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Monday 30 September 2019

ADCS response to the President of the Family Division's consultation on public law cases in the family courts

Introduction

1. The Association of Directors of Children's Services Ltd (ADCS) welcomes the opportunity to respond to "*Recommendations to achieve best practice in the child protection and family justice systems.*" ADCS is the professional association for directors of children's services (DCS) and their senior management teams. All 151 local authorities are currently within membership. Under the provision of *The Children Act (2004)*, the DCS is the chief officer responsible for the discharge of local authority (LA) functions with regards to education and children's social care and acts as an advocate for children across the local area.
2. Last autumn the President of the Family Division initiated a review with the aim of bringing forward proposals to ease the pressures on the family courts as well as addressing variation in application rates and in the types of legal orders awarded in different parts of the country alongside related conversations about practice, culture and risk following on from the *Care Crisis Review (2018)*. A total of 81 recommendations have been put forward, some of which will require changes to legislation or guidance.
3. ADCS welcomed the opportunity to take an active part in this exercise, which offered a valuable opportunity to take stock as we approach the 30th anniversary of *The Children Act (1989)* receiving Royal Assent. ADCS has used this milestone to reflect on the new challenges facing children, families and social workers. Much of the Act still holds true but no one could have predicted that Section 20 would be used so frequently to support unaccompanied asylum-seeking minors arriving in this country without any family ties, for example.
4. The final report does not allocate specific recommendations to identified organisations or bodies nor does it have a timetable attached, which may, in part, be due to the rapid nature of the review. It would be helpful if the final version of this report included a delivery plan and consideration was given to how this work programme can be aligned with related activities led by the Family Justice Board, Family Justice Council, the burgeoning Family Justice Observatory and relevant government departments. ADCS looks forward to ongoing dialogue about the recommendations made here, the outcome of this consultation and how best to bring forward meaningful, lasting change for the benefit of children and families.

Context

5. It is important to contextualise the Association's response to this exercise with an overview of scale and nature of child protection activity. Since 2007/08 ADCS has sought to capture activity in children's social care via a biennial survey, [Safeguarding Pressures](#). The sixth phase of this research came out in autumn 2018. It clearly showed that every area of social care activity, from early help assessments and initial contacts at the 'front door,' to the numbers of children on protective plans or coming into care increased between 2008 and 2018.
6. Using a decade of data, ADCS recently attempted some basic forecasting and the trend for increasing activity across all domains looks set to continue up to 2023, the care population,

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for example, is projected to rise from 75,000 to 81,000 by 2023. So, whilst levels of need have been increasing since 2010, and look set to rise further in the coming years, funding for these vital services has not. In fact, core local government funding fell by 50% in real-terms between 2010 and 2018. Whilst it's true spending on children's services has been prioritised by local politicians, this headline masks a significant reorientation of spending, with children's social care taking up ever greater amounts of the overall funding pot, meaning capacity for preventative work with families has been diminished.

7. There is no single reason as to why growing numbers of children and families find themselves in need of help and support. The number of 0 – 17-year olds grew by 6.4% over the last decade, welfare reforms, insecure work and poor-quality housing puts a strain on family relationships, which in turn increases the risk of poor-quality parenting, parental mental ill-health and emotional distress. The range of support services available to draw down on is diminishing; there are long waiting times for mental health services, local drug and alcohol services have been decimated as a result of cuts to public health grants and family support workers have been lost. The cumulative impact of these factors, as well as rising levels of poverty, affects children's wellbeing, which in turn affects their outcomes and life chances.
8. Last year the shortfall in funding for children's social care alone stood at £800 million, with this overspend being met via deeper cuts in other areas of service or from financial reserves. In the longer term the Local Government Association (LGA) estimate at least £3.1 billion in additional funding will be required by 2025 just for children's services to stand still. Where new funding has been made available in recent years this has been in the form of one-off injections of cash or more commonly short term, project-based grant funding allocated on the strength of bids rather than local need, including the limited roll-out of FDAC, for example, or the Pause Project. A more sustainable and equitable funding settlement is urgently needed for children's services.
9. That more children are being kept safe and partner agencies recognise risks and act on them is in many ways a success story and why this country's child protection system, underpinned by *The Children Act (1989)*, is widely regarded as one of the safest in the world. So, whilst ADCS does not characterise these pressures as a crisis, there are some not insignificant challenges within the child protection system. ADCS members are clear there is no 'right' number of children who should be in the care system, rather the question should be are the right children in care and are they in the right placements? More could be done by government to regulate the cost of placements, via legislation to prohibit excessive profits if necessary, or central funding could be brought in line with levels of actual levels of need presenting in local communities.

General comments

10. ADCS members recognise the capacity challenges facing the courts, like other parts of the public sector HMCTS has faced significant budget reductions since 2010. Put simply, if there are more children and families encountering the courts, fewer judges and support staff and indeed fewer court buildings then performance will understandably be impacted. If this is not acceptable to government then new investment must be brought forward as a matter of urgency, either at court level to help clear the backlog in the system, or preferably to allow LAs to work with families earlier to avert the need for court involvement at all.
11. A number of the report's themes echo discussions DCSs are having at a local, regional and national level, particularly in relation to learning, sharing good practice, using strengths-based working and supporting the workforce in these challenging times. It is recognised that there are differences in the ways LAs work with children and families across the country and ADCS members are committed to working together to better understand and

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address some of this variance. Explicit references to addressing differences in court decision making in order to improve children's outcomes in the report are certainly welcome although the report implies LAs are bringing unnecessary applications before the courts. There is no evidence that children are being brought into care inappropriately, in fact inspection activity suggests that where performance is giving concern, children are being left in potentially harmful situations for too long, not taken into care too readily. Reinforcement of the 'No Order Principle' and the ability of judges to gatekeep and determine whether care proceedings should continue at all at the point of application could be strengthened.

12. There is a strong track record of children's services working together as a sector to bring about improvement via peer challenge work and regional data benchmarking. In recent years these arrangements have begun to evolve and ADCS is working closely with the Department for Education, local authority chief executives and elected members on the development of Regional Improvement and Innovation Alliances. At a national level ADCS works with the LGA, Cafcass and others to bring about improvement in practice via conferences as well as the development of advice notes and templates e.g. the SWET.
13. In taking whole system view of activity, it's worth noting that for every case brought before the courts, LAs are working with dozens of others to safely manage risk in the community in a bid keep families together (where this is in the child's best interests). It is therefore inevitable that the cases that do come before the courts are the riskiest and most challenging. The court arena can be adversarial and all too often a bruising experience for social workers. LAs do not shy away from challenge and scrutiny but it must be recognised that social workers are qualified, registered professionals working in extremely challenging circumstances. The focus on culture and the fostering of a blame free environment is welcome but more detail could helpfully be provided to explain how this shift will be achieved.
14. Taking the opportunity to review and refresh forms and templates, in consultation with the practitioners and professionals who use them most, makes sense. As does the move towards greater standardisation of agenda, letters and forms, but these actions alone will not be enough; the child protection system is built on relationships not processes. In the longer term it therefore makes sense to focus on practice development, building the collective knowledge base and to facilitating the sharing of good practice whilst also keeping national guidance and associated regulations under review – the FJO recently highlighted the lack of guidance around pre-proceedings for new borns. Greater focus on, and funding for, local authority social work is likely to have the greatest impact in the longer term.
15. On a related note, a number of 'good practice' examples drawn from local areas are included in the report. Whilst it is helpful to facilitate the sharing of new and/or different ways of working it is hard to be prescriptive about the adoption of a single model or way of working; each local area is different. These resources are helpful to share and ADCS would be interested in continuing discussions with the President and his review team, the FJO and the What Works Centre in Children's Social Care about how to build on this piece of work going forward.

Specific comments

16. The complexity of working with children and families with multiple and overlapping health and social care needs means that social workers are frequently making difficult decisions based on their assessment of risk and harm at a point in time. Where neglect and/or emotional abuse are the primary concerns it is worth remembering that this harm sits on a spectrum making it very difficult, if not impossible, to open up clear blue water in practice.

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There are different approaches to **pre-proceedings** in local areas and every effort must be made to ensure that the child always remains at the centre of decision-making. Indeed, this is the guiding principle of the *Children Act (1989)*. ADCS members agree that pre-proceedings are a serious process and that parents should be able to access more support via increased legal aid funding.

17. ADCS firmly believes that social workers are, and should remain, at the forefront of advocacy for children during legal proceedings. LAs have a statutory duty to work in the best interests of children and **pre-proceedings** are part of our core business, not Cafcass'. The expansion of Cafcass into this area of work would certainly require additional funding as well as staffing and there is already a national shortage of experienced social workers. ADCS members are concerned that taking forward this proposal would further concentrate resources and focus on intensive statutory interventions rather than the provision of early help and support to divert the need for children to come into care at all. This move would also add another professional into an already crowded space which could create confusion and stress. It may unintentionally send a message to parents that court proceedings are inevitable thus disincentivising co-operation and change.
18. National **timeliness targets** have focused hearts and minds but not every case, not every child is the same. ADCS therefore supports the extension of 26-week limit in favour of appropriate timeliness over an absolute focus on speed. Reinforcing the ability to stop the 26-week countdown without recrimination is preferable to rushing through an assessment of an potential special guardian who has emerged during court proceedings. This use of extension periods might well address other issues raised in the review, such as the practice of attaching supervision orders to **SGOs**, and may overcome the need to create a new legal instrument.
19. ADCS supports the increased focus on work with family members who might become a special guardian before care proceedings commence, on assessments and training and ensuring that potential special guardians have a meaningful relationship with the child. Some LAs already have well established systems in place so there are existing practice examples to draw on. A review of the statutory guidance for special guardianship would be helpful as the current usage of this order differs from the spirit of the legislation and indeed between court areas. This review could usefully address the anomalies and challenges created by significant case law and would need to carefully consider connected persons and kinship carers.
20. ADCS members support plans to reduce the routine **usage of experts** during proceedings. Introducing an expert adds delay and it is not always clear what value independent social workers, who do not have an established relationship with the child, can add, although there are clearly come exceptions e.g. the provision of specialist advice in relation to international assessments. Again, there is significant variation in usage of expert witnesses across the country. ADCS appreciates that family court judges face very difficult decisions where the evidence is frequently in the balance between different disposals, further expert opinion can be sought in the hope this will ease the decision-making process, but often it does not.
21. The **case management section** of the report does touch on variation in judicial decision making and indeed two specific recommendations relating to the promotion of nationally consistent outcomes and the misuse of care orders are made but little detail is provided to understand how these aims will be achieved. Judicial independence must of course be maintained but there is learning that can surely be drawn from better use of national data, research and learning exercises which follow the child's journey, experiences and outcomes, particularly in relation to care orders at home and supervision orders. National

data show significant differences in the public law applications made and the orders granted and it's important to really understand what this means for children. Children and young people should experience support and justice consistently across the country.

22. The development of the social work evidence template or the '**SWET**' was a sector-led endeavour coordinated by ADCS and Cafcass. It was written for social workers in consultation with social workers to improve both the quality and consistency of court reports. The sector should continue to own it and take forward the suggested review actions, including initiating a conversation about the development of a new template for urgent applications.
23. The report recommends that **Family Group Conferencing** is adopted by all LAs, similar approaches are in use in local areas, it is hard to prescribe a single model, particularly where there are financial implications. ADCS supports the principle but not the mandating of one model over all others.
24. The proposed changes to the **role of IROs** seem largely focused on adding 'grit' in the system. ADCS believes it might be more helpful to refocus attention on the relationships IROs build with children in care as well as operational staff to promote best practice/outcomes. It might also be helpful to look beyond an escalation process, which is inconsistently applied, to a more supportive role that seeks to be proactive and timely. Further, IROs generally have a wealth of experience that could be better used to support and enhance practice development, particularly around care planning.
25. As it stands key practice-related recommendations, such as an expanded role for Cafcass, changes to IROs and the legal advisor require further discussion both within and between the relevant parties, particularly as the benefits of such changes are not explained in detail and there are clear financial and staffing implications. It is recognised that the legal advisor role is now wider in terms of providing input and advice into the legal gateway meeting, however, ADCS does not believe it would be appropriate for them to be actively making care planning decisions.
26. In terms of the use of **Section 20**, any resulting training and resources should be flexible enough to allow local models of practice to be reflected in the delivery.

Concluding remarks

27. ADCS members are committed to working alongside the President of the Family Division, relevant government departments, Cafcass and other representative groups to bring forward a clear narrative and vision to knit together the myriad relevant work streams, reviews and programmes in this area in order to improve children's outcomes. A partnership of leadership is needed to drive forward system-wide changes, no single body, agency or government department can deliver such an ambitious transformation plan.
28. ADCS would welcome the opportunity to talk through the points raised in this response with the President of the Family Division and the team supporting him as part of this ongoing review. Please contact the relevant policy officer via katy.block@adcs.org.uk in the first instance.