Justice Committee: Pre-Legislative Scrutiny of the Children and Families Bill

Preamble

1. This submission is by 80 people who supported John Hemming MP's Family Justice (Transparency Accountability and Cost of Living) Bill (the Hemming PBM). It concerns clauses that are currently NOT in the draft clauses, but which we believe urgently should be.

2. We thank the Committee's clerk for allowing a late submission: the reason is that the clauses that we propose should be in the government's Bill were previously in the Hemming PMB that fell on 26th October – so we now submit that clauses of that Bill should be in the government's Bill.

Summary

3. We submit that the government's Bill must contain clauses requiring that

(i) Family Group Conferences are offered to families where an authority is considering care proceedings
(ii) Proper information is provided for families
(iii) Parties to a case are allowed to have McKenzie friends to assist them
(iv) Bona fide academic research is permitted, with safeguards regarding confidentiality
(v) Grandparents and wider family members are given certain rights in court
(vi) Children in care should, as the norm, be placed near their homes
(vii) An independent complaints procedure must be established in cases of complaints of serious abuse by children in care
(viii) It should be an offence to discriminate against children in care or care leavers
(ix) Courts should give reasons when dispensing with parental consent to adoption
(x) Local authorities should promote contact with parents and grandparent for children in care.

We request that this submission be read in conjunction with the Hemming PMB as published by the House. The clause numbers referred to below are those in the Hemming PMB.

Clause 1 Requirement to offer Family Group Conferences

4. The point at which many families commence contact with their Children's Services Authority (CSA) is currently at a 'case conference' or 'child protection conference' – a meeting of professionals who decide what steps the CSA should take regarding a child deemed to be at risk.

4.1 But children (if old enough) and families may be excluded, or may not see reports being discussed. So decisions may be taken without their input. This means that the meeting will not have as much information as possible when making difficult decisions – like taking children into care. This is not only unjust: it is not in the interests of children.

4.2 A better practice is now developing – Family Group Conferencing (FGC). This approach involves the children (where old enough), the families and, where appropriate, the wider families.

4.3 The FGC approach is supported by the British Association of Social Workers in evidence to the Family Justice Review:

> ‘There has been an increased use of Family Group Conferences which can be very effective and empowering of families if used appropriately and practitioners have received the necessary training to equip them to undertake this work). There should be increased roll-out of this approach. It requires very little adjustment in terms of skills but it does require a different attitude/values set.’[1]

Banardos told this Committee’s inquiry into The Operation of the Family Courts:

> ‘A better option (is) a requirement to have family group conferencing ... our experience of one (such) services ... was that for 27 families for whom care proceedings were considered **none of those children went into care**.’ (our emphasis).[2]

And the Committee’s report concluded (at page 93):

> ‘We were very impressed by the account of Family Group Conferences in Liverpool. It is a matter of regret that a service with an apparent 100% success rate is being cut back.’

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4.4.And note the results quoted above by Barnardos. A 100% success rate – no children taken into care: from a purely financial point of view, quite apart from child welfare, this new approach saves public money.

And the Munro Inquiry highlighted a report from Oxfordshire County Council CSA:

> ‘These types of evidence-based programmes are expensive to set up but there is increasing evidence that, by avoiding the need for looked after children to move to more intensive and expensive placements, they not only provide better outcomes for children and young people but are cost effective ... these intensive programmes have contributed to lower than average numbers of Looked After Children and resulted in identifiable savings within the existing Children and Young People’s budget ... in excess of £400,000’.[3]

4.5In conclusion, Family Group Conferences:

- Enjoy widespread support in the social work field;
- Provide better results for children and families;
- Prevent the break-up of families;
- Save public money.

Clause 1(1) of the Hemming PMB, while not abolishing child protection conferences (they may be necessary at times), establishes the FGC approach as the norm by requiring that families are **offered** such a facility. An FGC is defined as

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[1] November 2011

[2] Evidence Question 85

[3] At page 95

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> 'a family led decision making meeting convened by an independent co-ordinator in which a plan for the child is made by the family, involving the child (if old enough), the parents, and potentially extended family members and friends which addresses any concerns about the child's future safety and welfare.'

4.6 The Government's response. On 26th October the Minister (Jeremy Wright MP) said that 'many of the proposals in clause 1 are already covered by existing guidelines and good practice' and that although the government wants to encourage FGCs 'we do not believe that legislation to make them compulsory is appropriate at this point' because they are 'not always suitable for all families in all circumstances.'[4]

4.7 Our response. No reason is given for that view and so we submit

(i) that in view of the success of FGCs explained above that this unsubstantiated comment is wrong.

(ii) However, even if that view is not accepted then the requirement to offer FGCs should still be made mandatory with a caveat to cover exceptional circumstances.

Clause 1(5) Provision of Information

5. Since 1999 government guidance entitled Working Together has stated that 'the local authority has a responsibility to make sure children and adults have all the Information they require to help them understand the processes that are followed when there are concerns about a child's welfare.' [5]

5.1 In practice this guidance has not worked:

> 'Children and adults are often confused about what is happening to them. The need to address this will rise' - Norgrove Family Justice Review November 2011 page 5
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> 'From the perspective of adopted families Adoption UK often hears of limited information and explanation being provided to families about what will be happening and why' ADOPTION UK response to Family Justice Review page 4
>
> 'They (i.e. families)... are confused ... and they don't understand the processes' - Munro Review of Child Protection para 2.26
>
> 'We surveyed about 453 single parents ... over half found the system dreadful and poor. About 73% find it difficult to navigate' -Gingerbread evidence to the Justice Committee 25th January 2011 Qu 78.

5.2 This Committee previously investigated the need for guidance, especially because of the increasing number of litigants in person, and reported the **unanimous view of Judges** that this slowed things down, thus causing severe wastage of Court time, and so concluded that

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[4] Hansard 26th October col 1247

[5] Working Together page 286 para 10.7

'This will require guidance to be developed to accommodate the challenges posed by larger number of litigants in person'.[6]

Clause 1(5) deals with this by requiring that:

'Any child or parents or other relatives of the child attending a Family Group Conference must be given in advance a publication explaining the childcare system and how it may affect them in the future and referred to an independent advice and advocacy organisation.'

5.3 The Government's response. The Minister recognised 'the importance of parents having simple information to support them'[7] but said that this is already the case.

5.4 Our response. In the light of the evidence above this statement is complacent: the reality is confusion and lack of information. Guidance **that has been operation for 13 years** has not ended this. Legislation is needed, as per clause 1(5) of the Hemming PMB.

Clause 2: McKenzie Friends and Observers

6. Clause 2(1) permits parties to a case to have two 'friends' with them, to support advise or advocate. Much of the evidence quoted above regarding clause 1(5) (Provision of Information) demonstrates the need for this. Additional evidence is provided by the report of the recent Family Justice Review:

'the common complaint (was) that the courts are daunting and intimidating places for families.'[8]

Detailed research by the London Safeguarding Children's Group also showed that when families arrive in court to see a large number of lawyers and professionals lined up:

'Professionals need to understand how intimidating it is (for parents) to be so "outnumbered"[9]

6.1 Clause 2(1) rectifies this and also ensure that confidentiality is maintained by making these friends 'subject to the same rules of confidentiality as the party to the proceedings'. So breach of confidentiality would be contempt of court.

6.2 The Government's Response. The Bill's 'support for the use of McKenzie Friends ... is welcomed. The support for attendance by observers is also welcomed.'[10]

6.3 Our response. On this there is unanimity: we submit therefore that can be no reason why clause 2(1) of the Hemming PMB should not form part of the government's Bill

Clause 2 Transparency and Accountability

[6] Operation of the Family Courts 14th July 2011 par 237 page 73
[7] Hansard October 26th cols 1247-8
[8] Family Justice Review 2012 page 40
[9] London Safeguarding Children's Group December 2010
[10] Hansard 26th October col 1248

7. The family courts sit in private to protect the anonymity and interests of children. *The Bill accepts this* but makes provisions that will make the courts more transparent and accountable.

Former Children's Minister (Tim Loughton MP) said:

> 'we need greater transparency in the courts ... I am an inveterate believer in greater transparency.'[11]

The NSPCC has made similar comments:

> 'we support efforts to make the family courts more transparent ... but without increasing the likelihood of identifying children.'[12]

Clause 2 of the Hemming PMB achieves this balance.

7.1 Clause 2(2) permits bona fide academic research into proceedings in the family courts. The need for this has been highlighted previously by this Committee:

> 'Family courts sit in private to protect the anonymity of children. But there is a danger that justice in secret could allow injustice to children.'[13]

This point was demonstrated by research by Professor Jill Ireland into the quality of expert evidence used in the courts, which showed that there is a risk of injustice because:

> 'one fifth of expert psychologists were not deemed qualified ... two thirds of their reports were "poor" or "very poor" '[14],

And by a recent case in the Court of Appeal in which it was established that a child had been removed from his family on the basis of incorrect evidence:

> 'the Principal Registry ordered a toddler to be returned to his parents (after) it was established that the baby was vitamin D and calcium deficient and had undiagnosed rickets.'[15]

7.2 There can be little that is more unjust than a child being taken from their family because of incorrect evidence.

7.3 However, the Hemming PMB also recognises the need for confidentiality by saying that:

(a) 'any publication of the research removes all identifying details; and
(b) it shall be a contempt of court for any person receiving or publishing information pursuant to this section to reveal the identity of any person whose details he has received.

7.4 The Government's Response: The Minister dealt mainly with the quality of expert evidence and when it should be used. He did, however, recognise that the Bill wanted 'researchers to have access to court records including experts' reports' but went on to say that 'Practice Direction 12G ... enables any person lawfully in receipt of information relating to children proceedings to pass that information

[11] Evidence to the Justice Committee 26th April 2012 Questions 332 and 334
[12] Evidence to the Justice Committee September 2010 Ev 129
[13] Justice Committee Report July 2100 p 99
[14] Evaluating Expert Evidence Prof Jill Ireland February 2012
[15] Press Release by Goodman Ray Solicitors 9th May 2012

to researchers conducting **an approved research project'**[16] so the clause is unnecessary (our emphasis).

<u>7.5 Our response.</u> The inadequacy of the Minister's statement lies in the words 'an approved research project'. Proper accountability is not about research 'approved' by the powers-that-be. That is the accountability of the former communist states. Proper accountability is about the system being open to scrutiny 'from below' – whether 'approved' or not but subject, of course, to the strict confidentiality rules explained above.

Clause 2 Grandparents and wider family members

8. Clause 2(3) (a) enables wider family members to attend that part of the hearing that maybe be considering whether the child should be placed with them. Sub clause (3) (b) permits grandparents to participate in the proceeding if they have had long term involvement with their grandchildren and have information that could assist the court.

8.1 However the clause recognises that children may be inhibited from giving evidence in front of certain people so it provides that the judge may exclude any person from that part of the proceedings where the child is giving evidence if, in his opinion, their presence would inhibit the child.

8.2 The Government's response. The Minister's remarks largely miss the point, as they relate to the duties of local authorities, whereas the clause deals with events in court. He asserts also that 'the court may at any time direct that any person be made a party to the proceedings.

8.3 Our response. This is not a response to these clauses. The Minister did not give any reason why wider family members should not be allowed to attend that part of any hearing that is considering placing a child with them; nor did he give any reason as to why grandparents should not be allowed to participate as of right if they have information that is helpful to the court. We submit that 2(3) (a) and (b) are simply common sense.

8.4 Clause 2(4) allows grandparents to direct and indirect contact with their grandchildren if the child so wishes, without this contact being supervised unless it is not the interest of the child. This is to rectify the situation highlighted by the following statements (of many) by grandparents.

> 'I spent over seven years with my grandchildren two or three times a week. After they were taken into care[17] I can only see them twice a year for two hours supervised. I cannot write, phone or text I can only send them birthday and Christmas cards.'

In a joint statement four 'grandparents organisations'[18] said:

> 'We have many similar cases but few will speak out because some are told to keep quiet while others think it may damage their case for contact with their grandchildren.'

8.5 The Government's response. The Minister misrepresented the Hemming PMB by asserting that 'any legislation that granted an automatic right to specific individuals to have contact with the child would, potentially' not be consistent with the principle that the welfare of the child must come first.[19]

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[16] Hansard 26th October col 1249

[17] In proceedings totally unrelated to the grandparents

[18] The Grandparents Association; Grandparents Apart Wales, Grandparents Apart Uk, Grandparents Action Group

[19] Hansard 26th October col 1250

8.6 Our response. True as that may be, it is not what clause 2(4) says. The clause only gives this right of contact if the child so wishes it and if it is in the interest of the welfare of the child. The government has not answered the point: this clause should appear in its Bill.

Clause 2(5) Placement of children near their home

9. Clause 2(5) amends the Children Act 1989 to require that children taken into care are placed near their home unless it is not in their interest to do so.. This is because of the plethora of evidence that placing children far from their home puts them in greater danger. The London Evening Standard reported on the 12th September,

> 'the Standard today exposes the scandal of London children being 'exported' to care homes across the country where they are at increased risk of abuse. Almost two thirds of youngsters taken into care are sent outside their borough and....maltreated and introduced to drugs...police (warn) this places them in greater danger.'

9.1 And BBC Radio 4's The Report programme said on 31st May,

> 'Rochdale Council leader says children should no longer be sent to care homes in the borough because their safety 'is not being guaranteed' ... 41 children's homes in Rochdale,house vulnerable children from all over England.
>
> 'Last year an inquiry into Lancashire's 101 children's homes found that the council and the police had little knowledge of some of (them). It estimated 21,000 children...were being cared for in areas outside their home authority.
>
> 'councillor Steen says placing vulnerable girls, susceptible to grooming, so far away from home, can lead to them ' becoming invisible'...so cannot be monitored or helped.'

9.2 In May this year a joint enquiry by the All Party Parliamentary Group for Runaway and Missing Children and Adults and the All Party Parliamentary Group for Looked After Children and Care Leavers called for 'urgent action to reduce this practice' of sending children far away from their original areas. Clause 2(5) provides that urgent action.

9.3 The Government's response. The Minister made two points: (i) that the current law is that children must be placed near their home if reasonably practicable and (ii) there might not be a suitable children's home in the child's area.

9.4 Our response. As regards (i) this is wholly inadequate, as the words 'as far as is reasonable practicable' are being used as a 'coach and horses'. Note the Lancashire findings above – 21,000 children placed away from their home; or the Rochdale situation – 41 homes with children from all over England. As the Joint APPG Report said 'urgent action' is needed, not complacency as to the danger to children.

As regards (ii) the Minister may have a point: there *may* not be a suitable home locally at the moment. To that we say (a) that this must change – resources or not, if we are to protect children from the dangers of being placed far away resources must be made available; (b) perhaps there should be a gradual phasing in of this clause to enable provision to be made; and (c) perhaps most importantly even if we accept the Minisetr's point there needs to be an immediate a change in the law to reduce the current practice of tens of thousands of children being in danger.

Clause 3 Complaints by Children in Care

10. This states that where a child in care complains about serious abuse, those complaints should be dealt with by a body that is independent of the local authority. This is needed because of the evidence that local authorities have not investigated or have ignored complaints by children in their care. The Times of 24th September reported that 'confidential papers showed a decade of abuse in South Yorkshire.'

> 'Police and child protection agencies have held extensive knowledge of this ... **for ten years.**
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> '**As long ago as 1996,** a social services investigation uncovered concerns that girls were being coerced into "child prostitution" by ... men who regularly collected them from residential care homes.
>
> '**A July 2010** independent review for the Rotherham Safeguarding Children Board ... described the offences as "child sexual exploitation at the top end of seriousness".'

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In September the Mail online reported that,

> 'Rochdale Council and police **had 127 warnings** about sex abuse ... gang raped dozens of children, finds damning report.
>
> 'NHS warned Rochdale Borough Council ... on **dozens of occasions over six years** about sex abuse risks.'
>
> '

10.1 There are numerous other examples. For instance Lancashire 2011: Mr. Justice Jackson concluded that children in care 'suffered real lifelong damage' but '**the council's actions did not come under independent scrutiny**.'[20]

And the Jimmy Saville case revealed that children from Duncroft School who complained were ignored or punished.

10.2 The Government's response. The Minister explained the current situation that children must be provided with an independent advocate[21] as required by the Children Act 1989.

10.3 Our response. Exactly. That has been the case since 1989. The results quoted above show how it has not worked. Only a truly independent **procedure** can do that.

Clause 3(4) Prohibiting Discrimination against children in care and care leavers

11. There is considerable evidence that this is widespread. A care leaver told us:

> 'I have twice lost my job when my employers have come across my upbringing, despite having more professional experience and qualifications than my managers. We are views as mad, bad or sad.'

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[20] A and S (Children) v Lancashire County Council

[21] Hansard 26th October col 1251

Another said

> 'I lost my job and at the Employment Tribunal the barrister told them that as a result of being ex-care I would have a residual tendency to fabricate.'

In July this year Children's Minister, Edward Timpson MP launched a report by the All Party Parliamentary Group for Looked After Children and Care Leavers that said

> 'There was concern that the attitude of teachers towards children in care remains mixed, with some children being labelled as troublemakers simply because of their looked after status.'

The Who Cares Trust website states that

> 'The discrimination faced by children in care is brought to life time and time again through our interactions with (them).'

11.1 The Government's response. The Minister did not mention this clause.

11.2 Our response. It should be made an offence immediately and should be in the government's Bill.

Clause 4 Adoption without parental consent

12. The Children and Adoption and Act 2002 permits adoption 'without parental consent' if a child is at risk. In Section 1(4) Parliament laid down safeguards that 'the court must have regard to', including::

(i) The child's wishes (where old enough) and needs, and the lifelong effect of losing contact with his birth family,
(ii) The harm that the child has, or might,
(iii) The relationship the child has with relatives and the value to the child of it continuing,
(iv) The ability of the relatives to provide a secure home for the child and the wishes of the relatives.

Parliament has decreed that all these points **must** be considered by judges.

12.1 In practice these provisions are often ignored. We have 8 judgements that make no reference to the consideration of these provisions. Julie Haines, from Justice for Families says: 'I have assisted hundreds of cases. The judges usually do not explain how they consider these points.'

12.2 The Minister's response. He pointed out that the court is already under a duty to consider the points summarised above.[22]

12.3 Our response. We agree – that is the law. But the evidence is that courts are not explaining how or even whether they have considered these matters. Our clause would require them to do so. These are safeguards parliament has laid down before dispensing with parental consent: it is reasonable to require the courts to explain how they have considered them.

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[22] Hansard 26th October col 1252

Clause 5 Duty of Local Authorities

13. This deals with the duties of local authorities when children are in care. While maintaining the position that the welfare of the children is of paramount importance it also requires the local authority to ensure that the child has access to and contact with both parents and grandparents, unless such contact is not in the interest of the child.

13.1 The Government's response. The Minister did not mention this clause.

13.2 Our response. It should be in the government's Bill.

Ron Bailey/Jacque Courtnage + 78 others