



JUDICIARY OF
ENGLAND AND WALES

LEICESTER FAMILY COURT NEWSLETTER
MAY 2018

It is 17 months since HHJ Bellamy moved to pastures new and a lot has happened since then so it seems like a good time for a Newsletter.

Judiciary

We are delighted to welcome HHJ Harold Godwin to the Family judicial team. He is a very experienced judge who has moved to the Midlands from Wales. He is also a nominated judge of the Court of Protection. His work will no doubt be very beneficial in enabling us to list cases more promptly than we have been able to of late.

Our congratulations go to His Honour Judge Hedley on his elevation to the Circuit Bench. Although he will be sitting primarily in the civil jurisdiction, Judge Hedley retains his Family ticket so we can call on him to help with those urgent Friday afternoon applications!

We are also delighted to welcome District Judge Afzal to join the District Bench in Leicester. He also sits as a Recorder in Family cases thus providing greater scope for listing and judicial continuity.

As you know District Judge Reed will be retiring soon. He will be sorely missed by his colleagues and we are all looking forward to the various events taking place in the coming weeks to mark his retirement.

Performance

The most recent performance statistics available are for the end of February 2018, month 11 of the financial year. Those statistics are disappointing and show a reduction in our performance from the previous 12 months. For public law work the average length of a care case in the Family Court at Leicester was 34.7 weeks. The national average is 28.4 weeks so we have fallen behind. Locally we are only completing 38.5% of cases within the statutory 26 week period, the national average being 55.8%.

The reasons for this downturn in performance are many and various. The year on year increase in the number of new cases has continued apace and so there was an increase in the number of new cases this year although we did not have as many sitting days available. There was a large spike in new cases issued in the early summer of 2017 which took everyone by surprise and impacted on court availability for some older cases. Listing has become more difficult because of the need to accommodate those who work part time and cases not always being effective on their trial dates despite the best efforts of court staff to check in advance that they are trial ready. Delays occur if assessments are not done on time. The report card simply says, “Must do better”.

In private law work the statistics are better. The target for completion of a private law case is 20 weeks. Locally, we are averaging 26 weeks compared with a national average of 23.2 weeks.

Volume

The increase in public law work and sizeable increase in Family Law Act applications, up from 312 in the financial year to 2017 to 344 in the 11 months to date, has inevitably meant that the burden on the court, on the profession and on Cafcass has increased proportionately. There is little that can be done to stem the tide of new work. We do have extra judicial resource with the arrival of HHJ Godwin which will help redress the listing difficulties of the last 18 months or so. It is to be hoped that the statistics will improve over time as a result. They will be improved if some of the issues mentioned above are addressed. They will also be helped if more effective use can be made of IRH’s [see below].

In the meantime thank you for all your efforts over the last 16 months to go the extra mile in an attempt to achieve the best outcomes for the children and families we serve. It has not been easy but we never fail to be impressed with your dedication, hard work and sensitivity towards your clients and the issues that arise in the cases before the court. Please carry on supporting one another and offering mutual encouragement.

Listing – short hearings

One of the consequences of the increase in volume of work is that court lists are becoming over-full. If judges were not prepared to accept the principle of over-listing the waiting time even for the shortest of hearings would be incompatible with the requirement to complete care cases within 26 weeks. There has been an increase in the number of requests to put hearings back by a few days or to list at short notice to re-timetable or for other urgent reasons. The

more that happens and the more the court tries to oblige, the more difficult the listing problem becomes. Practitioners are reminded that the timetable we operate under is a statutory one and we have a duty to adhere to it. Where, on hopefully the increasingly rarer occasions an extension of time is required, practitioners are invited to consider whether such applications are of a nature that can be agreed with a consent order being provided to the court as, in appropriate situations, this will increase efficiency and keep costs to a minimum.

Listing – final hearings

For the most part, final hearings are not listed until the IRH. To enable court time to be used efficiently it is important that the PLO requirements for an IRH are strictly complied with. In particular, it is appropriate to highlight the need for the advocates to be able to inform the court:

1. what issues are in dispute;
2. if those issues cannot be resolved at the IRH, which witnesses are required to attend to give oral evidence and why;
3. the dates when those witnesses are not available to attend court to give evidence and why;
4. how long the oral evidence of each witness is likely to take.

Frequently advocates attending an IRH have given no real thought to these issues and are not able to answer these questions. There needs to be improvement in this area. It is only when advocates comply fully with their responsibilities that the court can fully comply with its PLO responsibilities – to identify the key issues, to determine whether the IRH can be used as a final hearing, to resolve or narrow issues, to identify the issues which remain to be resolved at a final hearing, to identify the evidence required to determine those issues and to fix a date for the final hearing within the statutory 26 week time limit confident that hearing can be effective. Expect from now on, in appropriate cases, judges directing an advocates meeting prior to the IRH and the filing of a schedule of issues in advance of the hearing together with a completed witness template.

Police disclosure

There are real difficulties in obtaining timely police disclosure at the moment largely due to a reduction in the number of staff working in the disclosure unit. The issue is being discussed with the police by local authority lawyers and the judiciary in the hope that additional

resources can be found quickly. In the meantime, to try and avoid more delay, all judges and legal advisors have been reminded of the need to try and limit police disclosure to what is necessary and proportionate in the individual case. Practitioners are invited to do likewise. For example, it is helpful to consider limiting the dates between which disclosure is sought as it may not be necessary to have all the information on the police database since 2005! Try and be as specific as possible about the addresses against which a search should be carried out and to identify as carefully as possible the full names and dates of birth of the parties and the dates of any specific incidents about which information is requested.

Cross-courting

HHJ Bellamy introduced a procedure about cross-courting a few years ago. Some people are very good at operating it; others less so. So, a reminder! If you are in more than one court on any given a day you must seek the court's permission to cross-court in advance. When doing so you must state which cases you are in, who they are before and what the time estimates for each hearing are, so that the judges can properly assess whether permission may be granted – it cannot always be assured and practitioners should always make a contingency plan as soon as the prospect of cross-courting becomes known.

Bundles

We know that Bundles are everyone's favourite topic so it would be remiss of us not to mention them. PD27A contains all you need to know. More honoured in the breach than the observance are the following requirements within the PD:

- ❖ lodge the bundle not less than 2 working days before the hearing
- ❖ lodge only one copy, unless for Magistrates when four copies are needed; bring the witness bundle with you
- ❖ after the hearing retrieve the bundle from the court office within 5 days otherwise it will be destroyed

One other plea: many documents are sent to court the day before or on the morning of the hearing. They will not be in the judge's bundle because no-one will physically have been able to put them in. The judge won't know about them unless she is told or gleans of their existence from comments made in another party's document. Please try and ensure the court staff are asked to forward a copy of any recently filed document to the judge or bring a hard copy with you and hand it to the usher as soon as you arrive.

Recent legal developments

Practitioners will find it helpful to familiarise themselves with the substituted Practice Direction 12J-Child Arrangements and Contact Orders: Domestic Violence and Harm which came into force on 2 October 2017. It widens the scope of domestic abuse; imposes greater duties on the court to consider whether it is an issue and to record on court orders what decisions are made about whether or not to hold a fact-finding hearing and why; and, if abuse is found to have occurred, whether a contact order can be made and, if so, why and in what terms.

There is also a new Part 3A to the FPR entitled Vulnerable Persons: Participation in Proceedings and Giving Evidence. It sets out the court's duty to consider how a party can participate in the proceedings and how a witness can give evidence. It contains a helpful checklist of factors to take into account and necessitates consideration being given to convening a "ground rules" hearing.

Judges Handley, George and Godwin

May 2018