Transcript: The Family Justice Review in Action

John Coughlan:

The Family Justice Review has tried to take an approach that puts particular emphasis upon people who work within the system and upon people who've got experience of the system on a personal basis; so rather than taking a purely academic view, we've tried to make sure that it is informed by people's real life experiences.

We've also tried to make sure that we work around some international comparisons. The brief is huge when looking at international research but members of the review team have been able to make brief visits to other countries and jurisdictions with similar systems for comparative analysis. So far that's included France, Scotland, Sweden and Australia where we found some very interesting examples of positive work going on. Of course the test always is to make sure that the examples of different ways of working transpose to the English and Welsh systems.

We've been keen to take account of value for money because of the costs of the system and the implications for the current public financial situation Affordability is a key component of what we're looking at, alongside issues including accessibility of the system, the speed of the system, and the capacity of the system to make the right decisions.

We're expected to report in two stages; we're due to make an interim report by the end of this financial year and our final report next autumn. We started work proper in May and the call for evidence was in September this year, although discussions had started before the call for evidence and have continued since. We've been particularly keen to ensure that this review has close connections with the Munroe Review, which was commissioned after the election in order to understand what more could be done to tackle issues around support for children being taken into the care system or being investigated.

I think our evidence gathering process has been very successful and I'm very grateful to a number of colleagues and partners who've contributed with great gusto and thought to the call for evidence. We've had five hundred and seventy nine individual responses and they break down to four hundred and twenty seven responses from individuals with personal experience from the system, largely revolving around the private services, and a hundred and thirty five responses from organisations. To break those down further, of the individual responses eighteen percent were from fathers, fifteen percent were legal professionals or members of the judiciary, eight percent from mothers (an interesting comparison with the fathers' figure there), five percent from systems users, five percent from academics and thirty percent unidentified. On the organisational side, we've had thirty four percent from support services, nineteen percent from the courts, judiciary and legal services, sixteen percent from local government and children's services, seven percent from academic organisations and nine percent from mediation groups.

We're still working on the analysis of the evidence we've had so far. We've been given a huge amount of information and obviously sifting through that is one of our biggest challenges, and we'll try to ensure that the papers that come from the review distil and identify that information. It's too soon to offer anything conclusive about the information gathered so far but these are the emerging themes:

1) A very strong collective view about the core responsibilities of the system to protect the needs and welfare of children and young people. It's a coherent system message that has resonated around a number of people saying within their evidence that they like the way The Children Act 1989, which is still regarded as the bedrock piece of legislation, focuses on the needs of the children.

2) The whole process on both the public and private side is under significant strain; strain in terms of resources, strain in terms of the experience of agencies trying to service the system and obviously the particular strain of individuals who find themselves involved directly in the system.

3) A strong consensus that we can do more collectively to try to avoid people ending up within the courts proper, a consensus which has struck both the public and the private law systems. What more can we find by way of earlier intervention, earlier identification or other forms of mediation to stop people getting into court?

4) When cases are in court, again both public and private matters, again there's pretty good evidence to suggest that more can be done for progression. We have a system which is complicated and sometimes hard to navigate and that we can collectively do more to drive things on in an ordered way without prejudicing the outcomes. Particularly with regard to the private law system, there's a very strong case for increased use of mediation but alongside that some caveats of what mediation can achieve and the need for us not to rush into a new fashion and over assume what the capacity of the mediation system might be, both physically because it would need to become an increasing part of the system but also in terms of its remit and its ability to deal with more intractable problems.

5) There is a very strong sense across the whole piece about a system which is populated by professionals, staff, individuals, services, who are very dedicated to what they are trying to do, very committed and often work above and beyond what they're required to do. That ranges from within the courts to outside the courts and into local authorities as well. There is a question of how well that commitment can cope with the expectations of the system, particularly as the demands have increased, especially in the area of public.

6) We're seeing evidence about opportunities for efficiency within the system and a stronger approach to a more managed system although this is an issue of some delicacy, particularly on the judicial side. A stronger approach to a more managed system can lead to finding more efficiencies and making things work more fluently. I would like to stress this is not a simple, financially driven argument; a more efficient system which moves quicker will, for example, on the public law side, get us out of the position where on average now a public law child case takes well over a year to conclude, with many cases take much longer than that, particularly if they're going all the way to adoption. The efficiency point is about delay as much as it is finance, although that is not to deny the financial issue.

As an overall theme, we are hearing evidence to suggest that there's a case for looking more radically at how the system currently functions. Rather than looking at ways in which we can tweak things are there opportunities to change the nature of the system but potentially in a way which doesn't undermine too far the '89 Children Act – which we do keep in hearing is something which should be prized by the English system and is something which is apparently regarded very highly in other jurisdictions.

The key lines of inquiry on the private law side include the potential for better information to assist self resolution. When people enter the private law system usually it's for a very rare occasion in their lives and it's a time of great duress and trauma. We want to look at how good the system is at pointing people effectively and easily to opportunities for resolution before everyone gets sucked into very demanding and damaging court processes.

We've heard a lot of evidence for the potential of better assessments in private law, including triage to assist with ways into the system. This is not in order to create barriers to resolution, but to find ways in which individuals can resolve their problems with a modicum of support, not necessarily through the court process.

Still on the Private law side, there are opportunities to ensure that court time that is required is effectively and proportionately directed; a key issue on the private law side relating to the earlier point about efficiency.

We are also looking at the question of what enforcement options there can be. We've heard from many people who are familiar with the scenario of courts reaching necessary conclusions but those conclusions can't be fulfilled because of the refusal of individual parties to comply with the orders as they stand. We have heard about the sense of powerlessness in the system, even within the courts, to enforce the orders which have been judged to be right for the children concerned.

Finally, what ways are there to really simplify the divorce process where there's no fault, no question of default, but the two parties are clear they want a divorce? Obviously there are social and political sensitivities about that, but it's certainly worth us exploring.

In terms of the key lines of enquiry on the public law side, there are fewer of these but arguably they're bigger issues to with which to wrestle. We've been mindful of the issue of delay and mindful of how the oversight relating to the child can be managed and addressed in a cooperative way rather than becoming a battleground. We have heard interesting opinions about whether our system is an adversarial one or an inquisitorial one and already we've heard evidence which suggests that the picture is not nearly as clear cut as some would have you believe.

We need to look at how the child's pathway through the courts on the public law side is effectively managed. A particular point about that is care planning. One of the things the Review panel have been looking at is what the basis has been, and what the appropriateness is, of care planning for children who are subject to care applications. Increasingly it would appear, through either process or habit or appeal court judgments that the care planning sits more with the courts, despite the fact that people have argued that care planning responsibility was to rest with the local authorities under the original intentions of the Children Act 1989.

We've been trying to explore the range and nature of the different court orders at the disposal of the courts on the public law side: what they should be; whether there are too many; whether they are too complicated and whether they are being used in accordance with the intention of The Children Act 1989. We have also been looking at what more can be learned from the jurisdictions where there might be more options for specific court orders for children earlier on in their care career and listening to jurisdictions that express considerable surprise at the way in which the English system includes permanence in a very formal sense as part of the outcome for the child.

We're looking at what and how evidence is made available to courts as they take their decisions. A frequently raised issue on this point is about the use of expert evidence, how well that's managed and how it contributes to delay. We are exploring evidence that experts can feel they enter the system as if they're on trial for their professional practice, although others would say that's right and proper because the scale of the orders available in the family courts in public law cases.

Case management is a common theme on the public law side, particularly because of the issues of delay and how well the system is or could or should be managed centrally or how much is left to the devices of local or regional systems which develop their own solutions. Again I tread carefully here, because we're very conscious of this as set of issues which gets close to the border line of judicial independence at its most extreme. We have to ask ourselves, how far we can propose a more managed system which directs the way in which courts should operate and risk imposing extreme timetables upon the court, for instance.

Also particularly prevalent, we've heard a lot of evidence to say that the pace or quality of an individual case can turn on both the quality of the individual social worker and the consistency of the allocation of that social worker to the case. This question of consistency stretches right across the system, including the judiciary. We are exploring issues around the potential for work force reform and development, ranging from what more can be done to ensure the quality of professional practice for individual professions. through applying consistency to different experts, to how well the judiciary are enabled to understand the different professional perspectives brought into the court. We are looking at how far we need to break down barriers between professionals and in so doing how far do you diminish the capacity of the system to work in its different component parts.

In terms of systems management, we want to explore ways in which the system can be locally delivered and driven and find forms of accountability in order that we can better understand collectively how well the system is working in different courts. It's quite difficult to draw comparative analyses, and we are not the first to be doing this, on how different courts work and how those courts then relate to their different local authorities, health authorities or other forms of the system. So the question is, are there models in which we can have a stronger, evolved system which stays robust and can be locally accountable?

Alongside that, we are exploring opportunities for finding stronger, clearer strategic leadership. Do we need to have a system where there are individual strands of accountability or where we can have a strong direction for the whole of the system in order so that we can drive forwards processes centrally. Linked to that, where are the opportunities for better co-ordination and efficiency in communication? Again, we are seeing that this is a system populated by generally excellent individuals , committed agencies who are working over and above, but who don't always communicate well with other parts of the system. Also, sadly, in some of the evidence that we've also seen, there are very divergent views about what the problems are to the point of fairly frank blame culture in some parts of the system. How do we address and tackle that?

We need to look at what we can do about the budgetary side. Are there opportunities for explicit financial devolution? How can we better understand the cost of the system? And linked to that, how well coordinated is all the data out there and what are the opportunities for a simplified approach to information management?

Finally from me, we're still holding workshops carrying on over the winter, which are opportunities for stakeholders and us to dig further into the issues that we've heard and try to develop some hypotheses from the evidence we've heard. Our hope is for the Review to meet some meaningful conclusions, but that these conclusions will look to a system that continues to evolve and develop together to create a much improved family justice system.