent experience and the views of the family Judiciary on layouts which combine sufficient security with the appropriate level of informality for a family court setting.

6.2. IT

Extracts from the Position Paper:

“IT support for family administration is at present poorly developed and not integrated across court centres. This hampers the ability of HMCS to efficiently utilise back office functions and creates inefficiency and risk as paperwork is transported around. As a minimum, funding needs to be provided to enhance, upgrade to a modern IT platform and integrate across court centres one of the present inadequate family support packages and in particular to provide IT based listing support. The pilots will evaluate the ability of existing systems to meet business needs.”

“Her Majesty's Court Service (HMCS) would support family courts through integrated management and administrative arrangements, with the aim that specialist family staff would use one IT system, processing family work across all jurisdictions”

Way forward: Respondents highlighted the need for a single IT solution but were concerned that this would be costly. The UFS Programme is looking at the options for a single IT solution for family across all tiers of court. The HMCS Board will consider any proposals for changes to IT systems.

6.3. Video Conferencing

Video Conferencing was not specifically referred to in the Position Paper however respondents highlighted their desire to see this technology in FCCs. All Care Centres have video conferencing facilities. These facilities could be used to increase accessibility in relation to family hearings.

More information on Video Conferencing is available on the HMCS website http://www.hmcourts-service.gov.uk/infoabout/video_conferencing/index.htm

7. Staffing

(Including Position Paper 9. What would the management structure look like? 10. Specialist Staff, 12. Managerial Reporting to the Area Director, 13. Family Proceedings Legal Representation, 14. FPC/Senior Legal Advisor & 15. Dual-track career paths for Legal Advisors)

7.1. Administration

Extracts from the Position Paper:

“A Specialist Family Centre Manager would be focussed on delivering results; leading the office team; managing resources, delivering good customer service and working in partnership with the judiciary. The role will encompass:

- Efficient customer focussed processes*
- Listing efficiency taking account of workloads and delay in neighbouring*
- Specialist courts and responding to needs to list on a one off basis at*
- alternative venues to meet particular needs (e.g. disability or remote geography)*
- Achieving family PSA targets (e.g. protocol support)*
- Achieving HMCS targets such as waiting times and customer service.*
- Regular liaison meetings with the judiciary and professional court users.”*

“At present court managers and listing officers do not tend to specialise in just family matters and at present, if specialising, to cover just private law family applications. If the SFC model is followed, the manager and staff will specialise in family work, both private and public law and across County Courts and FPC jurisdictions whilst appointed to the SFC, and will build up confidence and expertise in this complex area of work. There will be the added advantage, of working closely with legal advisers who will be available to give legal advice and guidance and help the office to provide more proactive support to case progression (e.g. chasing compliance with directions). Some staff may choose to make family administration their chosen career path and develop expertise over many years, others may apply to work in SFCs for a defined period of time as part of overall experience in courts administration and management. Specific roles within the offices in addition to a family listing officer, could include a family case progression officer to proactively chase progress of ongoing cases and ensure care protocol cases meet timeframes, referring cases in a timely manner to legal advisers or the judiciary if further directions are required. An early part of this role will be to ensure that any outstanding pre – protocol cares are dealt with expeditiously.”

“The reporting lines would follow those for other Court Managers in large and small areas. Where the number of direct reports is small the Care Centre Manager and Specialist Family Centre Managers, could report directly, championing family issues at Area Manager level. In London Region there is an Area Director with family responsibility and a single Family panel already exists across the region. In

other large areas without a jurisdictional Area Director lead, where there are a number of Specialist Family Centres there could be a senior manager co-ordinating the individual centres, Area Directors will decide whether this person reports directly to the senior management team or through an operations director or Family/Civil Operations group.”

Way forward: Respondents were concerned that specialist family roles would not always be possible particularly in rural areas. This will be the case with the pilot at Barnet County Court, where the Court Manager will have responsibility for both family and civil work at the Court. It is likely that rather than purely specialist roles management will be given lead responsibility for certain jurisdictions. It is possible that there will be a Family Court Manager managing business across two locations (e.g. at paired sites). Respondents agreed that there would need to be co-ordinated management within a unified system. Practically staff and management structures will need to be different at each FCC as they will all have different volumes of work requiring different staff structures, which will be determined at Area level.

7.2. Legal

Extracts from the Position Paper:

“In London more than half of the overall Family Proceedings work is dealt with at a well-established specialist centre at Wells Street that deals solely with Family Proceedings Court work. The overall legal management and accountability for both this centre and the 600 family panel magistrates in GLMCA rest with a family specialist Justices’ Clerk. She is unique in holding a specialist JC role and has established a strong national profile that has enhanced the profile of family issues.”

“There could be a significant role for a full time specialist senior family legal adviser (title to be determined) as a lead role for FPC business within the SFCs. HMCS has established a group to consider legal adviser career paths and roles and these are issues that may be considered by that group. It is suggested the family role could include:

- *Responsibility for ensuring an effective training programme was delivered to*
- *Family Magistrates in partnership with JSB. The senior legal adviser would be a lead trainer and would identify training needs to the Judicial Studies Board and Local Area Bench Training and Development Committees or Magistrates Area Training Committee.*
- *Responsibility for the effective preparation of the Justices Family Rota*
- *Be an FPC representative for family issues on the area’s legal forum and any court user groups.*

- *assisting with the District Judge “gatekeeper” role in determining at which level individual cases could be heard.”*

“(Legal advisers already have the ability to transfer cases. A legal adviser would have an understanding of the reasons for the judicial level determined, particularly if allocation guidance is issued, and could have effective discussions with the “gatekeeper” District Judge and Care Centre if workloads were becoming unbalanced).”

“In future, it is envisaged that there will need to be a dual-track approach for Legal Advisors, that is those who wish entirely to specialise in family work, and those who wish to gain family experience for a period via secondment. Moving the family work into specialist centres will mean that those currently working on a mix of crime and family will need to apply for a secondment to the new centres and work there for a dedicated period, rather than being able to experience family work as part of the mix within their own court. There may also be scope for a team of Family Legal Advisers based in Criminal Courts to be on a regular rota to cover SFC work. The frequency of this would need to be sufficient for them to maintain competence and would enable better cover of workload fluctuations.”

“Others may wish to specialise in family work; indeed the service will need to find those who are prepared to make it their career, so that the centres of excellence can truly develop in depth and breadth of experience. In these cases, the national Court Clerk Competency model will need to be tailored in some way, so that those wishing to specialise in one area are not discriminated against in appraisals. In time HMCS will have to evaluate all new posts created as a result of SFCs as part of its pay grading and review procedures.”

“HMCS will be able to organise SFC secondments centrally as part of a service-wide development plan. Understanding the career aspirations of new Legal Advisors, and helping them to achieve their goal, whether it be specialisation or wider, generic experience will be of benefit to the service and is likely to improve career progression and retention. Central co-ordination of this process within an area or possibly wider, would seem sensible, given the greater logistical challenge of staffing the new SFCs, where the need for dedicated, specialist staff is much greater.”

“Currently it is only possible for legal advisors to specialise in family work once the initial usually two-year training period in criminal work is complete. A larger number of dedicated SFCs may make it more feasible to recruit directly into the family specialism. This would also facilitate recruitment into the service of those in private practice, who want to specialise, and are attracted by the comparative security of working in the public sector. These are all issues that will no doubt be considered in the context of the legal adviser working group and will be subject to discussions with unions if appropriate.”

“It will be essential for all levels of judiciary and legal advisers to operate as a team respecting each other’s roles in providing a seamless customer focussed family service. Specialist Family Centres should help to enhance mutual understanding of these roles as part of a whole family system.”

“At area level the Area Director could choose to invite the Specialist Senior Family Legal Adviser to attend Area meetings or the report line could be through the Area Justices Clerk. Where an area is large enough to have a number of SFCs, the individual Senior Specialist Family Legal Advisers could all report to a Justices’ Clerk with special responsibility for family. This could be a replication of the type of specialist Justices’ Clerk role performed in London, or may be a generalist JC with this portfolio responsibility. In large areas such as London co-ordination of this role across the SFCs will be essential. In London, due to the size and complexity of the Region, there is a functional Area Directors’ role for Family. In areas where geography dictates that “virtual specialist centres” have to function, rather than different levels actually sitting at one location, again a Justices’ Clerk with special responsibility for family (in addition to other duties) would also ensure that family issues are considered appropriately at Area level.”

Way forward: All issues in relation to the Legal Structure (including family specialism) are being taken forward by the Legal Advisors Working Group. The Legal Advisors Working Group is divided into 3 sub-groups as follows:

- Career Structures
- Recruitment and Retention
- Qualification and Accreditation

The Legal Advisors Working Group has received a copy of this paper and the specific responses in relation to this area.

8. Partner Agencies

Extract from the Position Paper:

“CAFCASS are more likely to be available at SFCs, whereas they may not be able to cover all FPCs in order to assist with early resolution of private family law issues. If issues remain unresolved following discussions with CAFCASS, suitable applications could be referred for hearing of the unresolved issues, to the most appropriate judicial tier, which is likely to be the FPC or the District Judge, whichever can first offer a hearing date.”

Way Forward: FCCs will work closely with CAFCASS to ensure assistance is available at all tiers of court.

CAFCASS have recently published the consultation paper “Every Day Matters” New Direction for CAFCASS the consultation paper can be found on their website as follows:
<http://www.cafcass.gov.uk/English/Publications/Publications.htm#ConsultationandSubmissions>

9. Fees & Remuneration (Including Position Paper 6. Legal Services Commission & 7. Application Fees)

9.1. Court Fees

Extract from the Position Paper:

There are also different fees for commencing similar applications at different family court venues. These anomalies may need to be addressed if transfer across to different tiers operates effectively.

Way forward: Respondents agreed that there needed to be parity of fees in FPCs and County Courts. Part of the remit of the fee programme is to deliver SR04 income requirements. In particular, by the of the period, we are required to achieve recovery through fees of 66% and 100% respectively of the cost of (non exempt/remitted) family and civil cases in the county courts and high court ; and move towards equivalent targets in the magistrates' courts' civil and family business. This will also in turn help to facilitate more effective integration of those jurisdictions, care will be taken in ensuring that fees do not over recover against the cost of providing the service and that a robust system of fee exemption is in place so that fees do not bar access to justice from those who cannot pay. Another part of the programme is a project being developed by HMCS who are looking specifically at developing a costing model which reflects all the differences between the areas of work in the differing courts.

In September 2005 the "Civil and Family Court Fee Increases" consultation was published, the consultation closes on 18 November 2005

9.2. Legal Services Commission – Remuneration

Extract from the Position Paper:

"There are significant differences in payment for solicitors and barristers funded through the Commission for Legal Services, which are dependent on the level of family court hearing the application. These payment differences are likely to be a major driver in the present drift of work away from FPCs. The successful transfer across different tiers at the SFC will be greatly assisted by alterations to the present fee structure. There would be advantages to creating incentives within the fee structure to hearings at the lowest level, rather than disincentives as at present. CLS are concerned that fee levels are causing shortages of lawyers willing to undertake specialist family work in some parts of the country."

Way forward: Respondents agreed the need for parity in rates between the tiers of court, particularly FPC and County Court District Judge hearings to avoid fee levels influencing the venue for work and to facilitate transfer of family work to the most

appropriate tier of court. The matter is currently being considered by the DCA within the context of a limited Civil Legal Aid Fund and it may mean a possible redistribution of existing resources.

10. Unified Family Service Programme (Including Position Paper 3. Evaluation Process)

Extract from the Position Paper:

“From the 1st April 2005 a small programme team located within the London Region will be monitoring pilots both inside and outside London.

Pilot initiatives, for example at Barnet County Court in London and Birmingham Combined Court Centre, will inform the development of a national management strategy for family business and HMCS will work in partnership with the judiciary and other court users in developing that strategy.

Pilots will be introduced and monitored to establish which arrangements might achieve improvements in service to court users

Regional and Area Directors will be able to consider with the judiciary how best to adapt any blue prints developed in these pilots to meet the needs of their locality.”

The Unified Family Service Programme has been established to oversee the evaluation of the Family Courts Centre pilots and to take forward other projects required to test the proposals for a Unified Family Service.

10.1. FCC Pilot Updates

10.1.1. Birmingham

Birmingham went live on 23 May with staff from the FPC and County Court moving to the same location within the Priory Courts. The new Birmingham Family Courts have been set up as a new entity with the Family Court Manager reporting directly to the Area Director. New FPC cases started to be input onto FamilyMan from 1 July. They are currently working on the staffing structure to facilitate total administrative integration. Running parallel with this they are also working on integrating the listing of all tiers of family work, and the provision of active administrative case progression.

10.1.2. Barnet

The consultation paper on the proposals to move work from Enfield, Haringey & Barnet FPCs to Barnet County Court closed on the 12 September 05. It is likely that the Pilot at Barnet will begin in December 05.

10.2. Evaluation Criteria

Extract from the Position Paper:

“Pilots will be introduced and monitored to establish which arrangements might achieve improvements in service to court users. For example, the impact of different scheduling patterns within different sizes of venue will be considered. Pilots will also provide an opportunity to test IT support.”

“Anticipated Advantages to be evaluated include:

- opportunities to transfer work across within the SFC to be heard at the most appropriate judicial level.*
- minimising delays in private law cases by listing cases before either a District Judge or FPC lay bench depending on the earliest available hearing date.*
- Improving judicial continuity including magistrates’ continuity in the FPC.*
- Improvements to delay in public family law cases due to an increased variety of venues to hear Public law cases at the most appropriate level.*
- Increased flexibility to transfer public law cases to the appropriate judicial tier within one venue, as issues emerge or are resolved.*
- Impact on judicial requirements of increased jurisdiction for District Judges.*
- Ability of different IT systems to supports cross jurisdictional working.”*

“Initial pilots will investigate the practical minimum critical size for Specialist Family Centres and other appropriate ways to improve services for the public where SFC’s are not feasible.”

Way forward: Respondents also suggested the following should be included in the evaluation:

- access to Dispute Resolution Services; and,
- an increase in the number of private law cases diverted away from court without recourse to a court hearing.

The Programme Board will be considering the full evaluation criteria that will be used for all pilots. The agreed evaluation criteria will be published when available.

10.3. Cost

Many of the respondents were concerned with how much the changes would cost. This will be an issue to be taken into account by each Area as part of their planning process in particular the local estates strategy and location of FCCs. Individual projects under the umbrella of the UFS programme (such as IT) will be costed as part of the project approach.

A summary of the comments received on the paper, including detailed responses to specific headings in the paper

A total of 40 responses to the position paper were received. Of these, over half were from the Judiciary (including magistrates).

1. Overall Strategy

Overall the strategy is broadly supported, especially amongst magistrates. There is a general consensus about the need to modernise the family justice system through the development of a more cohesive unified system for court users. Various practical concerns were expressed, particularly in relation to issues of geography in rural areas and poor transport links. Several respondents said they were concerned that the Barnet and Birmingham models were too urban based and any national rollout needed to reflect the operational issues in rural areas. Some confusion was expressed around the meaning of “outreach arrangements”. Several respondents emphasised the need to ensure that the strategy was driven by the need to improve the delivery of services to court users and not by the realisation of efficiency gains for HMCS.

On the proposal to establish SFCs, there appears to be support for these in principle from most respondents but many practical issues were raised: the use of “specialist” in the title may be unnecessary and could imply a less competent service offered at other venues; the term “SFC” may be confusing for court users given the existence also of Designated Care Centres (and their role as “centres of excellence”).

A number of respondents commented that the role of IT will be key but some concern was expressed that a single IT system would be expensive and significant issues remain to be overcome.

Several respondents said they were keen to participate in pilots, further consultation on the detail and / or the identification and sharing of best practice.

Concern was also expressed at the potential costs of the proposals; it was felt that there was a lack of information regarding the overall potential cost of the programme in relation to national rollout.

2. Progress to Date

There is concern that the pilots (Barnet & Birmingham) are in areas with good transport links and good access for court users. This is not the case nation-wide and several views expressed the concern that evaluation should be undertaken with this in mind so that the emerging framework allows “for geographical and demographical differences between areas”. Many respondents feared being left with a proposal that was, as a result of its piloting in urban areas, overly concerned with metropolitan areas at the expense of those in outlying rural areas.

Encouragingly, many respondents feel that they had already made changes that supported the strategy, and many in line with the public law protocol.

3. Evaluation Process

Many respondents (21%) raised concerns over the relevance of pilot findings in relation to access to justice for the court users, with particular reference to rural areas. There seems to be a consensus that urban areas will gain more benefit from the proposals where transport infrastructure is better. Several respondents commented on the need for piloting in rural areas.

Where concern was raised it was mainly about the need for a firm statement as to what constitutes success. Assurance was also sought that both strengths and weaknesses indicated by the pilots would be thoroughly assessed before national rollout.

It was suggested that the list of identified advantages could also include:

- access to Dispute Resolution Services; and,
- an increase in the number of private law cases diverted away from court without recourse to a court hearing.

Encouragingly, a high number of respondents expressed a desire to be involved in either the evaluation process, further pilots or to have input into the project board.

4. Facilities

In general the list of proposed facilities were welcomed, although many reiterated the point that local access should be deemed more important than attendance at another court that has the facilities already in place. Concerns were raised over the poor facilities within a number of FPCs and the fact that combined courts will

generally only have one entrance. Several respondents questioned the expense of providing these facilities where they do not exist.

Some respondents indicated that practitioners prefer the layout of the FPCs rather than the PRFD as a result of the informality of the FPC setting. However other respondents have indicated the fact that the formality of the court surroundings is important in communicating to users the authority of the court. There was recognition of the need in some instances to ensure physical separation of parties to avoid the potential for intimidation.

Many respondents highlighted their desire to see suitable IT facilities, especially in terms of video conferencing equipment and IT for justices' retiring rooms.

5. Judiciary

Whilst there was general support for the underlying principles set out in the Position Paper, respondents disagreed how this was best achieved. In particular there was conflict over (a) where the role of 'gatekeeper' should rest and (b) how judicial continuity is best achieved.

(a) The gatekeeper argument concerned who was best positioned to do this. Those supporting the role falling to legal advisers and District Judges point to experiences with the public law protocol, suggesting that legal advisers alongside magistrates are best placed to decide whether the required experience exists at the FPC. Furthermore there were concerns raised at the very small number of cases that are transferred down (or back down if transferred up) to the FPC. Opposed to this were views arguing that the gatekeeper role in public and private Children Act cases was different and that for a legal adviser to have this role within private law would be against the President's Guidance.

(b) Responses were equally split as to what constitutes continuity of cases at FPC level, some suggesting that one member of the Bench or legal adviser is sufficient, others suggesting that all three members are required, especially in the eyes of the court user, to ensure confidence.

An increase in the amount of time spent on family was supported by all respondents who commented on this area of the Paper. Only 1 respondent commented that they would not support Specialism "The ticketing of lay justices is not supported if it means magistrates sitting exclusively in the FPC, although a modest increase in average sittings is supported". The Magistrates Association comment was "Balance between crime and family must allow for competence to be maintained as there is benefit to the family courts as a result of a diverse group of

magistrates who have broad experience from knowledge beyond the court and from sitting in more than one jurisdiction". There were some respondents that did support full specialism by way of only sitting on family cases, however they did not specify whether this should be voluntary. There was also support for the ability for magistrates to take the Chair for family work without the requirement to do the same for criminal work.

Other points raise questions as to where experience will be gained in family work within the junior judiciary, the ability (or willingness) of magistrates to travel to other courts and practical arrangements for allocation within a combined centre. Again, families' access to justice, especially if there were to be a decrease in the number of FPCs, was raised as a key issue.

6. Legal Services Commission

[This was incorrectly labelled in the Position Paper – it is not the Commission for Legal Services.]

81% of respondents who commented on this section of the paper indicated a need for parity in rates between the tiers of court as essential to ensure that work is allocated to the correct tier of court rather than the existing incentive that drives work to the County Court. It is felt that without parity any attempt to ensure allocation of work based on the circumstances of the case would not be successful. Not all of these respondents are looking to have fees increased within the FPC to levels within the County Court, although that was the general consensus.

The LSC states that "there can be no question of increasing fees in the lower courts up to those applied in the higher courts but rather a possible re-distribution of existing resources to reflect more flexible allocation and handling of cases within the court structure and generally."

Reasons other than the differences in rates of payment were offered as to why County Courts are favoured over FPCs. These include, delay between hearings, the requirement of the bench to give written reasons (not currently required in a County Court), a need to have a solicitor at every hearing (Legal Executive - rights of representation are discretionary before a FPC) and difficulties in gaining an initial hearing because of the infrequency of family bench sittings.

7. Application Fees

Comments on this section of the paper reflect those made under 6. "Legal Services Commission". In general comments reflect the desire to see parity between fees within FPCs and County Courts.

A question was raised as to whether application fees should be payable by public bodies where public law cases are brought to protect a child's interests.

8. Court Jurisdiction

Where commented on, there was a diverse range of views. As with the question on where applications should be made, there are differences of opinion when considering which jurisdiction is best placed to hear certain types of cases (e.g. domestic violence, molestation orders, etc). The views expressed would seem to be related to the level of court with which the respondent has most contact (i.e. family panel respondents supporting the roles of magistrates' and the legal adviser, a Judge rejecting the proposal that applications should be routinely issued in or transferred to FPCs). A Judge was strongly of the view that it is not for Regional and Area Directors to consider issues of jurisdiction as these are governed by statute, applicable rules and Allocation Regulations.

9. Management Structure

Where commented upon the management structures were welcomed. Co-ordinated management within a unified system is seen as imperative, however it would be important for these roles and responsibilities to be clearly defined whilst allowing for the ability to evolve as experience is gained and local systems develop. Concern was expressed about how SFCs could operate efficiently in predominantly rural areas (e.g. Dyfed Powys).

10. Specialist Staff

There was broad support for specialist administrative support staff but there were a number of practical concerns expressed: the scope for sustaining a specialist team in areas where volume of work might make this unviable; the need to avoid 'specialism' becoming a divisive issue; and while the consensus seems to be in favour of a Case Progression Officer, one respondent questioned their skills, training and remit.

Views on legal advisers specialising were more mixed. Some respondents said that specialist legal advisers were not the best way forward, especially in smaller areas where there was a premium on the need for flexibility. Some legal advisers were concerned about possible impact on their long-term career prospects and a shortage of legal advisers might mean that opportunities to specialise were in reality rather limited and in any case this would rob the criminal jurisdiction of some of its ablest staff. Others thought that specialist family legal advisers brought greater continuity and increased the depth of research into the individual case

(noting that family work requires evaluation of a substantial amount of facts) reducing delay later.

A point relevant to both staff and legal advisers was that exposure to other cases offers a more rounded experience that can be in turn be brought to family cases and offer real value.

11. Administrative Support Functions

There was broad consensus that IT support for family as it now stands is poorly developed and integrated and that an IT system that better supports the strategy is needed.

There was also broad agreement that use of a centralised administration centre for bulk or electronic processing would not be welcome. There is an over-riding distrust of such centres for what is seen to be specialised work. Potential savings are lost when orders, applications, etc. are returned with spelling mistakes, or worse, the intention of the order misunderstood. It is felt that the local knowledge available at the point where the order, application, etc. was made is invaluable in ensuring that such paperwork is accurate.

On the proposal for centralised processing of certain types of family case (i.e. divorce) the Law Society expressed itself to be strongly opposed to the idea because (a) many individuals do wish to object to a decree and deserve the opportunity to impress their viewpoint on the judge and (b) divorce is a rite of passage and those who want to attend courts should be able to do so. The Position Paper was suggesting centralised administration with local hearings.

12. Managerial Reporting to Area Director

The importance of management was raised as a key part in ensuring that family justice is not seen as the poor relation of the justice system. It was noted however that there would need to be proper co-ordination of roles within areas to ensure that the proposed benefits were realised. There were two responses that suggested that there was not the workload to justify a separate management structure.

13. Family Proceedings Legal Representation

Responses pointed to the need to appoint a lead legal adviser to take responsibility for training the magistrates and legal staff of the FPCs. They should also liaise with the judiciary, court users, SFC manager and area and Regional Directors. Parallels were drawn with the Integrated Domestic Violence Courts (IDVC) notion of an

'administrative judge' and note was made of the IDVC project board's suggestion that there is a need to ensure continuity of legal advisers in an integrated court as well as judicial continuity.

As with earlier points regarding the rural nature of several areas, it must be borne in mind that "practices that function well in large areas with high volumes of cases may not translate to smaller areas operating smaller panels and lower case loads".

Against this it was expressed that the requirement for a full-time specialist senior legal adviser as a lead for FPC tier business would be divisive. There was also concern that the rights of audience had not been addressed in relation to Legal Executives appearing before an FPC bench. In addition, there was concern that District Judges have yet to demonstrate that they are prepared to give proper consideration to the allocation of private law cases to justices.

14. FPC / Senior Legal Adviser Representation at Area Director Level

It is felt to be essential for a senior legal adviser to take the lead role for FPC business within SFCs as without this communication between the SFCs and Area Directors would be difficult to achieve. However, the feasibility of a wholly specialised legal team is greater in areas large enough to sustain this in terms of size and volume of business; as with other points, rural settings make this a harder proposition to put in place.

In addition it was noted that if there is to be proper representation of all tiers of the SFCs at any HMCS Area meetings then a District Judge and a Circuit Judge should also be invited to attend.

15. Dual Tracking Career Paths for Legal Advisers

There was a mixed response to this section of the position paper. Of those that passed comment 50% were in favour of the proposal whilst 50% raised concerns. Some of these reinforce the messages given under 10. "Specialist Staff".

Those that supported the proposal were keen that any specialism does not have a negative impact on career prospects. The point was also made that past experience has shown that proposals such as this can change and raised the question of whether this would have a negative impact on take-up. Those concerned would not wish to jeopardise career prospects on an initiative that might prove to be short-lived.

Those that raised concerns questioned that whilst legal advisers would wish to continue their interest in family work many would be averse to specialisation,

especially if it were perceived to be forced upon them. This would impact upon an area of business where recruitment is already an issue.

One respondent questioned whether we are in danger of repeating the situation already faced with judges who are ticketed for one type of case or the other which has led to the shortage of judiciary who can do both.

A full copy of all comments is available on request

Annex A – Position Paper Recipients

The Position Paper was sent via e-mail to:

DCA Ministers

- Lord Falconer
- Lord Filkin
- Baroness Ashton

DCA, Court Service & Magistrates staff (Prior to the formal launch of HMCS)

- Sir Ron de Witt
- Mark Ormerod
- Sally Field
- All Regional and Area Directors
- Trade Union Side – AMO & PCS
- LSC –Clare Dodgson
- HMCS Inspectorate – Stella Dixon
- Ministerial Strategic Group

NDPB

- Family Justice Council

London

- London Courts Board

Judiciary

- President of the Family Division – Dame Elizabeth Butler Sloss & Sir Mark Potter
- All Family Judiciary (via Michael des Tombe in the Presidents office)
- Personal copy to HHJ Hamilton & HHJ Wilkinson
- Association of District Judges (via DJ Walker)
- Justices Clerks Society
- Senior District Judge (Magistrates) Workman
- Magistrates Association - Malcolm Richardson, Chairman, Family Proceedings Committee

London

- Greater London Bench Chairmen Forum (via Alex Segal)
- Greater London Family Panel (via Margaret Wilson)

Other Departments

- LSC
- CAFCASS
- Dept for Education and Skills

External Stakeholders & Advice Agencies

- The Law Society
- The Family Law Bar Association
- The Association of Lawyers for Children
- The Association of Directors of Social Services
- The Royal Colleges of Psychiatrists, Paediatricians & Physicians
- UK College of Family Mediators
- Equal Opportunities Commission
- Commission for Racial Equality
- Children's Rights Commissioner/Children's Rights Alliance
- British Association for Adopting & Fostering
- Family Mediation
- Relate
- National Association of Citizens Advice Bureaux
- National Council for Voluntary Child Care Organisations
- Women's Aid Federations of England and Wales
- Families need Fathers
- Grandparents Federation

Annex B – List of Respondents

Organisation	Respondent
Law Society	Asmita Shah
Telford Magistrates' Court Service	Andrew McDougall JP & Dennis Morgan
Resolution – first for family law	Jacqui Jackson
Wiltshire MCC	Rachel Hunt
Greater London Family Panel	
Haringey Family Committee	Amanda Checkley
Sussex Western Bench Family Panel	Jane Davies
Wells Street FPC	Avril Calder
Norwich Magistrates' Court	Jane Hall
Bromley FPC	Mary Setchell
Association of District Judges	District Judge Millward
Oxfordshire Magistrates' Court	Diana Bagnall JP & Colin Webster
West Lancashire Family Panel	Ursula J. B. Walton
Dorset Magistrates' Court	Ann Ballard
MCSI	Stella Dixon & Arran Poyser
	HHJ Clifford Bellamy
Norwich Magistrates' Court	Esther Tan
Central, South & West Norfolk Family Panel	M Nicholson, J L Clarke & J D Wing
Magistrates' Association	Sally Dickinson
Croydon Family Magistrates' Panel	Sue Duncan
DCA – Domestic Violence Team	Jan Salihi
North Norfolk & Great Yarmouth Family Panels	J P Stibbs
Midlands Region	Mark Swales
Stephen Whale	Dyfed Powys
CAFCASS – Greater London	Vivien Salisbury
Family sub-Committee of the Council of Her Majesties Circuit Judges	HHJ Isobel Plumstead
Legal Services Commission	Lynn Graham
Kent Family Panel Chairmen	Quentin Morton
SWLMA	Christine Reay JP
Barnet County Court	Anthony Ansell (Circuit Judge)
Warwickshire Magistrates' Court	John Davenport JP
Lancashire Magistrates' Court Service	John Robinson

Organisation	Respondent
West Yorkshire Area	Patrick Traynor
Bolton PSA Family Panel	Douglas Summers JP
Greater Manchester	HHJ Newton
Leeds County Court	HHJ Peter Hunt
Wales & Cheshire Region	Hugh Simkiss
Merseyside Area	Simon Vowles
DJ (MC) Chesterfield	John Friel

© Crown copyright
Produced by DCA