

Care (proceedings) in crisis

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annual general meeting in November 2017. Noel was the inaugural winner of Legal Aid Lawyer of the Year Awards' children's rights category in 2015.

There is probably little doubt, at least not amongst those involved in or concerned with public (family) law proceedings that the system is in what many term a crisis. That loaded term was used notably by the President of the Family Division, Sir James Munby in his 15th View from the President's Chambers in September 2016, who at that time surmised that we were approaching a 'looming crisis' (see '15th View from the President's Chambers: care cases: the looming crisis' [2016] Fam Law 1227). Arguably we are now standing, feet firm, in the crisis. Any remaining doubt is firmly put to bed when one considers the information pack for the post of President of the Family Division, which closed at the end of January 2018. As soon as one reaches the top of page 2, it explains:

'The most pressing priority facing the successful candidate is likely to be the unsustainable numbers of public law cases in the care system.'

In 2016 Sir James posed the question: 'What is to be done?'. The Family Rights Group (FRG) (funded by the Nuffield Foundation) is currently attempting to explore the causes and identify suggestions for change through its seven-month sector-led 'Care Crisis Review'. An online survey is available on

FRG's website for practitioners (legal/social work/other) to feed into the review. It hopes to report in early June 2018 and it will then be for Sir James' successor (who will occupy the post of President no later than 27 July 2018) to, as the information pack describes, 'decide which recommendations to support and promote'.

In my view, once care proceedings have commenced and the 26-week hourglass is set, it is incredibly difficult for parents to demonstrate sufficient change against such a tight deadline. The local authority (LA) will already have reached a conclusion that a care order (and possibly a placement order) is necessary and in the best interests of the child. It will take some real 'doing' for the parent to steer the LA and the court away from that course. This is a different scenario to the days when care proceedings could last one or more years: change within the proceedings was more likely back then. It seems to me that change, if it can occur, will more frequently be achievable in the steps that are taken prior to care proceedings being initiated – so the pre-proceedings phase or earlier: through the child protection (CP) processes.

Early identification of difficulties and issues is imperative, as is acting quickly to plan and provide support around these parental struggles. If LA thresholds for support to children and families (s 17 of the Children Act 1989) are set too high the danger is that what are identified as trivial challenges may fester, become entrenched, spiral or lead to more complex difficulties. Once this happens the obstacle of achieving change naturally becomes harder. Surely the prospects of overcoming difficulties are higher, the earlier support is provided. Careful and (importantly) collaborative planning of support services is essential.

Although it is not the role of solicitors to provide family support, I do wonder

Comment

whether it is now time for the Government (given that it is currently undertaking a review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) to recognise the importance of early legal advice and make the form of service 'Legal Help – Public Law' available on a non-means tested basis for every parent who is involved in a LA's CP process. Even better – make it available where a LA starts a 'child in need' process (which is sometimes

the precursor to the CP process). At the least, this would allow all parents to receive legal advice and assistance during that early part of the wider process where matters are not yet so polarised. Lawyers for parents have a role here – to press for genuine and concerted support. While the national fixed fee (£132) is shockingly low, if the financial value of the work reaches three times the fixed fee, the case escapes the fixed fee and is remunerated at hourly rates.