

Quick guide

Public Law Cases and the Family Justice Review

March 2012

Introduction

The Family Justice Review has outlined **major reforms to the family justice system** in England and Wales. The Review was commissioned by the UK and Welsh Governments in response to an **increase in both the number and duration of family law cases** in the courts and the **negative effect** on families and children. An interim report¹ and final report were produced in 2011². The Welsh Government published its response to the final report in February 2012³ at the same time as the UK Government which published a separate report responding to **134 recommendations** in the Review, **almost all** of which it has **accepted**⁴.

1. **Public law** proceedings involve any case about the **protection of children** and the **involvement of the local authority**.
2. **Private law** proceedings involve any case of **family break-up** where **separating parents cannot agree** on the upbringing of their children.

This Quick Guide summarises what the Review has to say about **public law**, the **Government response** and the implications for **devolved and non-devolved issues** affecting children in Wales. It also outlines **criticisms from key organisations**.

A Quick Guide has also been produced on Private Law Cases and the Family Justice Review.

The need for change

The Family Justice Review states that **cases take too long** – on average care and supervision cases involving the protection of children take **56 weeks**. Many take **much longer**. The Review echoes concerns about how **delay damages vulnerable children**.

The Review talks about the large number of organisations involved in the family justice system, with structures that are **complicated and overlapping**. It highlights a **lack of joint working and planning** between different parts of the system combined with a

¹ Ministry of Justice, *Family Justice Review interim report*, March 2011, [accessed 29 February 2012]

² Ministry of Justice, *Family Justice Review final report*, November 2011 [accessed 29 February 2012]

³ Welsh Government, Gwenda Thomas (Deputy Minister for Children and Social Services), *UK Government's Response to the Family Justice Review*, Cabinet Written Statement, 6 February 2012 [accessed 29 February 2012]

⁴ Department for Education, *The Government Response to the Family Justice Review: A system with children and families at its heart*, February 2012 [accessed 2 March 2012]

distrust of social workers and a general **prejudice against care as a positive option** for children. As a result the courts have increasingly **scrutinised care plans** in order to determine whether a care order is in the best interests of a child, rather than leaving the detail of the care plan to the local authority. This creates **duplication and delay**. The Review also says that local authorities often **wait too long before starting care proceedings** because they **underestimate the impact** on children of long-term neglect and emotional abuse.

It points out that the **growth in the use of expert witnesses** in recent years has contributed to **increased delays** in court proceedings and also **increased costs**. The Review is concerned about **low morale** amongst some professionals involved with the family justice system. The low status of some staff does not match their levels of skill and commitment, especially **social workers**.

The Review stresses the **need to make the system resolutely child-focused** and the importance of **hearing the child's voice** in all proceedings affecting them.

The Review makes recommendations in **devolved (social welfare)** and **non-devolved (family law and proceedings) areas**. The dividing line between the two is not always clear but will be clarified over time.

All of the following recommendations have been **accepted** in the response from the UK Government and the Welsh Government has indicated a commitment to 'implementing those areas of the response devolved to Wales'.

Devolved areas

The Welsh Government is responsible for Welsh local authority **social services departments, child welfare** and **child protection services**. It is also responsible for the Children and Family Court Advisory Support Service in Wales (**CAFCASS Cymru**).

The Review recommends that **government guidance** on child protection procedures should emphasise the importance of the **appropriate use of court proceedings in planning for children** and should also emphasise the **importance of the child's timescales** when aiming to reduce delay.

It recommends **reducing the responsibility of local authority adoption panels** so that they are no longer required to consider adoption plans for individual children. The review says that **court scrutiny of adoption plans should be sufficient** and will **reduce delay**.

The Review also makes recommendations for the **professional development of social workers**, placing more emphasis on **child development** and **training to improve the content of assessments** that meet the requirements of the courts when making decisions about children.

Non-devolved areas

The Review suggests that **new legislation** should **set a time limit** on care proceedings - this should be **no more than six months** for all but the most complex and difficult cases. It also recommends **changing the renewal requirements for interim care orders** so that

people do not have to keep going back to court when care proceedings are on-going⁵. Judges would be responsible for **timetabling and case management**, in line with the proposed legislation to set time limits for care proceedings.

The Review recommends that, in future, courts should **not** scrutinise the detail of the **child's care plan** as set out by the local authority. It should **only look at the essential issues** which are where the child should live at the end of care proceedings and what level of contact there should be with family members if the child does not return home.

There are several recommendations on **improving training for judges** and ensuring **judicial continuity** in children's cases. The Review also recommends replacing the current three tiers of court with a **single family court**.

Recommendations for working together

The following recommendations combine areas where professionals in devolved organisations such as **Cafcass Cymru and Welsh local authorities** work with professionals in the non-devolved justice system.

The Review says that judges and local authorities should **work together to set standards** so that local authority reports fit with the requirements of the court. This should also **reduce current reliance on expert witnesses** to supplement evidence.

The Review also recommends a system of **continuing professional development** for judges and magistrates, starting with the introduction of a pilot scheme where judges and magistrates would **learn the outcomes for children and families** with whom they have been involved. It also suggests an **interdisciplinary induction course** for all professionals working in the family justice system. The Review also recommends **strengthening links** between Independent Reviewing Officers⁶ (IROs), children's guardians (employed by CAF/CASS Cymru) and the judiciary.

The Review recommends the setting up of a new **Family Justice Service** to bring together different services involved in the family justice system. In the interim a **Family Justice Board** will be established and this will have **key representation from Wales**.

Welsh Government response

The Welsh Government has welcomed the UK Government's response to the Review and points to **key policy initiatives** in Wales that complement the recommendations. It highlights the framework set out in its policy document **Sustainable Social Services for Wales** which echoes messages from the Review on **accountability and delivery of services** to promote the welfare of children and young people and **improving the professional skills and confidence of social workers** in managing complex cases.

Ensuring that the child's voice is heard in all court processes is central to the **children's**

⁵ Care proceedings fall under Part IV of the Children Act 1989 which is defined as a "family proceeding".

⁶ IROs are employed by local authorities to participate in statutory reviews of looked after children, to oversee the care planning process and ensure that the child's voice is heard. The local authority must respond to any recommendations that the IRO makes.

rights agenda in Wales.

The Welsh Government plans to establish a **Family Justice Network in Wales** that will inform the work of the **interim Family Justice Board** and its Welsh representatives. It will meet for the first time in **April 2012**.

The Welsh Government plans to introduce a **Social Services Bill**⁷ in October 2012 which will aim to reduce complexities in social services delivery including a **reduction in regulation and bureaucracy** so that organisations can focus on delivery.

Criticisms of the Review

Several responses to the Review questioned the **lack of extra resources** to support compliance with the proposed **statutory time limit for care proceedings** in a system which is already under pressure^{8,9,10}. The Law Society expresses concern about other developments that could affect implementation, highlighting the **closure of court facilities** and **cuts to legal aid**.

One organisation representing lawyers is concerned about **ending the detailed scrutiny of care plans** by the courts¹¹. The professional association representing children's guardians and independent social workers echoes this and also expresses concern about the **impact of rigid timescales on children** and the **workload pressures on children's guardians**¹².

Further information

For further information on the Family Justice Review, please contact **Lynette Hayward** (Lynette.Hayward@Wales.gov.uk), Research Service.

See also:

Quick Guide: [Private Law Cases and the Family Justice Review](#)

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⁷ Welsh Government, Consultation, *Social Services (Wales) Bill* [accessed 15 March 2012]

⁸ Family Law Week, *Norgrove – The Response Considered* [accessed 29 February 2012]

⁹ Association of Lawyers for Children, *Government's response to Family Justice Review - press release*, 7 February 2012 [accessed 1 March 2012]

¹⁰ Law Society, *Law Society welcomes Government commitment to speed up care proceedings*, 6 February 2012 [accessed 1 March 2012]

¹¹ Association of Lawyers for Children, *Government's response to Family Justice Review - press release*, 7 February 2012 [accessed 1 March 2012]

¹² NAGALRO, *Government response weakens court safeguards for children*, 10 February 2012 [accessed 1 March 2012]