Presentation to members of the judiciary, the legal profession and children's social care managers

Bar Library Belfast

22nd January 2015

Getting the Balance Right, Children and the Court

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Drawing on research on the implementation of the reforms to care proceedings and relevant case law, this presentation will examine the positive and negative impacts of changes for children, parents, Trusts and the courts. The presentation aims to identify how the family justice system in Northern Ireland can achieve good decisions for children in a more timely way, and avoid some of the difficulties that have been experienced in England and Wales over the last 16 months.

On the positive side:

- Implementation of the reforms has been effective, especially when compared with the Judicial protocol and the PLO 2008, with good collaboration in Local Family Justice Boards
- The average length of care proceedings has reduced from 56 weeks (November 2011) to 29 weeks (June 2014)
- The proportion of care proceedings completing in 26 weeks (the statutory limit) has increased from 11% to 51%
- The number of children leaving care through Special Guardianship Orders has increased from 2150 in (2012) to 3330 in 2014.

On the negative side

- There remain serious problems in securing police disclosure of material relevant to care proceedings.
- The number of placement orders and placement order applications has been halved, denying the opportunity of adoption to children who cannot return to parents or family.

- There has been pressure on the Court of Appeal both from the number of appeals following *Re B-S* and the fact that parties are not represented, (see *R (A Child)* [2014] EWCA Civ 597) resulting in excessive delays for some children.

Key questions to be examined include:

- How have shorter proceedings been achieved? What pressures does this place on Trusts, practitioners and the Courts?
- What impact should reducing case length have on case outcome?
- What evidence should be produced for the Trust's care plan?
- What arrangements are required to secure that evidence meets a sufficient standard?
- In what circumstances, and on what evidence, is a care plan for adoption justified?

The European Convention on Human Rights and the decisions of the European Court of Human Rights (*YC v UK*, 2012; *RP v UK*, 2012 *R and H v UK*, 2011, *P, C and S v UK*, 2002) and of the Supreme Court (*Re B* [2013] UKSC 33) provide the context for the discussion. Whilst it remains the case that the use of adoption is rather different from most other member states of the Council of Europe, it is not the case that parental rights cannot be terminated without consent in many other parts of Europe cf Lady Hale. Whilst the ECtHR views care orders as temporary measures with a view to rehabilitation it has repeatedly accepted that where there relevant and sufficient reasons adoption can be proportionate to children's art 8 rights to family life and upbringing in a supportive environment.

Key references

Adoption Leadership Board, *Impact of Court Judgments on Adoption* (2014)

Beckett *et al*, *Concluding care proceedings within 26 weeks: Messages from the evaluation of the Tri-borough care proceedings pilot* (UEA)

Dickens and Masson 'The courts and child protection work in England – Tail wags dog' *B J Soc Wk* (forthcoming)

MoJ, *Action research to explore the implementation and early impacts of the revised public law outline* (PLO) (2014).

Masson 'Third time lucky for care proceedings reform' paper submitted to CFLQ

Judith Masson, December 2014