

Proposal for the reform of the ‘Family Justice System’

The current system for deciding the living and caring arrangements of children whose parents separate is a disaster.

The ‘public’ evidence of this, however, is not the worst issue. The current system is appallingly expensive for the state and those involved. It is slow, complex, and bureaucratic. Its adversarial nature inflames disputes. Both children and their families suffer. The decisions are erratic and often poor. They are not enforced.

This, however is not the worst issue. That is, rather, that children and their ‘other parents’ and their wider families in all other cases, have to live with the unilateral decisions made by the parent in control. The barriers to challenging this situation – financial, practical, emotional, and above all the procedures being so alien to ordinary people – are so high that they do not feel able to do anything else. For example, most people would not go anywhere near such a system without advice. A hour’s interview with a mid range solicitor costs about the national average weekly income.

Now most mothers (for it is mothers who generally take or get control) are, mercifully, not opposed to their children having a relationship with their father and the family his side. (But there have to be provisions for those that do). However their view of the relative importance to their children of their ‘other parent’ is likely to be – it is only human – *partial*. It may be that 2.5m million children are not allowed as much contact with their ‘other parent’ that they would like*

The need of children is for a system that puts their needs first. This needs to ensure that as many as possible get the relationship with both their parents which promotes their welfare. This should be achieved with the minimum of conflict. And children need to actually get the relationship that benefit them. For parents, the issue is a quick and actually usable dispute resolution service. For the state, the most important think is (or should be) ensuring the best upbringing of our children. Often the most topical thing, however, is the cost.

The suggestion made here will meet these criteria. And they meet the requirement of the United Nations Convention on the Rights of the Child. This does not require that the decisions are taken only by the Counts but by a ‘competent authority subject to judicial review.’

The entire clutch of agencies, Family Courts and all its aspects, (such as initial hearings, Findings of Fact hearings and so on), Mediation, CAFCASS, Family Lawyers, specialist advisors and so on would be either abolished or superceded, with only some residual aspects retained, as outlined below.

They would be replaced by one new agency which deal with all of these. This should have a walk-in advice service backed up with internet and other means, but the key would be this. One single officer, matched to the needs of the children and family, and seeing themselves as trying to get the best for children, *would then carry out all the other necessary functions*. Meeting the children and the family, investigating and ruling on any necessary issues, advising on and brokering a Parenting Plan. In the event of disagreement, they would make a binding arbitration. They would have a continuing support role, approving variations needed, being a port of call in the event of new issues etc. In the event of their being information that a parent was not complying with Parenting

Plan either agreed or imposed, it would be their job to investigate and propose appropriate remedies. They would have the power to impose sanctions of a modest sort, of which the most commonly used might be orders for compensatory parenting time in the event of disruption. There would be specialist services in house and on call for any issues that seemed necessary, for example parenting courses or if a mental health assessment seemed required.

There may need, occasionally, to be judicial hearing leading to a formal Child Arrangements Order. These would normally be at the instigation of the Children's Officer (or whatever they were called) At them s/he would act as advocate for the needs of the children. To breach such orders would, as over Non Molestation Orders and so on, be a criminal offence. The Children's Officer would also have the right to propose to a Court sanctions on a parent or other person for non-compliance with an arbitration that were more severe than one the Officer had the discretion to impose.

There would need to be an internal appeal procedure, consisting of a senior and experienced officer reading the paperwork, speaking to the lead Officer, the parents and others that seem relevant, and confirming or amending the previous decision.

There would be no role for advocates for the demands of the parents. Hence no legal aid. There could, however, be in-house staff to support people who were vulnerable.

All would be subject to Judicial Review.

Depending on the complexion of the Government, this service could either be within the direct machinery of the State, if slightly hands-off, (as with CAFCASS}, or it could be one or more independent services under contract.

In either case, there would be full guidelines and the Officers would need special training. For many, their previous experience as CAFCASS officers, specialist Family Lawyers, Mediators and other family based professions now abolished or unnecessary so on would be relevant and enable them to be exempted from part of the training.

The guidelines would not be prescriptive but drafted (as FNF has proposed) in terms of the child-centred objectives to be obtained. There should, however, be expectations as to deadlines. These for starters, requests for advice appointments should result in one within a week. In the event of a formal decision being needed, 90% should be dealt with within 6 weeks, and a delay of more than 3 months should require judicial or other senior approval.

If there are decisions required over child maintenance, housing, or financial matters, these should *be held after the Parenting Plan decision*. This to enable them to be driven by the child welfare issues.

* Figure given to an FNF AGM by the then Children's Commissioner for England, Prof Al Ainsley-Green.