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BASW Response to the Family Justice Review – Interim Report

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BASW is the UK professional association for social work, led by and accountable to a growing population of approximately 13,500 social worker members. Our members work in frontline, management, research and academic positions in all social work settings across the UK. BASW members share a collective commitment to those values and principles that will secure the best possible outcomes for children and young people, adults, families and communities.

Preface

BASW recognises that this is an extremely important wholesale review of the family justice system and supports reform of the current structure to ultimately improve the delivery and quality of services to ensure that the most vulnerable children in our society are protected and their welfare needs are met.

Many of the issues raised in this review are of great relevance to social workers in England and Wales; BASW members are involved in both public and private law in terms of local authority social work, guardian ad litem, independent social workers as well as those social workers working in the third sector supporting children and families. The review also focuses on the care planning process and the role of independent reviewing officers of which many of our members are and have strong views on the subject. Finally, a number of our members work in the specialist field of adoption and fostering in the statutory and PVI sector and again are amongst the many groups of interested stakeholders.

BASW is also a member of the Inter-Disciplinary Alliance for Children and therefore a key contributor to the joint submissions to the review from the alliance - notably, the representations about Cafcass and an alternative model. We were therefore appreciative of the panel giving serious consideration to this model and credence to some of its components. We very much hope that our suggestions can be taken forward as they have widespread support from a number of disciplines which bodes well with the overarching aim of the review to unify the current system into a much more coherent Family Justice Service.

Given that there are over 80 recommendations in this review, our response will not only address the questions which are of greatest relevance to our members but equally will comment on those recommendations which impact the work of social workers.

Responses to questions

Towards a Family Justice Service (Chapter 3)

1) Do you agree with the proposed role that the Family Justice Service should perform?

We fully endorse the very positive approach to unite the various strands of the family justice system to promote a more coherent and straightforward service for all service users, especially children.

2) Ensuring that the child's voice, wishes and feelings are central to the Family Justice Service is crucial. What would you recommend as the crucial safeguards to enable this to happen?

We were pleased that the report highlights the rights of the child and the importance of the child's voice being at the heart of the system. An effective family justice service in England and Wales must be unequivocally predicated on the rights of the child and hold true to the articles in the UN Convention of the Rights of the Child. This must be the philosophy that underpins the service and all professionals engaged in it must be trained to work in this way.

There have been some encouraging signs in England of the Government's commitment to a much more rights based approach to children in terms of strengthening the role of the Children's Commissioner; this is long overdue but clearly welcome. We are also hopeful that Sarah Teather's (Minister of State for Children and Families) recent pledge to give due consideration to the UNCRC when making new laws will make a tangible difference to the lives of children and young people in England, particularly the most vulnerable.

Ideally, England needs to follow the example being set by the Welsh Assembly Government to ensure that the rights of children are upheld through the Rights of Children and Young Persons (Wales) Measure 2011. This is to be applauded and celebrated. It is our contention that these are all critical factors in developing a truly child-centred safeguarding service together with recommendation 15 of the Munro Review in England for a chief social worker who will have the power to hold the Government to account in terms of its statutory responsibilities for protecting children.

Perhaps the Family Justice System needs to be re-named the Children and Family Justice Service as a reminder to us all that this is essentially a service that is about children and for children (whilst we may not want to adopt the Scottish children's panel model in England and Wales at the very least, should we not have a more child centred and inclusive title than the present one?) All too often, children are not prominent enough in the family justice arena submerged below the interests of others.

3) Do you agree that children should be offered a choice as to how their voice can be heard in cases that involve them, including speaking directly to the court?

Yes, children should be given the opportunity to speak directly to the court if that is what they want. They will require proper support and preparation to do this. We need to recognise that this is not something that all children will desire and therefore no child should be put under any pressure to advocate for themselves but it should at least be an option on the menu. The judiciary must receive training in how to communicate effectively and appropriately with children in order that this is a positive experience for the child. We would recommend preparation with the child being undertaken by a skilled children's guardian or family court adviser (senior social worker) as a prerequisite; time and resources must be made available to ensure that this work is carried out sensitively and at the child's pace. Adopting a more child centred approach may also help courts to be more expeditious in reaching decisions in the best interests of children and reducing delay. Children addressing the court directly should under no circumstances be subject to any cross examination akin to what happens in cases of child abuse brought to the criminal courts. This must be sacrosanct in the process.

4) Do you agree that there should be a single family court?

Yes, we believe that this will help to reduce the confusion experienced by service users by simplifying the service and will also help reduce delay by providing one arena for skilled and experienced family court workers with particular reference to highly skilled social workers.

5) Do you agree that changes we have proposed to the judiciary – including greater continuity, specialisation and management – will lead to improvements in the operation of the family justice system?

We certainly support the principle of continuity and consistency of personnel within the context of social work services to children so would welcome this being applied to the judiciary charged with making such profound judgements in the lives of children. We concur that if this is implemented and adhered to, it will provide a much more effective and efficient service for all those concerned. Continuity should reduce delay in terms of preventing duplication for example - new judges revisiting areas of the case previously addressed by the court and specialisation would increase the knowledge and expertise of the judiciary in the area of childcare law and practice.

6) Do you agree that case management principles, in respect of the conduct of both private and public law proceedings, should be introduced in legislation?

We don't necessarily think that legislation is the way forward; what is required are the resources and time to complete tasks appropriately. That is our overriding concern with the current system.

7) What changes are needed to the culture and skills of people working in family justice and how best can they be achieved.

At this juncture, we would like to express our disappointment that the review stops short of recommending that Cafcass be disbanded in spite of compelling and copious evidence to both this review, the Justice Select Committee and an evaluation carried out by the National Audit Office last year from many different sources strongly advocating that the organisation is not fit for purpose. Sadly, the current structure embodies everything that is wrong in terms of a top down, overly bureaucratic organisation that has a reductionist approach to direct work with children and is more preoccupied with the superficial exercise of ticking boxes, providing data for the inspectorate and perpetuating a 'blame culture' that does very little to build the confidence of its practitioners and promote innovative social work practice. If we want an effective court welfare service for children then we urge the review panel to be braver by acknowledging that what we have presently does not work and has lost the confidence of the social work profession let alone other disciplines and wider society. It is not a good brand. This is an opportunity to create something that is owned by the profession and can rightfully take its place in the social work reforms in terms of promoting excellent social work practice and an opportunity for skilled practitioners to advance their careers in highly specialist court work. We do not believe that the current resources committed to Cafcass are utilised to the best effect given that the modus operandi is as previously described. A structural and cultural change must be put in place so that there is clear water between what was and what needs to be otherwise there is a real risk of regurgitating what we currently have and reproducing the same problems. A change in name alone will not remedy the current malaise.

Our members feel very strongly that we need to recognise that in order to undertake court work, social workers must have a number of years of experience in order to have the knowledge and skills to be competent in completing comprehensive assessments and making plans for a child's future. This should come later on in the career of a children's social worker. Cafcass has succeeded in bringing about the erosion of the children's guardian role with the introduction of converged working, diluting the skills needed for such complex and specialist work.

Public Law (Chapter 4)

1) Do you agree with our proposals to refocus the role of the court?

Yes, as stated in earlier previous responses we hope that the proposals will provide a much better service to children.

2) Do you think a six-month limit with suitable exceptions, for all section 31 care and supervision cases should be introduced?

No, we are not in favour of this proposal; it smacks of a 'one size fits all' approach suggesting that all cases are similar. The public law protocol has illustrated the difficulties in preventing delays and prescriptive timescales in themselves do not necessarily lead to desired outcomes. The Chair of the review panel stated realistically in the regional seminars that given the current demand placed on the family justice system show no signs of abating so things are likely to get worse in a time of economic austerity before they get better. In the same vein, whilst a lot of work has been going on in the last year to reform social work in terms of the work of the Social Work Reform Board and more latterly the Munro Review – change is not going to come overnight and so we think such a proposal could do more damage than good in terms of demoralising the workforce. We should not implement measures that set people up to fail. The overriding objective of this review to unify the family court system and strategies to improve efficiency through judiciary continuity and modernising courts in terms of technology are all much more constructive ways forward. BASW members are fearful that a 6 month timescale conversely could place children at greater risk as local authorities try to collect longitudinal evidence prior to the request for an order to avoid not meeting the target in court proceedings.

11) Do you agree the timetable for the child should be strengthened?

Again, we think this should happen by dint of some of the proposals in this report such as dispensing with interim hearings to renew orders; if this requirement is removed it follows that there will be a need for active and robust planning and agreement by all parties to ensure that cases do not drift. This will be the responsibility of the case manager (judiciary) and with specific training and experience we are confident that the timetable will be strengthened without additional legislation.

3) Do you think our approach to the strengthening of judicial case management is correct?

Yes, we welcome this approach alongside the introduction of effective IT systems. It is essential that judges are provided with the necessary training, support and guidance to exercise this role appropriately. Given that this will be a new development the quest must be to identify and

model good practice in this area and we were struck by the issue raised in the review of the judiciary's accountability as well as their independence and would support a system of peer review as well as 360 degree appraisals which have become a more familiar concept in social work particularly in services to children in the looked after system.

4) What criteria should be used in the decision whether or not to appoint experts? And should the judge draft the letter of instructions?

BASW recognises that it is important for family courts to be clear about their rationale in respect of when and why they need to appoint experts. Experts come from a range of disciplines and there are also huge variations in fees charged. It is incredulous that in the current system no data is collected by the LSC or MoJ in terms of disbursements; this is not acceptable and would never be permitted in other settings where robust auditing is at the heart of services determining how budgets are set. Nevertheless, in a climate where resources are under pressure and cuts are being made there is a danger that a sledgehammer is applied to crack a nut. On the one hand, the review found evidence of judges erring on the side of caution preferring to enlist an array of experts to help them to make such profound decisions about the future care arrangements of children. Whilst we are not in favour of an over abundant use of experts we would not like this complex issue to result in a backlash against their involvement. Hopefully, a more specialist judiciary will have the confidence (backed by training) to appoint experts in cases where what is being presented to the court begs some serious questions that require further interrogation by specialist personnel before final decisions are made about the future lives of children.

The use of expert witnesses has been a highly contentious issue for the social work profession as consultations carried out by the LSC and MoJ in recent times have systematically excluded independent social workers from being recognised and categorised as expert witnesses which is extremely disrespectful and damaging to the profession. BASW together with Nagalro, ISWA and Willis Palmer have joined forces to actively campaign against their exclusion and more recently capping of fees. We are pleased that the Family Justice Review does at least acknowledge that independent social workers are legitimate expert witnesses however, we take issue with the recommendation that 'independent social workers should only be employed to provide new information to the court'. We find this problematic as it is not clear what is meant by 'new information' which makes this ambiguous leaving it open to interpretation. Also, this condition has not been attached to the use of other expert witnesses. Judges need to determine what they perceive to be the gaps and weaknesses of cases brought before the court in order to establish what additional layer of expertise needs to be deployed to help them to take decisions in final hearings. It is not an exact science and if ISW assessments sometimes support the recommendations of the local authority it does not necessarily follow that they are superfluous. We are pleased that Julia Brophy and her team are currently undertaking some research into the work of ISW expert witnesses in family courts (of which

BASW is a sponsoring partner) and think that this will prove to be incredibly important in terms of providing us with an evidence base in respect of their efficacy and ultimately inform deliberations in how they can and should be used. We would ask the panel to confer with Julia Brophy directly to ascertain what her findings are at different stages of the research.

Finally, whilst we await movement on the recommendations of the Munro Review and the Social Work Task Force the situation on the ground in terms of frontline child protection social work still remains dire in many places; social workers are typically carrying too many cases making it very difficult for them to give the necessary time to do in-depth work with the added pressure of assessment and court timescales. We still have a very fluid workforce where at the coalface throughput is everything and the situation is exacerbated by cuts to services which mean workers who leave are not replaced, posts are frozen, back room support is being reduced, serious cases are being downgraded from 'children at risk' to 'children in need' and many valuable resources provided by the third sector have lost their funding leaving gaping holes in local children's services perpetuating more crisis amongst vulnerable families. Given this unhealthy scenario we strongly countenance against throwing caution to the wind and dispensing with specialists who can make the difference to ensuring that children identified as being at the greatest risk are properly assessed so that the right decisions can be taken to protect them. As Professor Munro argues what we are faced with is akin to turning an oil tanker around – it's a mammoth task and whilst change is underway everything possible should be done to safeguard children.

14) Under a proportionate working system, what are the core tasks that a guardian needs to undertake in care proceedings?

BASW believes that the guardian should be a consistent person throughout the child's involvement with the family justice service and be the voice of the child throughout, clearly representing their views while determining their best interest. Guardians must be afforded sufficient time to ensure this role is completed to a high standard in each case. BASW members endorse the need for the tandem model to continue with good communication between the child's solicitor and guardian and other parties to the proceedings. We have strong reservations about proposals for a proportionate working system proffered by Cafcass as our experience of the organisation dealing with demands on the service to date have been far from child centred and detrimental to both children and good practice. It is lamentable that the latter do not actively consult and work in partnership with practitioners in devising strategies to address these issues. As stated previously, this model of managing resources and service delivery needs to be condemned and replaced by a much more empowering business plan that liberates professionals and uses resources much more purposefully. Currently, we have an extremely disproportionate system in terms of time spent working directly with children and families – this balance must be redressed.

15) Could there be a greater role for other dispute resolution services in support of the public law court process?

Yes, we believe there is greater scope for using these services for example, in ascertaining placements with family members, confirming positive contact arrangements and helping with transitions through family group conferencing. If successful, dispute resolution methods could be an asset to preventing delay in cases whilst promoting children's best interests.

16) Do you have any other comments you wish to make on our proposals for public law?

Below are comments provided by BASW members that reflect the views of many social workers working in the family justice system.

"I believe that work of the Family Courts would be improved if they used a more inquisitorial approach, rather than being based on an adversarial system, as demonstrated by the Family Drug Court. I think there should be much more emphasis on conciliation and working together, as particularly within Public Law, the court environment can make it very hard for social workers to continue working alongside families on a case, when proceedings are ongoing. The way evidence is presented can be very one dimensional and doesn't always do justice to the way families and professionals have worked."

"I think it's essential that only lawyers with special training in child care law should be involved in public proceedings, in order that the proceedings are focused and timely."

"The court environment should be overhauled to ensure that there are sufficient private rooms and spaces for intimate discussions with families. I have an abiding memory of two parents I was working with being told their child was being removed from their care, in a corridor by the lifts. One of them was actively suicidal and it was an appalling way to work."

"Equally I feel extremely uncomfortable seeing lawyers trading very private e.g. medical information in public waiting rooms packed with other families, lawyers, social workers etc."

BASW supports the notion of multi-disciplinary teams having responsibility for carrying out additional assessments required in cases. Some of our independent social workers already operate on this basis and it appears to work well as they are able to draw on a wealth of skills and select what is appropriate for individual cases. We think that this would help to develop greater consistency in practice as well as equity in respect of remuneration. This is certainly something that is worth exploring.

We also concur with the need for more research being carried out a

propos residential parenting assessments, as again there are huge variations in the quality of these services and they are expensive in both financial terms and time in the life of children. There is also disparity amongst local authority resources as our members report that poorer authorities rely much more on Section 20 agreements and rarely fund residential parenting assessments. Perhaps this issue needs further interrogation in research; if more affluent authorities are more likely to take legal action including funding expensive placements, particularly where new born babies are involved, what is the correlation between this and better outcomes for children?

We do not agree that courts should only focus on core issues in care plans; judges should be given discretion to exercise their professional judgement in seeking information about specific aspects of the care plan as they are doing this on behalf of the child. As the review proposes that the judiciary should be designated the case manager we think that this is reasonable but good practice needs to be developed in this area.

We believe that the role of independent reviewing officers is fundamentally flawed in terms of 'independence' given that they are employees of the local authority. This has proved to be a difficult issue to resolve over the years and whilst we support the steps being taken to strengthen the role in England through the introduction of the new handbook etc. we do not think this is necessarily enough. Nevertheless, we support IROs having stronger links with guardians whilst cases are in the court process. Continuity of IROs can also be problematic if they are agency workers; this role needs proper recognition in an effective career structure for social workers.

Private Law (Chapter 5)

17) Do you agree there is a need for legislation to more formally recognise the importance of children having a meaningful relationship with both parents post-separation?

Yes, in principle however, this must never come at the expense of welfare concerns about children; research carried out on applications to 11 courts for child contact in 2008 for the MoJ found that 63% of the cases were characterised by serious welfare concerns – notably, domestic violence which was evident in 50% of the cases. The pursuit for a meaningful relationship with both parents post-separation in these circumstances has to be assiduously assessed so that no child or adult is placed at further risk.

18) Do you agree with the proposals to remove the terms 'contact' and 'residence' and to promote the use of Parenting Agreements?

We certainly recognise that in some cases residence has been interpreted by parents as ownership of the child and this is not desirable. Therefore, the promotion of parenting agreements would appear to have merit to curtail this mentality. The involvement of court social workers can make a critical difference in bringing resolution to families who are locked in

disputes about their children. However, it would not be wise to do away with the terms 'contact' and 'residence' altogether as in cases where there are welfare concerns establishing who the child is resident with and when and how contact takes place are critical factors in keeping children safe. This of course, goes beyond parents as members of the extended family may have applied to the court for section 8 orders and need the court's support in making legally binding decisions about where a child resides and clear arrangements for contact.

19) Do you agree that there should be a requirement to consider dispute resolution services prior to making an application to court?

Yes, as early intervention can sometimes prevent situations from becoming more acrimonious which clearly is not in the best interest of children. It must be delivered by trained and highly skilled professionals. However, this would not be appropriate in cases where there are serious welfare concerns - this needs to be established early on so the right course of action is followed.

20) Do you agree with the processes we outline for the resolution of private law disputes?

Yes, but with some provisos – dispute resolution should not be regarded as the panacea to all cases but applied where it works. Dispute resolution is understandably about engaging parents to resolve their differences as amicably as possible in the best interests of their children. Much of the direct work will therefore be undertaken with adults but it is important that the voice of the child is also prominent and not peripheral in this work.

21) Which urgent and important circumstances should enable an individual to be exempt from the assessment process for Dispute Resolution Services?

It is the role of all professionals to ensure that a child is not at risk or likely to be at risk of significant harm. If a dispute resolution process is mandatory it may well place some children (and their non-abusive parent) at risk; for instance, in cases of domestic violence where the perpetrator has a power relationship over the victim, it is entirely inappropriate. Evidence has suggested children have been put at risk by parents who are violent and full assessments need to occur in these circumstances to ensure the child is safe. Such assessments need to be conducted by experienced, trained and skilled social workers. A very important principle that needs to be adopted in this work is that children are both seen and spoken to. Unfortunately, reductions in Cafcass outputs have led to briefer interventions sometimes comprising assessment by telephone. This is not acceptable and services need to be properly quality assured to interrogate their robustness in assessing risk and engaging with children. Children who are vulnerable in private law cases should not be given a lesser service compared to those in the public law arena.

22) What do you think are the core skills required for mediators undertaking an assessment?

We refer you to our response to question 1 in terms of all professionals engaged in the work of the family justice service being signed up to a philosophy that promotes the rights of the child. Mediators must have extensive experience in working with families in terms of addressing complex issues. They need to be trained in child development so they understand the needs of children and can communicate this back to parents. They need to be trained in safeguarding and child protection so they can identify issues of risk that they can then refer onto the appropriate agencies. We think that experienced social workers would be well suited for this work.

23) Is there any merit in introducing penalties, through a fee charging regime, to reflect a person's behaviour in engaging with Dispute Resolution Services, including the court?

No. We do not support this recommendation.

24) Do you have any other comments you wish to make on our proposals for private law?

It is vitally important that we do not perpetuate a two tier system with regard to the voice of the child in terms of public law and private law; we are concerned that children subject to private law proceedings are sometimes overlooked and that a parent or adult centred culture prevails. We hope that children in private law proceedings will be shown the same consideration as children in public law in terms of being able to address the court directly with proper support and safeguards. There are different issues of course to be taken into consideration as it is usually parents and relatives who have made applications to the court as opposed to the local authority so fundamentally the power resides with them. Children must have access to appropriately trained and skilled practitioners who are child centred and make it their core business to engage with them so that their needs and best interests are paramount.

Implementation

25) Do you have any comments about how these proposals might be best implemented?

It will certainly need to be driven by the number of different disciplines and partner agencies involved. A joint working group could be established to steer it. We do have serious concerns that the proposals could be

undermined by the fallout from the spending review and cuts to public services. Finally, a lot of store has been placed in the Munro Review and the work of the Social Work Reform Board. In the words of a BASW member:

“ but whilst I agree in principle that the recommended improvements to social work practice should raise standards, it is likely to be a long time before we start to see results and this must be given proper consideration prior to any reliance on it having made social work practice safer.”

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