

Question 1 - In Ancillary Relief cases some District Judges have started to append to ancillary relief FDA Orders detailed directions about the trial bundle and the filing of skeleton arguments for FDR. This practice does not seem to be uniform however. Are there any plans to have standard FDR Directions? Manchester County Court, for example, has adopted a very short FDR Direction Document which prohibits the preparation and lodging of a full FDR bundle. What are the Panel's views?

Answer

Detailed FDR Directions have been used by the District Judges in Liverpool since June 2007. They may be obtained from any of the District Judges.

They do not require any trial bundle or skeleton. They encourage brevity. They are intended to restrict the amount of information to that which is necessary properly to conduct an effective FDR.

The practice of adopting them may not be uniform because, as with all case management, this is at the discretion of the Judge and is case specific.

The Manchester FDR directions are similar, but require more information to be filed and disallow the costs of preparing a bundle as, like here, none is required. We have no plans to standardise the Liverpool directions which the District Judges consider are working well.

Question 2 What is the Panel's view in relation to the shelving of the Cohabitation Law Reforms? What is the Panels view in relation to the case management issues in TOLATA Act Claims? Is there any mileage in having an FDR type hearing even in a TOLATA Claim where the CPR governs the procedure?

Answer

The issue of Cohabitation Law Reform is a matter for Parliament.

Case management issues in TOLATA Act Claims are dealt with in Liverpool before a Chancery District Judge in an FDR type hearing.

This hearing results in Standard Directions with the parties being required no later than seven days prior to the CMC to file and serve the following:

- (a) An agreed valuation of the property in issue
- (b) Copies of offers made/received
- (c) Brief skeleton/outline arguments.

It is further directed that the parties should attend the hearing as well as their legal representatives and should be in court one hour before the hearing time to facilitate discussions with the other parties.

I am told that most matters settle on this basis before the Chancery District Judge.

Question 3 We have noted how the Manchester Civil and Family Court is luxurious both in relation to staff, client and professional facilities, and in particular the provision of meeting rooms and the café. We at Liverpool were told we were unable to have a café because we had no jurors. Manchester has no jurors. We are grateful for the water machines but we wonder what efforts are now being made to redress the balance and to improve the facilities here? Those who subscribe to the conspiracy theory may believe that in the light of the impending possible judicial redundancies, and indeed, the closure of other surrounding courts, Liverpool Civil Centre is also doomed to close and we are to move to Manchester. Does the Panel have any views on that?

Answer

In Liverpool we do, in fact, have jurors in some Civil cases.

There is no plan to close Liverpool and, indeed, whilst there may be a merger of the Magistrates/ County Courts in St. Helens and Southport there is no plan for closure of the outlying Courts.

The region faces a budget cut of 2% but there has been no mention whatsoever of Judicial redundancies.

Liverpool has a very high case load (equal, I am told, to that of Manchester).

As to the facilities, Mr Simon Vowles, Head of Civil and Family Operations in Cheshire and Merseyside, has held a number of meetings with solicitors and barristers to improve the facilities within the Civil and Family Justice Centre. If there are any concerns as to existing facilities, representations should be made to him.

Question 4 Children seem to be growing up more quickly and absorbing more TV dramas, and accordingly want to see the court and participate in proceedings relating to them. They will not be fobbed off even at the tender age of 10, with words that it is adult business. What training have Judges had in dealing with these issues, and what is the current view about children participating in proceedings?

Answer

Every case has to be dealt with having regard to the specific facts and specific child.

The President of the Family Division, Sir Mark Potter gave a speech on the 4th May 2008 entitled 'The Voice of a Child: Children's "Rights" in Family Proceedings.'

Within that speech he discussed the issue of Judges meeting children and appeared to be encouraging of the fact that Judges should be prepared to look at this matter and meet the child regardless of whether or not it will actively assist the Judge in his decision.

Within that lecture he stated clearly that;

"I share the view of Lord Justice Wilson, expressed in his recent Hershman/Levy Memorial Lecture to the Association of Lawyers for Children that it should become the norm for a Judge, when concluding proceedings in which a child lacks a guardian, to offer the child the opportunity of a face to face meeting should the child wish to take it up. Whether or not the outcome is likely to coincide with the wishes of the child, specialist Family Judges should be willing to see the child and, within the limits of good sense and propriety to explain the judicial process and the Judge's reasons, if only so as to reconcile the child to an unpalatable decision and encourage him on his way".

Judges hitherto have had no particular training for this.

Question 5 Practitioners have noticed a severe drop of work in the Public Law sector. This has coincided with the implementation of fixed fees, which are to work on the basis of swings and roundabouts insofar as they will do less work in one case but more work in another case, which balances out. Where there is no work then that argument fails, and practitioners are leaving. Does the panel believe that the reduction of work is in relation to the implementation of the PLO, or the draconian increase in court fees which have been implemented or, that children are no longer at risk? Should practitioners be retraining?

Answer

In Merseyside there has not been a drop overall in Public Law cases. Whilst there has been a drop elsewhere in the country, this has not affected Merseyside save shortly after the implementation of the Public Law Outline and it was felt that this related to the requirements in relation to checklist documentation.

Question 6 Does the Court have any proposals for the wider use of e-mail for filing and in the management of cases in Public Law and Private Law family cases?

Answer

Urgent e-mails can be sent to the relevant Judge through the administrative section. Urgent faxes for the attention of the Judge can also be sent to the following numbers and personnel namely:
Darren Anders 0151 296 2408/ 0151 296 2460
Jan Brookman 0151 296 2525

Filing of long documents is not appropriate for e-mail use and we currently do not have the resources for this.

Question 7 Judicial continuity is the mainstay of the PLO and, indeed, good practice for all cases. There seems to be a pattern of that not happening with cases suddenly being switched, and a completely different judicial approach being taken. There are even some efforts for that to happen where one Judge has made a finding of fact and then attempting to return it to the original Judge who should have been hearing the matter. Does the Panel believe that judicial continuity is important, and that there should be a general ban on cases being heard by other Judges unless it is absolutely necessary?

Answer

The importance of judicial continuity has been emphasised by Baroness Hale in RE B (Care Proceeding) (Standards of Proof) (2008) 2 FLR 141 H.L.

Where one Judge has made a finding of fact, that Judge is effectively considered to be part- heard in the case. Sometimes it is impossible to have judicial continuity where there has been directions given by one Judge because that would involve inordinate and damaging delay to the child. In those circumstances, it may be appropriate for another Judge to hear the case. It will depend upon the stage which a case has reached and what judicial involvement has so far taken place.

Question 8 The PLO and court documents make reference to the case progression officer. Is this post properly funded within Liverpool Family Section, can more publicity be given to the individuals together with the details of contacts?

Answer

We currently do not have a case progression officer although many of the functions of a case progression officer are carried out by the following:

- (a) Gillian Best
- (b) Darren Anders

Question 9 Mr Justice Mumby in the recent case of Re X and Y (2008) has said that he intends to name and shame solicitors who fail to abide by the Practice Direction for bundles. Solicitors are either on a fixed fee or £61.00 per hour in order to do this work. Is this proportionate to name and shame on those cases?

Answer

In that case Mr Justice Mumby emphasised the need for bundles to be filed so that Judges can be properly prepared. This is necessary for the orderly and just conduct of any proceedings. Generally there is good practice in Liverpool in terms of filing bundles. It is critical that solicitors file those bundles and if there are any difficulties they should inform the court well in advance. It is a matter for solicitors to challenge fees and to adhere to court orders.

Question 10 Budgets and lack of resources are all pervading within the system. CAF/CASS in particular seems to be having greater delays than ever in the Merseyside area. Is this affecting the smooth running of the Protocol and the best interests of the child? Are there any proposals for the court to support and pay for private mediation to deal with family matters?

Answer

It is correct that CAF/CASS are having difficulties in terms of resources. Until recently there were no delays in terms of allocation of Guardians in Public Law cases.

In recent times, due to a change in policy there is a greater delay in appointing Guardians although this is currently being discussed at a very high level with CAF/CASS regional officers.

In terms of mediation, at the Court Representatives Group Meeting held under the Family Justice Council, we constantly discuss mediation and, indeed, the provision of counselling for parties in relevant cases. CAF/CASS were looking into the provision of mediation but due to the reduction in resources, it may be that we will need to look at court provision of mediation although this is now difficult in the context of the budget cuts.

The issue of mediation is, however, a matter which concerns the DFJ greatly and which is constantly being reviewed.

Question 11 On 9th September, a consultation document was produced by the Legal Services Commission where it states that it is asking for views on amending the handbook that:

- i. No fees are to be payable to contact centres at all.
- ii CAFCASS is to be directed to do this work.
- iii. No fees are payable for any risk assessments to be undertaken by CAFCASS under Section 16a Children Act to be implemented shortly.
- iv. Work in establishing, maintaining or, improving contact or, assessing violent behaviour so as to assist in contact, will not be an allowable disbursement.

The consultation finishes on 21 October but, clearly history tells us that consultations really result without change. In the light of CAFCASS problems does the court have any plans to assist in trying to move matters on particularly for those parties who are not represented, for example, more information available about contact centres or, joint parenting courses?

Answer

The CAFCASS website will provide details as to available services on an interactive map as from the 8th December 2008.

It is clearly regrettable that the consultation paper does not allow much time for views to be collated but it is clear from the meetings that I have held that, as a result the LSC withdrawing the funding of contact from September 2008 contact centres will be heavily reliant upon funding from CAFCASS and CAFCASS has a limited budget.

As a result of the reduction in funding, NYAS centre in Birkenhead is under real risk of closure and, indeed, other supervised centres and supported contact centres are under similar constraints.

The Representative Organisation sub-group meeting considered these matters on the 11th June 2008 and 6th October 2008 and everyone was encouraged to respond to the consultation paper. The Judges remain extremely concerned about the lack of resources in terms of contact centres and in terms resourcing risk assessments.

**Her Honour Judge Margaret De Haas QC
Designated Family Judge for Merseyside**