



Submission to the Bach Commission call for written evidence

TOPIC 1 – The current state of access to Justice.

Submission on behalf of FNF Both Parents Matter Cymru by Paul Apreada, National Manager.

61 Cowbridge Rd East, Cardiff, CF11 9AE / paul@fnf-bpm.org.uk / www.fnf-bpm.org.uk

- **What would you or your organisation describe as the biggest impact of LASPO?**

LASPO has significantly disadvantaged men in the Family Justice system because they are less likely than women to be able to access Legal Aid as a result of being victims of domestic abuse. Research undertaken by Rights of Women has shown that 38% of women who were victims of domestic violence and abuse were unable to access Legal Aid because they could not provide the prescribed evidence. In contrast research undertaken by our charity with a sample survey of 226 male victims using the same question framework as Rights of Women discovered that 69.8% of respondents did not have the qualifying evidence. https://www.fnf-bpm.org.uk/image/upload/branch/cymru/Evidencing_DV_FINAL_report_for_publication.pdf

- **What difficulties do you, your organisation, your clients or the people you represent face in enforcing their legal rights?**

Anecdotally there has been an improvement in the granting of 'contact' to non resident parents following the enactment of S11 of the Children & Families Act 2014. However we see all too often that this contact is 'token' and is predicated on a model of childcare that is a relic of the last century – i.e that mothers stay at home and care for children while dads go out to work.

- **What difficulties do you, your organisation, your clients or the people you represent face in navigating bureaucratic legal procedures?**

We believe that the C100 form was designed in 2014 to be as difficult as possible to complete in an attempt to reduce the number of Private Law applications being made to the Courts. We acknowledge that some effort has been made to provide help and assistance to Litigants in person primarily through the MoJ funded LIP strategy bringing together a coalition of organisations headed by the Access to Justice foundation, and including helpful (if somewhat overlong) guides from Law for Life (AdviceNow). Litigants in Person now make up the majority of litigants in the family court and there is clearly a case for a wholesale review of the system from a service user perspective. Producing such briefings and support materials – however well intended – are missing the point that we now have a new reality which the system itself needs to respond to rather than bemoaning the fact that 'Litigants in Person don't know what they're doing and cause delays'. This sounds rather like hospital consultants blaming patients for not being ill during office hours.

One small example of the way in which the system fails to recognise the needs of its service users can be illustrated by the response to a suggestion our charity made to HMCTS in Wales. Service

users attending our meetings report that they don't really know who the individuals in court are – for example assuming that the Legal Adviser in a FHRA without a bench of magistrates is in fact a judge, and that contributes to their anxiety at a moment of severe stress. We proposed that rather than ask everyone to introduce themselves all officials – including judiciary (lay and professional) and Court staff should display a name plate with job / role title clearly. This proposal was rejected out of hand.

• **How have court and tribunal fees affected the capacity to enforce legal rights of you, your organisation, your clients or the people you represent?**

The majority of our service users will submit an application using the C100 at a cost of £215. We note that the fee waiver form EX160 has been dramatically improved in late 2015 reducing it from a 30 page document to a 4 page one.

We have made representations to the President of the Family Division about the unfairness of requiring those people using a C79 form for enforcement of their Order to have to pay a £215 fee. However we anticipate that this issue would best be dealt with by proposals to make costs orders in the event that the application for enforcement is successful.

• **What, as a user of the system, are you or your clients' biggest frustrations**

There is a persistent and widely held view by our service users that the Family Court is not fit for purpose. This is exacerbated by statistics produced by MoJ that show that in relation to applications for enforcement of Orders only 2.1% end in an order for enforcement. A well respected Senior family court judge in Wales once remarked that he knew that people came to his court every day of the week and told him a pack of lies. In exasperation he concluded by saying '...but what can I do about that!?'.

It is also a too often heard comment from service users that 'the only thing that is predictable about the Family Court is its unpredictability'. It doesn't assist parents who are trying to resolve issues around the care of their children following divorce or separation to be faced with a system where they are told 'every case is different and needs to be determined on its individual merits'.

Many LiPs have the clear impression that the Court pay far more attention to the words of professionals i.e barristers and solicitors, than to them. Paradoxically we are aware that legal professionals feel that LiPs have an unfair advantage because they are allowed to get away with saying things that the professionals would not.

Many service users have also pointed to the incongruity of a system predicated on 'the best interests of the child being paramount' yet maintaining an adversarial rather than inquisitorial system to determine that.

TOPIC 2

- **In a sentence, what practical steps could be taken to ensure access to justice for all was a reality?**

1. Abolish Child Arrangements Orders to reinforce the correct legal position that those who wish to restrict a child's contact with the other parent should be required to apply for a Prohibited Steps Order before taking any action
 2. Introduce an inquisitorial system for resolving family court disputes
 3. Redesign paperwork and procedures in the Family Court from the perspective of service users rather than professionals
- **Please outline in more detail ideas for practical solutions to the crisis in access to justice. These could range from minor alterations to a radical overhauling in our justice system.**

We believe that there should be a radical re-appraisal of the arrangements and assumptions made by the Family Court in disputes over the care of children. We have posed the following question to Resolution and to the President of the Family Division – 'What is the lawful basis on which one parent prevents the child from contact with another person with PR without an Order from a Court allowing them to do so?' We have never received a response to this. That strikes at the heart of the difficulty our service users (who tend to be fathers excluded from the lives of their children by the mothers) face. An unlawful *fait accompli* by a controlling parent results in a breach of the child's right under Article 9.3 of the UNCRC. When excluded parents seek redress in the Family Court the best they are likely to achieve is an Order that in law actually restricts their 'rights'.

In Wales the UNCRC is incorporated into domestic law principally through the Rights of Children & Young Persons (Wales) Measure 2011 and the Social Services & Well-being (Wales) Act 2014. This latter piece of legislation places a duty on statutory authorities to promote the wellbeing of citizens in Wales who need care and support. Section 2 of the Act specifically provides for that to be in relation to Family, domestic and personal relationships. This should create a pathway for those people who are being excluded from the lives of the children they care about to be assisted to restore those relationships.

We strongly support the focus given to mediation in recent years but believe that this alone will not resolve the difficulties faced by those who are currently using the Family Court. Early intervention is a phrase too often spoken about and too little acted upon. When faced with unlawful exclusion from the lives of their children many parents are advised by family support professionals, the Police and advice agencies that their recourse is to the Family Courts. A refocus of the Family Justice system that provides clear and unequivocal expectations for the actions of parents and the enforcement of the rights of children would reduce the need for legal intervention and promote resolution of difficulties at a lower level of need.

The clear thrust of MoJ policy is towards digital justice. We believe that this is not necessarily a retrograde development. However to make this pathway more effective there will need to be a revaluation of the information and advice given to parents who are in conflict. This will need a campaign of public awareness and a much greater focus on children's rights. To that extent we were greatly encouraged by the words of the President, Sir James Munby speaking at the Family Justice Network for Wales stakeholder event in Cardiff. Sir James praised the incorporation of the UNCRC into Welsh law stating 'You are ahead of us in England'.