Private Law Advisory Group

Final Report

Summary of Private law proposals – Context – Key Reform Objectives – Timeline – Interim measures to achieve change – Circuit (FDLJs) network – Pilots to test longer-term reform – Consultancy Support – Other reform measures – Statutory and other changes – Training – Ministerial responsibility for separating families.

Summary of this paper

1. This paper sets out an outline of a proposal to deliver a significant and ambitious programme of reform of 'private law' in England and Wales. The term 'private law' is used in this context to describe not only the resolution of issues between separating couples within the Family Court, but also the delivery of services, advice, and support to families to assist them in issue resolution and co-operative parenting outside of the court.

2. This proposal for reform builds on, and draws extensively from, the recent reports of:

    a. the President's Private Law Working Group ('PrLWG') (June 2019 and March 2020: 'The Time for Change; the Need for Change; the Case for Change'),

    b. the Ministry of Justice (MoJ) Expert Panel: 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' ('the Harm Panel report': June 2020), and

    c. the Family Solutions Group (sub-group of the PrLWG) dated 16 October 2020 entitled 'What About Me?'.

    The clear and emphatic theme of all of these reports (prepared without particular reference to the impact of the Coronavirus Covid-19 pandemic on the functioning of the Family Courts) is that significant reform of private law processes is greatly needed, long overdue, and is indeed now critical. The Coronavirus Covid-19 pandemic, affecting all sectors of society nationally since March 2020, has served to

expose and exaggerate many significant flaws in the Family Court system with significant adverse consequences.

3. The Private Law Advisory Group[i] ('PrLAG'), as a subgroup of the Family Justice Reform Implementation Group ('FJRIG'), has authored this report; the FJRIG adopts and commends it. The PrLAG has distilled the recommendations from the recently published reports (above) into a set of key *Reform Objectives* (see [10]) below). These key objectives will be held firmly at the centre of our reform work, both in the long-term and in the short-term.

4. The FJRIG (advised by the PrLAG) advocates the design of pilots[ii] to test system reform in and out of the court system. It is envisaged that the pilots will run in approximately 6-8 areas of England and in Wales (we propose that a pilot is run in *one DFJ area* on each circuit), and we hope will commence in the spring of 2021 (see [17] below).

5. While long-term reform is being devised and piloted, the FJRIG will take the lead in promoting further short/medium-term system change in the context of, and as a precursor to, the more radical reforms proposed; our proposals for immediate system change are set out in **Annex A** attached. As we explain below ([33]), the FJRIG proposes to use the network within each of the six[iii] circuits to stimulate and encourage the modifications to existing working practices set out in **Annex A** in the hope of offering relief to the current system under stress. While our focus is on reform, we are acutely aware of the need to achieve *recovery* (more accurately, 'better ways of coping') in the courts around the country.

6. The majority of private law work is dealt with in the Family Court by District Judges, and by Legal Advisers/Magistrates. Accordingly, we have discussed these proposals in outline terms with representatives of the Association of District Judges and the Heads of Legal Operations / Senior Family Legal Managers (responsible for the work of the Legal Advisers and Magistrates).

Context

7. The readers of this paper will need little persuading of the need for reform of the way in which separating families receive the support they need, and their access to court decisions in a timely way. Even before the impact of the Covid-19 pandemic, the Family Court was stressed to breaking point by a combination of the following:

    a. Significant increase in case volumes in private law;

    b. Increase in the numbers of litigants in person; lack of legal aid funding; litigants attending at court without having received any legal advice;

    c. The court being used as a default for many separating couples; insufficient support for separating couples to access forms of non-court dispute resolution;

    d. Parents with unrealistic expectations about what the court can offer;

    e. Incoherent network of support services for families who are separating, and those who were never together

    f. A high incidence of returning cases.

    The reports of the PrLWG and the Harm Panel discussed the many ways (beyond those listed above) in which families are being ill-served by the current arrangements for issue resolution in and out of the court.

8. The effect of the Coronavirus Covid-19 pandemic on the Family Court has emphasised the pressing need to focus on activities which will:

    - safely and appropriately reduce the demand on the Family Court;
    - ensure that there is sufficient capacity in the system to manage the cases which come into the Family Court; and
    - achieve consistently high levels of productivity within the Family Court system through efficient case management and case progression.

    Within this framework, the FJRIG is clear that we need to focus on improving the experience of those who access the Family Court, and on improving the outcomes and life chances for children and young people affected by family separation. We

wish to emphasise the need to look at the 'system' holistically, identifying early support and issue resolution for families, rather than consigning them to protracted and unnecessary court hearings which damage family relationships. We need urgently to address the current merry-go-round of returning cases.

Key Reform Objectives

9. The reports of the PrLWG and the Harm Panel contain many important recommendations – key recommendations contemplate fundamental system change; others envisage more minor but nonetheless significant modifications to our current ways of working.

10. Drawing the recommendations of the reports together, we see the main reform objectives as follows:

    a. **Promotion of non-adversarial problem-solving**;

        i. Enhancing the network of services currently outside of the court system, and better integrating them with the court processes, so that parties are helped to resolve issues without court where appropriate; and/or helped to prepare for court where they do;

        ii. Providing information to separating families about non-court dispute resolution at an early stage, and in more accessible ways, than the current MIAM (Mediation Information and Assessment Meeting);

        iii. Exploring whether there could be a role, and if so what role, for Cafcass/Cymru in the pre-court space (i.e. before a family ever comes to court);

        iv. Considering the impact of fees/cost on the choices which families make to achieve issue resolution;

        v. Moving away from an adversarial approach to the resolution of court applications; devising and implementing a problem-solving approach to the resolution of applications within the Family Court;

vi. Integrating the services outside of the court, with the work of the court;

vii. Promoting better communications within the court system (different proceedings affecting the same couple); dismantling the 'silos' between all those involved with the family.

b. Effective management of cases through the courts;

i. Triaging cases in court to ensure that their management is defined by their complexity/characteristics;

ii. Testing the use of 'tracks' to promote more efficient case management referable to the complexity/characteristics of the case; co-ordinating Family Court and IDAC cases;

iii. Making best use of resources (including Cafcass/Cymru and where relevant local authorities) so that the professional input is targeted where it is most needed;

iv. Using technology, where appropriate and fair, to improve the experience of court users.

c. **Putting children and families first**;

i. Promoting the family court's ability to respond consistently and effectively to domestic abuse and other serious offences; improving the experience of survivors of domestic abuse (including improved special measures);

ii. Enhancing the voice of the child at all stages.

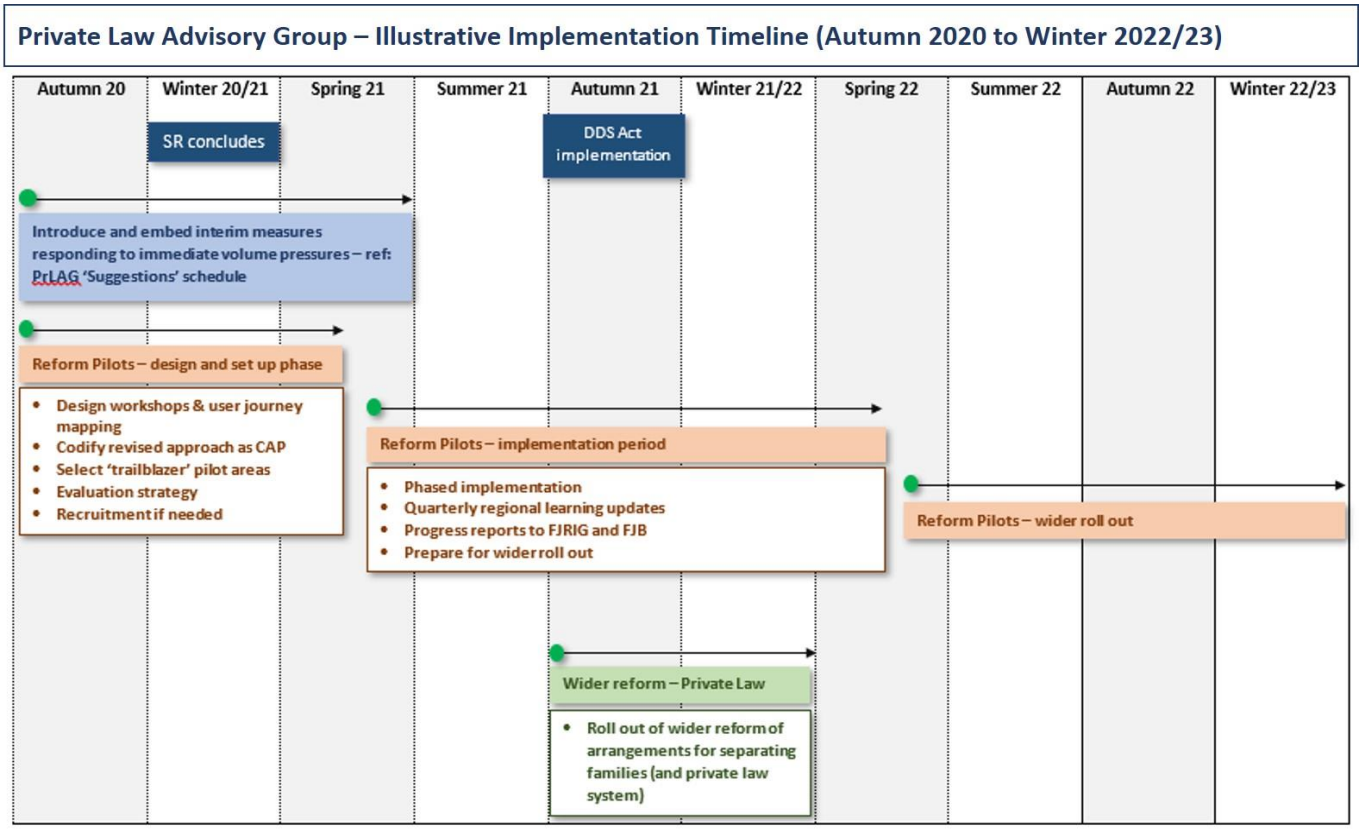
11. These objectives are designed to support and enhance a change in the culture of issue resolution for separating families inside and outside of the court. A change in culture will not happen overnight, and it is unlikely to happen at all without a government-supported programme of public education to advance these objectives. Culture change will need to bring with it a new lexicon to complement other reform strategies: we may, for instance, wish to think more about '*issue* resolution' rather than '*dispute* resolution'; we may prefer '*problem-solving*' to *'inquisitorial'* or

'investigative' when describing the proposed change in approach of the courts to the resolution of applications. It is possible that we will wish to consider re-timetabling[iv], reforming and rebranding the information and advice meetings currently known as MIAMs.

12. We contemplate that reforms to court procedures will be encapsulated in a revised 'Child Arrangements Programme' (*PD12B*), supported by a 'statement of good practice' for cases involving domestic abuse[v].

Timeline for change

13. We consider it realistic to work to a proposed 24-month timetable for our work. See table below:



14. The first milestone was 30 October 2020, when the President of the Family Division extended the operation of *PD36Q*, which gives DFJs the flexibility to operate *PD12B*

as they think fit according to need during the current Covid-19 pandemic. We have noted that *PD36Q* is drawn in specific terms:

> It is intended to assess modifications to Practice Direction 12B that may be necessary during the coronavirus pandemic and the need to ensure that the administration of justice is carried out so as not to endanger public health and so as to take account of available resources. (emphasis by underlining added)

Our piloting proposals (set out below) extend beyond the remit of *PD36Q*; we recognise that specific, new, Practice Directions will be required to launch the pilots.

15. We consider that we need to re-energise short-term strategies to alleviate the pressures during the pandemic (see below and **Annex A**).

16. The next milestone was reached on 10 November 2020 when this paper was considered and endorsed by the Family Justice Board.

17. Spring 2021: Following 4-6 months of design and engagement with stakeholders, we hope that the pilots will be ready for launch. After the conclusion of departmental allocation decisions following the recent Spending Review, we hope to see financial resources available at this point to run the pilots. We contemplate that the pilots will run for approximately 12 months (see [19] below); these will be continuously evaluated.

18. Autumn 2021: the likely date for the implementation of the *Divorce Dissolution and Separation Act 2020* (*DDSA 2020*)[vi] will be an opportunity for a half-way check on the progress of the pilots. We consider that the essential messaging of the *DDSA 2020* coincides with the messaging around these reforms; this could be publicly acknowledged as a way of enhancing the public education of the reforms.

19. Spring 2022: We consider that the pilots will conclude at this point, in at least 6 DFJ areas across England and Wales (from Spring 2021). The pilots will be further evaluated at this point and a plan for rolling out changes to all courts will be developed.

20. Autumn 2022: We therefore contemplate setting a date in the autumn 2022 for achieving (or having achieved) the rollout of wider reform of arrangements for separating families (and the private law system).

Interim measures to achieve change

21. It is well-recognised across all sectors that the Family Justice system is currently under unprecedented strain. Private law receipts (i.e. applications received in the court) continue to rise; the number of applications made in September 2020 (the last month for which we have records) shows a 14% increase[vii] over the same month last year, and was the third highest month in at least the last five years. Private law cases are not being heard, and 'disposed of', in as timely a way as before the Covid-19 pandemic struck and this increases the stress on the system. Furthermore, we have reason to be concerned about the future volumes of private law cases when restrictions under the *Health Protection (etc) Regulations 2020* (England) for the time being in force, and/or their equivalent in Wales, relax. Backlogs in private law cases have increased by 18% since before the start of lockdown in March 2020 and for those cases that are being heard, the average time to conclude a case is now **29** weeks. Public law has also been affected with the average case time now reaching **36** weeks. HMCTS estimate that, even with an increase in the number of sitting days, it may be another three years before the private law backlog returns to the pre-Covid-19 level.

22. Whilst the wider programme of long-term reform outlined in this paper is rightly a priority, it will not start to deliver positive change for at least 18 months. As a result, we must also focus on an immediate response to support recovery from the impact of Covid-19 on the Family Justice system.

23. In May 2020, the President of the Family Division issued a 'Suggestions' document[viii] to the DFJs; this had been drafted by a sub-group of the PrLWG. We have reviewed this document and consider that while it continues to offer valuable suggestions/ideas to assist Family Court judges (led by their DFJs) in processing their ever-increasing backlog of private law cases, particularly in relation to triaging and

tracking of cases through the courts, it can benefit from a modest revision and re-launch.

24. We are pleased to note that some or all of these suggestions have been taken up and implemented in some DFJ areas over the last 4 months; we recognise that given the stresses and demands on the system, and on the judiciary, not all DFJ areas have felt able or willing to adopt new working practices: (see **Annex B** (map of England & Wales showing 'take-up'), **Annex C** (table showing extent of 'take-up') attached). Where the suggestions have been taken up, we believe that this has been done with a positive impact on reducing delays within the system. In order to design the most effective pilots, there will need to be transparent and detailed appraisal of the take-up of the 'suggestions'.

25. We believe that with the agreement of Ministers and the Judiciary there are a number of further initiatives which could help increase productivity within the court and relieve pressure by encouraging some separating couples to resolve their issues without coming to court. In the attached table (**Annex A**) we have identified:

    a. A range of issues currently affecting the court ('Issue'),

    b. What we propose could be done to alleviate the issue ('Option/approach');

    c. The extent to which this has been trialled already ('Evidence of use');

    d. Whether this is available as a result of the implementation of PD36Q ('In PD36Q').

26. Some examples of the options to be tested are:

    a. Where FHDRA waiting times are excessive, and following safeguarding, using strategies to divert families to non-court issue resolution or SPIPs/WT4Cs while they wait for a first hearing;

    b. Directing a *section 7 CA 1989* or section 37 report in an obviously suitable case, without having to wait for a hearing to direct this;

    c. Using local authorities to provide safeguarding information where they are already involved;

d. Using the FHDRA for an Early Resolution Decision; this process, which can bring proceedings to an early conclusion, would be appropriate where

    i. the parties are close to agreement, and/or would benefit from a timely decision;

    ii. the court is satisfied that the gathering or filing of further evidence will not assist decision-making, and

    iii. the court is further satisfied that this is in the best interests of the child;

e. Bypassing FHDRA altogether and convening a case management hearing in order to move cases more swiftly through the court;

f. Using the DRA more effectively.

In making these proposals we have kept a firm eye on the 'Overriding Objective' set out in *rule 1.1* of the *Family Procedure Rules 2010* and specifically the need to deal with cases "justly", "fairly", "in ways which are proportionate to the nature, importance and complexity of the issues", "saving expense" and "allotting to the case an appropriate share of the court's resources while taking into account the need to allot resources to other cases."

27. We have considered it right to consider the viability of conducting more hearings on the papers. Although attracted by this proposal, we are conscious that there may be some concerns about pursuing this option given: (a) general access to justice issues; (b) the very real possibility that parties may wish to challenge decisions made on paper either by appeal or under the *rule 4.3(5) FPR 2010*[ix] procedure, which may paradoxically delay resolution; (c) the risk that the court will not pick up more nuanced safeguarding issues, not apparent from a reading of the documents alone; (d) the questionable saving in court time, given that some court time would in any event need to be set aside for a judge to deal with hearings 'on the papers'.

28. We consider that there may be value in developing further the 'Mediation in Mind' project (DWP funded, England only)[x]. We propose that further development of the

digital C100 (with nudges to non-court issue resolution) could be attempted in this period.[xi] Notably, the Ministry of Justice is currently exploring a number of options to encourage parties in private family law without safeguarding issues to explore non-court issue resolution as an alternative to court.

29. We are aware of further important discussions currently being held between the MoJ and the National Police Chiefs' Council concerning the development of a nationally uniform and clear process for the facilitation of disclosure of police records where the request is made by litigants in person. This is important and urgent piece of work. The rollout of an easier, nationally consistent, and cost-efficient means of achieving police disclosure in private law (to include, where relevant, access to level 2 (enhanced) police information, which Cafcass/Cymru currently request of individual police forces) will go a considerable way to unblocking some of the current gridlocks in the system.

30. How should these messages be delivered?

31. We realise that judges and other professionals in the Family Justice system are currently weary, having worked flat-out in strained circumstances during the pandemic, and are suffering 'Guidance' fatigue. We know that judges are increasingly resistant to change being imposed on them, particularly at present when many have had to make significant adaptations to work in continuing difficult circumstances; this is exacerbated by their concern that change is merely 'tinkering around the edges' rather than grappling with the big issues. We are also aware of many local initiatives which are working well, and where there will be resistance to higher authority proposing mandatory alterations to existing good and successful practices. We want to avoid delivering the message in such a way as to trigger all or any of the above.

32. We feel that the best way of achieving wider traction with the suggestions contained in the 'Suggestions' document, alongside an extension of *PD36Q*, is to do so now in the context of outlining the *longer-term reform proposals* and *pilots*. While there is real appetite for, and prospect of, reform, this cannot be delivered at scale for at least another 12-18 months. It is therefore imperative that we take urgent collective

action to identify, share and encourage take-up of the promising approaches which have been developed in a number of court areas, and/or by partner agencies, to help understand risk, manage the flow of work, and bring work to a conclusion in the most consistent way. Where this requires departures from the child arrangements programme, consideration will need to be given to a new *PD36 Practice Direction*. Our ambition in relation to implementation of short-term measures over the upcoming months is built on the following messages:

- We now need to work together to make best use of effective resources to keep work flowing through system and avoiding backlogs. This will avoid inefficiencies and duplication across already stretched professionals, improve interagency communication, and ensure limited local authority and Cafcass/Cymru resource is targeted in the best way.
- It is important that scarce resources are targeted to ensure that the most vulnerable children and court users are not disadvantaged. Identifying safeguarding concerns and issues of domestic abuse at an early stage is key to this.
- We wish to enable judicial independence in case management. *PD36Q* was designed to support judges by giving flexibility around the Child Arrangements Programme so that cases can be effectively progressed according to their needs and local demands.
- The proposed options that will assist with relieving pressure now have been selected on the basis that they will also assist in making the reform transition as smooth and painless as possible.

33. We consider that the delivery of short-term and long-term change should be achieved through the established networks based on the circuits with the support and assistance of the *Family Division Liaison Judges* and their DFJs, working together with senior partners from Cafcass/Cymru, and HMCTS, across England and Wales in 'regional forums'. In order to launch this, in each region we will:

a. review the data about new applications, throughput, backlogs, and timeliness in private law[xii], in order to understand the particular set of pressures;

b. discuss the initiatives in **Annex A** with local leadership judges and Cafcass/Cymru;

and

c. make available a summary of options that are being tested in other areas (and any results where available) so that decisions can be made about local or regional actions which will help sustain throughput in a way that helps manage the gap until longer term is delivered, but in a way that is aligned with likely design of reform.

34. We have held a meeting with the FDLJs on 3 November 2020 to discuss this proposal, and have received support from them.

Pilots to test longer term reform

35. The PrLWG was clear[xiii], as was the Harm Panel[xiv], that their recommendations should be piloted before being rolled out and adopted nationally. We agree.

36. A Project team, coordinated by the MoJ, is being assembled with a view to starting work in earnest on designing and testing redesigned arrangements in and around all of the courts within a selection of DFJ areas; this will enable us to test and evaluate new ways of supporting and promoting problem solving for families, with the ambition to roll out successful initiatives across the 43 DFJ areas in England and Wales..

37. Drawing on the conclusions of the PrLWG reports, the Family Solutions Group report, and the Expert Panel on Harm in the Family Courts, we believe that there are many exciting initiatives to develop in the non-court space, particularly with the development of alliances, and support networks for child-inclusive engagement; we contemplate the involvement of Cafcass/Cymru or equivalent in triaging cases which appear to be moving towards a court and may, for example, have signalled an intention (in a non-urgent case) to do so by lodging a 'Notice of intention to apply'. We are plainly not in a position today to set out our detailed proposals for what a

reformed private law 'system' will look like; it would be wrong to do so without much careful and detailed work. However, we envisage the *key* elements to be redesigned *within* the court system are likely to be:

a. An earlier 'gateway' to court in which a more investigative approach is taken to understand the family situation, including whether there is a history of domestic abuse and/or support from specialist services;

b. Triage into key pathways:

    i. Assessment, advice, and assistance with issues-resolution (including but not confined to mediation, SPIP/WT4C, parenting plan) for cases without safeguarding concerns (with possible route back to court for consent order);

    ii. Referral to Local Authority children's services: for cases where safeguarding concerns meet threshold of risk of serious harm;

    iii. Court: for case-management and determination of

        1. Specific issue cases;

        2. Cases with safeguarding/welfare or complex issues. These could (or should) include cases where there is currently no contact with someone who has PR so that early restoration of supported contact can be considered where it is safe to do so. The new Integrated Domestic Abuse Courts pilots with a focus on One Family, One Judge & investigative models, will address some of this cohort;

        3. Returning cases.

c. Development of additional support, including post-order support, for cases on each of the court pathways including specifically those cases involving safeguarding/complex issues or returning cases.

d. When and how children's voices are heard, or heard more clearly and consistently, in the non-court space and in court.

38. Our proposal is for timetable and approach to design along following lines:

    a. Autumn 2020 – Spring 2021 Design and set up:

        i. Collection of baseline data (including information on supply and take-up of MIAMs and mediation; 'user journeys' through the court process; volumes and durations of cases; and data on costs of professional input) in a least 2 DFJ areas;

        ii. Series of facilitated workshops involving all key stakeholders and agencies, to agree current processes, and design agreed future processes. Approach to be designed around 'end-to-end' user journeys;

        iii. Codify revised approach as revised CAP, with accompanying guidance on detailed business processes and workflows;

        iv. Identify pilot areas to reflect a range of area characteristics (demand, throughput, rural/urban, range of availability of support services etc). Ideally all or most of these pilot areas will have strong commitment from the DFJ and will dovetail with the IDAC pilots.

        v. Design and peer review evaluation plan and data collection;

        vi. Recruit any new posts – e.g. pilot coordinators in each area, data collection etc.

    b. Spring 2021 – Spring 2022, Run pilots

        i. Consider phased approach:

        ii. Quarterly learning updates at regional level (feeding into FJRIG and FJB)

        iii. Plan for roll-out

    c. Spring 2022: Evaluate pilots

    d. Autumn 2022: Roll out to remaining areas.

39. We consider it essential that the pilots are designed and managed in a way which facilitates learning and refinement along the way, not only from pilot areas but by the professionals in the rest of the system. Our proposal is to achieve this through strengthened regional forums on each circuit, and involving the relevant FDLJ (as appropriate), the DFJ, representatives of other levels of judiciary, Cafcass/Cymru Assistant Directors (England)/Heads of Operations (Wales), and HMCTS cluster managers. These would offer a much-needed link between the 44 LFJBs and the national Family Justice Board[xv]. We envisage each of the 6 FDLJ areas would include one pilot.

40. In designing the pilots, we would need to establish a core project team. We propose:

    a. Project managed by MoJ;

    b. Representatives from key operational agencies: HMCTS, Cafcass/Cymru, Judiciary;

    c. Legal draftsman;

    d. Analytics/data support from key agencies.

41. We believe the core pilot delivery team would be enhanced by exploring collaboration with service and user-centred design specialists. The addition of this expertise would add considerable insight to the design process, and would involve such activities as:

    a. mapping of 'user' journeys to understand the true baseline of the service;

    b. coordinating workshops involving delivery partners and clients to design the new service model, around agreed design principles;

    a. the development of pilots to test a 'single front end and initial response service for early triage and routing to differentiated pathways.

42. We hope to work in partnership with the Nuffield Family Justice Observatory as a source of independent advice on research and evidence, and a trusted convening space for professionals across the sector, to problem-solve some of the re-design

issues which need to be addressed. The NFJO has already supported discussions on options for improving non-court services for separating families.

43. We would also need to draw on wider stakeholder group for design workshops, so that we effectively build on existing thinking. These would explicitly need to include children and families. But also:

    a. Association of Directors of Children's Services (England), Association of Directors of Social Services (Wales),
    b. The PrLWG,
    c. The Family Solutions Group (PrLWG),
    d. MoJ returning cases 'deep dive' project,
    e. Academic principal authors of the Harm Panel Report;
    f. IDAC pilots etc

44. In addition, we propose to seek further input from the Nuffield Family Justice Observatory to provide independent space for design workshops; to support and peer review evaluation design, including how to estimate the non-FJS costs and benefits of the redesigned system.

Other reform measures

45. This paper does not purport to cover *all* of the relevant reform ground. The reports of the PrLWG, the FSG and the Harm Panel report are rich with recommendations and ideas. We are keen to see reform delivered in a number of small but important ways complementary to our key reform objectives listed in this paper.

Statutory and other changes

46. In order to deliver significant system change, Practice Directions will be required alongside changes to the Family Procedure Rules and potentially primary and other

secondary legislation. We consider that we should maintain our focus on what we wish to achieve through reform, while remaining vigilant to the need for consequential statute/rule changes.

Training

47. All those charged with implementing the proposals outlined in this paper, both short term and long term, (i.e. the judges, magistrates, Legal Advisers, Cafcass/Cymru), will need to be familiarised and trained and supported in the new methods of working. In this regard, if the FJB endorse/support these proposals, we will urgently liaise with relevant training body for the training of the family judiciary, the Judicial College, in this regard.

Ministerial responsibility for separating families

48. We propose that urgent thought be given to improving cross-government co-ordination of policies and services for separating families across England and Wales. At present, responsibility for family breakdown is spread across three Ministries: the Department for Work and Pensions and its partners across England (not Wales) provide initiatives to reduce parental conflict in low-income families; the Department for Education is encouraging Local Authorities to set up Family Hubs (with no specific mandate for separating families); the Ministry of Justice has responsibility for the courts. The Welsh Government takes responsibility for the funding and provision of family support in Wales. There is considerable benefit to be gained through improving the coherence and inter-connectedness of current arrangements.

49. We would also like to highlight the view of the Harm Panel that a lack of resources has severely impacted the ability of family courts to protect children and victims of domestic abuse and other risks of harm from exposure to further harm[xvi]; the Harm Panel further referenced 'downstream' costs to the state where families are not adequately protected. The costs to the court system, and to society, of not acting now are ever growing.

The Private Law Advisory Group

5 November 2020

Relieving pressure in private law:

Annex A: Draft table of 'Options'

	Issue	Option / approach	Evidence of use	In PD36Q
1	Effective use of existing channels of communication between Cafcass/Cymru and the court	Direct lines of communication between the court and Cafcass/Cymru can save significant case management time, as well as avoid duplication and delay. For example: • Making best use of existing channels (phone contacts, 'hotlines', dedicated email) so that courts are able to quickly access advice from local Cafcass/Cymru colleagues to discuss case issues, obtain information quickly, and to agree appropriate next steps for families. • Consider establishing dedicated in box in local courts for incoming Cafcass/Cymru business. This would help avoid current situation in some areas of Cafcass/Cymru reports being lost in other emails coming into family court inboxes, which risks delay in ensuring reports are available for hearings.	Local courts' implementation of these type of communication channels vary. Examples of when these methods may be particularly helpful are included below.	No
Gatekeeping				
2	Delay to cases clearly requiring a Section 7 report	PD36Q enables sufficient flexibility that, if it is clear from the application that a case *will* require a Section 7 report (for instance the application concerns internal or international relocation case, name change, sexual abuse allegations or disclosure, vaccination) , this can be directed at the outset from either Cafcass/Cymru or the Local Authority without the prior need for a Safeguarding Letter/Report and FHDRA. Safeguarding checks will still be completed within the S7 work.	Currently limited use, although there is learning from Watford on separate handling of these cases (at second gatekeeping which suggests that in 23% of cases at second gatekeeping, a s7 report was ordered without a further hearing. As listing of FHDRAs in some areas is exceeding 20 weeks, adding significant delay to progression of S7 enquiries for children and families this option with safeguarding and s7 assessments combined into a single approach seems worthy of consideration	No

			Cafcass/Cymru can be contacted to discuss this option using the **"dedicated communication channels" option** set out above.	
3	Local authority / Cafcass/Cymru duplication	Where a local authority social worker is involved in the family (for example, this could be where there are child protection concerns, the application states a child is on a LA Child Protection Register or reveals the name of an allocated social worker, or where the local authority involvement has led to an application for an SGO) consider whether the local authority, with their knowledge of the family, is best placed to provide safeguarding information rather than Cafcass/Cymru.	Some DFJ areas have established direct **local Cafcass/Cymru "hotlines"** so that, during gatekeeping, Cafcass/Cymru can be contacted to: Check whether there is current local authority involvement with a family; provide immediate information to the court about the type of involvement; provide contact details for any allocated social worker. This requires close working with the local authority. It enables gatekeepers to order the social worker to dial into the first hearing or provide a letter or report at an early stage.	Yes
4	Duplication in repeat Cafcass/Cymru safeguarding enquiries	If a C79 or C100 is issued in relation to a returning case (i.e. a case which has been before the court on a previous occasion, particularly if the case has only recently left the court environment), PD36Q enables more discretion to consider whether it is necessary to order further safeguarding enquiries from Cafcass/Cymru, or whether the issue can be dealt with directly by the court.	A previous Cafcass pre-pilot study in Liverpool DFJ found that gatekeepers felt **safeguarding enquiries could be avoided in around a third of returning cases**, for example where no new safeguarding concerns were raised which had not been considered on the previous application. The length of time which had lapsed since the last application was considered relevant but did not, on its own, determine the need for fresh checks.	Yes
5	Covid19-related applications may not require a hearing, and applicants' fees can be returned	If an application appears to be about solely Covid19 related issues: • This can be flagged to HMCTS staff on standard directions on issue. Parties will then be sent a letter to help them consider whether it may be in their child's best interests to withdraw their application. • Cafcass/Cymru will still complete safeguarding enquiries. If appropriate, and if parties consent, Cafcass/Cymru will state in the safeguarding letter/report that parties wish to	This process has been available since June 2020 but has had **limited implementation so far. A handful of cases have been withdrawn and applicants' application fees returned**. However, as local lockdowns increase, this process may become more relevant again.	Yes

		withdraw their application. • Withdrawal should be considered on paper and this does not require a hearing. Legal advisers can direct the withdrawal. • Final orders should be for a withdrawal, not a dismissal, and should use the withdrawal of application draft template issued by the PrLWG for this purpose. • HMCTS can then process fee refunds for applicants.		
Setting filing dates for Safeguarding Letters/Reports				
6	Fluctuating demand around report filing dates may not be manageable for local Cafcass/Cymru teams and courts need to know how long it is taking Cafcass/Cymru to prepare reports on the ground.	PD36Q provides flexibility for when filing dates can be scheduled, particularly when standard FHDRA / Hearing dates may vary. Prior communication between courts and Cafcass/Cymru can help to ensure that report filing times are manageable and set to the needs of the case. This also avoids duplication of safeguarding if the letter/report is filed several months before the FHDRA.	Some DFJ areas have established direct **local Cafcass/Cymru "hotlines"** so that the courts / Legal Advisers can collaborate on appropriate filing dates	No
Listing First Hearings and FHDRAs				
7	Excessively long waiting times for FHDRAs resulting in delay for children with limited options/funding for diversion	The Ministry of Justice is currently exploring a number of options to encourage parties in private family law without safeguarding issues to explore non-court issue resolution while they wait for a court hearing, and hope to announce proposals in coming weeks. Alongside this, courts may consider ordering SPIPs/WT4C following safeguarding (to ensure domestic abuse victims are not directed to inappropriate interventions) and/or directing parties to view the Co-Parent Hub: https://cafcass.clickrelationships.org/. The case could then be listed for a shorter directions hearing which may be quicker/easier to list, and which would not necessarily require	Not yet tried.	No

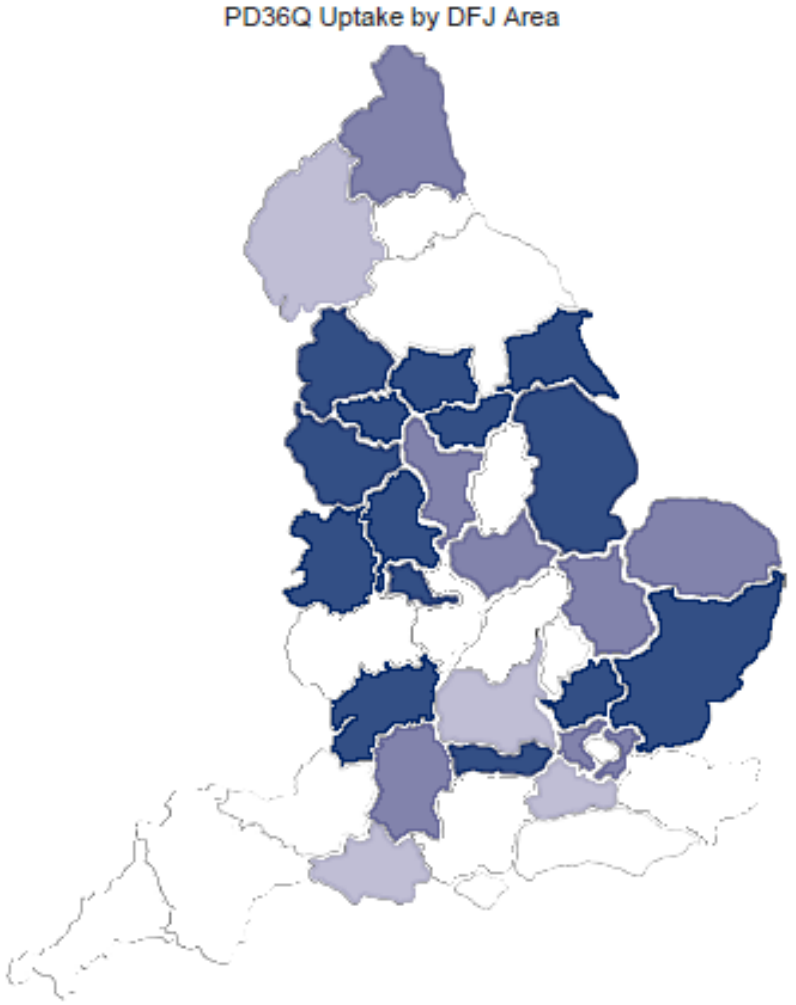
		Cafcass/Cymru attendance.		
8	FHDRAs may not be necessary / appropriate in all cases, particularly where there are backlogs and delays	PD36Q provides flexibility in how hearings are approached. FHDRAs are resource intensive and, in some cases, there may be no prospect of a resolution. Alternatives can be listed instead, including straight case management or directions hearings at which Cafcass/Cymru may not be required to attend.	Watford court has adopted a "second gatekeeping" model since the end of 2019. **Around 45% of cases did not require a FHDRA. FHDRA wait times reduced from 21 weeks in August 2019 to 7.5 weeks in July 2020**. Other courts, such as those in Kent, have made more use of directions hearings when FHDRA listings add significant delays and there are little prospect of the matter resolving at FHDRA.	Yes
9	Early Resolution Decision where parties are close to agreement.	Where parties are close to agreement at a FHDRA, the courts should consider making an 'Early Resolution Decision'. This would be confined to circumstances where the court is satisfied that, having regard to all matters before them, there is no need for further investigation that could lead to a different outcome, and that it is in the best interests of the child(ren) for the decision to be made at that point.	This has not been tried, but it is important that courts carefully consider the overall resources available and think carefully about whether a further hearing is the best course of action where an early resolution of the case may be feasible and indeed desirable.	No
10	It may not be necessary to hold hearings in all cases	If the substantive or interlocutory issue is a simple (particularly a procedural one) one, parties could provide agreement to a decision being made on paper. Each party can file a short letter/statement and decisions can be given in writing. However, writing decisions can be time intensive and may take longer than recording reasons on tape. If this option is pursued, booking a deputy district judge or recorder to take a list of paper cases for the day may be the most effective use of court time. This could also be done from home and does not require the judge to be at court if the documents can be scanned. There is a risk that cases that appear simple on paper turn out to be more complex and that domestic abuse and safeguarding issues do not always come out at an early stage. A thorough	In Watford DFJ, this approach has been used for case management decisions in ordering S7s during the pandemic. So far, no parties have raised concern that they did not have opportunity to contest the decision to Order a S7	Yes

		safeguarding screen by Cafcass/Cymru would be necessary under this option.		
Filing Safeguarding Letters/Reports				
11	Safeguarding letters/reports should only contain targeted, clear information and next steps	In specific case types, Cafcass/Cymru may file a Shorter Safeguarding Letter/Report template. These are to clearly direct to further enquiries where: 1) a S7 is required; or 2) Enquiries reveal an LA is actively involved on a CP basis. Alternatively, they are also used to indicate there are no safeguarding risks arising to report to the court in: 1) low risk cases; 2) returning cases.	Between July-September 2020, 13% of the safeguarding letters filed nationally by Cafcass used a shorter template.	No
Dispute resolution appointments				
12	Dispute Resolution Appointments (DRAs) need to be used in the most efficient way possible	In some straightforward cases, PD36Q allows for the flexibility for DRAs to be used as final hearings.	The **PD36Q suggestions document** provides guidance and examples on this point. As above, please remember that you should apply the overriding objective that time is proportionate to issues.	Yes
Outcomes / orders from hearings				
13	HMCTS resource difficulties may mean outcomes from hearings or second gatekeeping are not reported to Cafcass/Cymru in a timely way for case closure or progression	When sending directions and draft orders to the court office to draw up, judges and legal advisers can be invited to copy in an agreed Cafcass/Cymru email address. This notifies Cafcass/Cymru of the case outcome in advance of receipt of the sealed court order. • Some courts include wording to the following effect: This order takes effect forthwith without the application of a court seal.	This process is already established in some DFJ areas, for example Kent. **Between Feb-Sept 2020 Kent DFJ had one of the top five throughputs in England for Cafcass case closures following first hearing**.	No
14	Ask the police to accept unsealed	Waiting for the court office to seal the order adds to delay. This could potentially be reduced if the police could be	New idea not yet tried	No

	orders for disclosure	encouraged to accept a form of words such as "the court sanctions the provision of disclosure in advance of the sealed order and on the provision of this approved draft".		
Ordering of Rule 16.4 appointments				
15	Duplication of resource or unnecessary ordering where an alternative may be appropriate	The decision to appoint a Children's Guardian is a judicial decision. However, Judges are reminded of the requirement in Para 7.4 (a) of PD16A to consult with Cafcass/Cymru before ordering the appointment of a Rule 16.4 Guardian. This aids consideration of, for example: 1) whether Cafcass/Cymru will add value if a local authority is already involved; 2) where the court is minded to require a report, whether an alternative approach, such as a position statement, may be most appropriate to the case needs.	The ordering rates for R16.4 appointments vary significantly by DFJ. For example, **in March 2020 the average ordering rate on closed cases for R16.4s was 5.3%, however in some local areas this was as high as 9.5%.** R16.4 appointments increase average case durations to 71 weeks and add an additional 55-60 hours of work for a Cafcass Guardian in England.	No

Annex B: PD36Q Uptake by DFJ Area

DFJ	Is the DFJ adopting PD36Q / second gatekeeping models?
Birmingham	Yes
Blackburn/Lancaster	Yes
Bournemouth and Dorset	In Part
Brighton	No
Bristol (A, NS and G)	Yes
Carlisle	In Part
Central London	No
Cleveland and South Durham	No
Coventry	No
Cumbria	In Part
Derby	Not Yet
Devon	No
East London	Not Yet
Essex and Suffolk	Yes
Guildford	In Part
Humberside	Yes
Leicester	Not Yet
Lincoln	Yes
Liverpool	Yes
Luton	No
Manchester	Yes
Medway	No
Milton Keynes	In Part
North Yorkshire	No
Northampton	No
Northumbria and North Durham	Not Yet
Norwich	Not Yet
Nottingham	No
Peterborough	Not Yet
Portsmouth (Hampshire and IOW)	No
Reading	Yes
South Yorkshire	Yes
Stoke on Trent	Yes
Swindon	Not Yet
Taunton	No
Truro	No



Annex C: DFJ take up of Practice Direction 36Q – September 2020

DFJ	Is the DFJ adopting PD36Q proposals?	If so, what does the local model look like?
A1: Northumbria & North Durham	Not yet	
A1: Carlisle / Cumbria	In part	• Cases diverted to LA without Cafcass' involvement if appropriate; • Second gatekeeping agreed as a process but more limited use in practice; • Use of DRAs to avoid FHDRAs where it's clear issues can't be resolved.
A2: Blackburn / Lancaster	Yes	• Cases diverted to LA without Cafcass' involvement if appropriate; • Second gatekeeping adopted as a process from the start of August;
A2: Cleveland & South Durham	No	
A2: York & North Yorkshire	No	
A3: Manchester	Yes	• Watford type model to be implemented asap (potentially early September)
A4: South Yorkshire	Yes	Watford process adopted from w/c 27th July.
A4: Humberside	Yes	Watford process adopted from w/c 27th July.
A5: West Yorkshire	No	Watford process adopted from w/c 21st September.
A7: Portsmouth	No	
A7: Bournemouth & Dorset	Yes	• Mixed implementation. Cafcass asked to attempt some dispute resolution with the family & recommend whether a FHDRA is needed or not. Sometimes an alternative is listed.
A7: Bristol	Yes	• Second gatekeeping process implemented towards the end of May.
A7: Reading	Yes	• Second gatekeeping & deciding whether to progress to a FHDRA based on Cafcass' recommendation. Paper hearings used. Implemented towards the end of May.
A7: Swindon	Not yet	• Second gatekeeping may have begun. Limited Cafcass involvement.
A8: Devon	No	
A8: Truro	No	
A8: Taunton	No	
A9: Liverpool	Yes	• Adopted a Watford-type model from 13th July. Differs from Watford in that they don't have a Track C to divert cases away from Cafcass before the safeguarding letter is ordered
A10: Leicester	Not yet	• Considering both the Watford and the Midlands models.
A10: Peterborough	Not yet	• Likely to adopt Watford process.
A10: Lincoln	Yes	• Watford process from mid-July.
A11: Nottingham	No	
A11: Derby	Not yet	• Keen to implement some form of triage, considering Watford perhaps from September.

A12: Birmingham	Yes	• Midlands process implemented in mid-August • Cafcass is also identifying cases where a consent order is needed and flagging to Legal Advisers, to list for a quick final order hearing. This falls under special powers given to Legal Advisers during Covid.
A12: Wolverhampton / Telford	Yes	• Midlands process implemented in mid-August • Cafcass is also identifying cases where a consent order is needed and flagging to Legal Advisers, to list for a quick final order hearing. This falls under special powers given to Legal Advisers during Covid.
A12: Worcester	No	
A12: Stoke on Trent	Yes	• Legal Advisers have implemented the 'Midland Model' flowchart, where all cases are being sent to a second gatekeeping meeting. Following the second gatekeeping meeting, cases could be placed on two main tracks: 1) low risk; 2) higher risk. Date of implementation is mid-August. • Cafcass is also identifying cases where a consent order is needed and flagging to Legal Advisers, to list for a quick final order hearing. This falls under special powers given to Legal Advisers during Covid.
A13: Coventry	No	
A13: Northampton	No	
A14: Essex and Suffolk	Not yet	• Implementing Watford process from 1 September.
A14: Norwich	Not yet	
A15: East London	Not yet	• Midlands process asap
A15: West London	Not yet	• Were considering Midlands process but now considering Watford.
A15: Central London	No	
A16: Brighton	No	
A16: Guildford	No	• Process is used for cases to be diverted to LAs if they are already involved • Some use of DRAs to progress cases which are clearly S7
A17: Medway	No	• Process is used for cases to be diverted to LAs if they are already involved • Some use of DRAs to progress cases which are clearly S7
A18: Watford	Yes	• Watford model since late 2019
A18: Luton	No	
A18: Milton Keynes	In part	• Adapted version of the Watford model but largely business as usual
North Wales	No	•
South East Wales	No	•
Swansea	No	•

[i] This group was formed following the meeting of the FJRIG on 17 September 2020. The group has met on six occasions to discuss the proposals set out here: on 23 September, 29 September, 5 October, 12 October, 20 October, 2 November. Membership of the Group is: Mr Justice Cobb (Chair); Neal Barcoe (MoJ), Adam Lennon (HMCTS), Matthew Pinnell (Cafcass Cymru), District Judge Suh (Judiciary), Teresa Williams (Cafcass), Henry Vaile (Welsh Government).

[ii] In this form of 'pilot', we are not planning a trial period of a fixed/finite period, followed by a pause for evaluation. We intend that the pilot activity will be evaluated throughout the process, and wider rollout of the evaluated programme will follow without interruption. Pilots will serve as precursors for wider roll-out of reforms, rather than as a 'proof of concept'. In the indicative time-line table we refer to 'pilots' as 'trailblazers'.

[iii] The South Eastern Circuit is divided into three; there are three FDLJs for this one circuit/region.

[iv] i.e. we need to see Information and Advice Meetings as part of early support which is co-ordinated and overseen by a strong gatekeeping process.

[v] Drawing also from the Family Justice Council Good Practice Guidance on domestic abuse.

[vi] Enacted 25 June 2020

[vii] 4262 cases; this was the third highest month on recent record (i.e. over the last 5 years)

[viii] This document was produced by a sub-group of the PrLWG, and issued by the President of the Family Division, in May 2020 to offer 'suggested' ways for DFJs to manage their private law case load more effectively

[ix] The party affected may apply to have it set aside (*rule 4.3(5)(a) FPR 2010*).

[x] In this scheme, families are provided with a funded package of support: legal information, counselling pre and post mediation, mediation (including Child-Inclusive Mediation where relevant), plus communication meetings and group work. The project concludes at the end of March and will then be evaluated, with results expected in June. If the findings are positive, then further testing/piloting of this type of holistic approach could be indicated

[xi] HMCTS reform programme proposes to focus on private law reform from April 2021.

[xii] This information will be provided regionally by HMCTS and Cafcass/Cymru

[xiii] Para.175-181 PrLWG Report 2: "The success of the pilots will depend upon a clear understanding of the current 'baseline', clear identification of the issues to be tested, and proper evidence-based evaluation. This will involve gathering data on the current situation before each pilot is implemented, careful documentation of the pilot schemes, clear articulation of their objectives, and the identification of measures to assess whether those objectives are achieved" [177].

[xiv] See inter alia, para.11.5 (page 175)

[xv] The PrLWG consultation in 2019 yielded valuable information about the very varied levels of engagement and operation of the LFJBs around the country.

[xvi] See p.181 (para.11.9)