



The Law Society

**Law Society's response to the legislative programme  
outlined in the Queen's Speech**  
May 2012



## **Children and Families Bill**

### **Shared parenting**

Most separating and divorcing couples are able to reach informal or formal parenting arrangements without the need to go to court. For the minority who go to court, often the most high-conflict cases, it is not true that the courts are biased towards mothers: there is and can only be one bias – the welfare of the child.

The risk is that 'shared parenting' or 'shared parental responsibility' is too easily misinterpreted as meaning equal time with each parent. This can lead to a focus on the rights of parents over the rights of children, and an assumption that the starting point is 'equal time'. Unfortunately, this is only likely to entrench attitudes among litigating parents. What is really needed is a more thoughtful approach to what parental responsibility means post-separation.

### **Children with special educational needs**

The ambitious proposals in the Children and Families Bill for improving services to children and young adults with Special Educational Needs (SEN) are welcome, but must be tempered by realism. If sufficient resources are not made available, the expectations raised by the Bill will not be met. Unless the new single assessment plan is properly piloted across the full range of services, there is a risk that further complication, delay and pressures upon local resources will be created.

### **Adoption**

The government is right to be committed to speeding up the adoption process. The number of children adopted from care has been going down in recent years – just over 3,000 children were adopted from care last year, out of 15,000 under the age of five being looked after. There needs to be a more efficient and quicker adopter assessment process, and greater encouragement to prospective adopters to come forward.

### **Family law**

#### **Overview**

Radical and sustained changes to the family justice system are needed. Children are at the heart of family justice, but sadly many of our children are being failed by chronic delay. Delays of years are immeasurably long for a child, impact hugely on their well-being and seriously damage adoption prospects.

#### **Six month time limit on care cases**

To halve the time which care cases take now is a tall order, but it has to be done. It will require additional resources - more court time and more judges' time, and more time from family solicitors, but that is under threat from cuts in legal aid fees and scope. Legal aid cuts will lead to more people going to court unrepresented, which will take up more court time when court resources are already over-stretched. More people will have completely unrealistic expectations of that to expect from the courts because they have not had a family solicitor's advice.

Reducing delays in care proceedings is crucial, and to achieve this many other recommendations from the Family Justice Review will have to be implemented - including those on the use of experts, judicial continuity, and delays with public funding. These changes do not have to await legislation, and need to be taken forward not just by government but by everyone working in family justice.

In 1991, when the Children Act 1989 came into force, it was expected that care proceedings would take on average 12 weeks for the courts to deal with. By 1993 the average duration of care cases was 24 weeks; by 2002 it had doubled to 48 weeks; when the Family Justice Review (FJR) interim report was published last year it was 53 weeks; it's now 56 weeks. The number of care orders is also increasing – from just over 2000 orders in the whole of 1992 to 10,199 in the year to March 2012. This trajectory is unacceptable and unsustainable.

### **Case management**

The 'no stone left unturned' approach has ensured that care plans are comprehensively scrutinised, but has also contributed to lengthy proceedings and delay. The success of limited judicial scrutiny of care plans will depend on local authorities, experts, and solicitors working together more effectively with the judges.

Judges should be allowed to grant interim orders for the duration they see fit. There should be an increased role for judges as 'case-managers', responsible for timetabling, case management and ensuring that local authorities, experts and others comply with the court timetable.

### **Flexible parental leave**

We welcome proposed measures to make parental leave more flexible so that parents may share their responsibilities and balance their work and family commitments more easily. There is a strong business case for flexible working to become mainstream practice. Businesses need flexible working to retain their best talent. They cannot afford to invest time and money in someone's career and training, yet risk losing them before they can achieve their full potential.

## **Crime and Courts Bill**

### **Television cameras in court**

We welcome measures designed to improve public confidence in and knowledge of the justice system, and support the principle of open justice.

We have concerns, however, that allowing TV cameras into courts may lead to selective and sensational reporting, and cause even more stress to victims of crime, witnesses and defendants alike.

We are pleased the government intends to introduce live broadcasting in limited circumstances only, and we look forward to considering their detailed proposals.

### **The Judiciary**

We support many of the changes which reflect Baroness Neuberger's recommendations, however, we have concerns over what appears to be an enlarged involvement for the Lord

Chancellor in, for example, the appointment panel for the President of the Supreme Court and the Lord Chief Justice. This may raise questions over the true independence of the judiciary.

Moves to encourage flexible judicial deployment are positive and will make it possible for High Court judges to work part time or opt for flexible working and help to ease the transfer of judges between courts and tribunals.

## **Court data sharing**

The Society has stressed the importance of data sharing between the courts and tribunals service and other agencies for the purposes of checking fee exemption applications. This move will help tackle increased court fees so we should support this and therefore support this initiative.

## **Defamation Bill**

The Law Society is encouraged by the announcement in the Queen's Speech that the government will be bringing forward a Defamation Bill in this Parliamentary session. If the government's response to the Joint Committee report provides an accurate indication of the new Bill's content, then we expect the vast majority of its provisions to lead to a clearer, more proportionate defamation law regime, and we look forward to examining them in detail.

We do however hold deep reservations about the proposals to introduce a requirement that statements cause 'serious harm' to be actionable. We agree that a mechanism is needed to discourage trivial claims, but this proposal is likely to inhibit many people trying to validly protect their reputation from doing so.

If the purpose of this law is to stop the protection of reputation from becoming the sole preserve of the rich, then this proposal is the wrong way to go about it, as it will create an unreasonably high threshold to overcome at a very early stage, necessitating extensive and costly pre-action work. In combination with the recent changes to no-win, no-fee agreements, ordinary people, small businesses and charities may simply not be able to afford to protect their reputation if this provision becomes law.

## **Draft Communications Bill**

Vast quantities of communications data are generated about UK subjects through their telephone calls, web, and social media use. Such data can build a highly detailed picture of a person's life including their associates, their location, and their interests.

In a democratic society the needs of law enforcement will always need to be balanced against the rights of the individual. However, proposals for mass surveillance of the kind proposed in the Draft Communications Data Bill, call for greater scrutiny than more limited and targeted measures. In a global internet environment in which more data than ever is already available to the authorities there needs to be a firm legal basis, workable mechanisms and a proven need to collect more.

The relationship between developing technologies, government IT and surveillance systems and their legal frameworks has not always been a happy one. Individuals have a right to privacy and the Law Society and its members will seek to contribute to the debate which is already underway.

## **Justice and Security Bill**

### **Secret Courts**

It is a long established principle that justice should be open. Being able to see your opponent's case ensures fairness. Allowing justice to be seen maintains trust in the system.

There is no doubt that the work of the security services will sometimes be sensitive and therefore not for the public eye, but that needs to be balanced sensibly with the need for our justice system to be transparent, and the principle of holding the Government to account.

The secret justice proposals in the Justice and Security Bill must not become a cloak for a government to hide its blushes nor be allowed to deny justice to deserving cases.

It seems a difficult task to reconcile the principles of the Draft Communications Bill which seeks to closely monitor the lives of individuals, with the Justice and Security Bill which could do the opposite for government. The Law Society, which represents many of the lawyers who will be working in and with any new legal framework, will seek strenuously to ensure that the fundamental principles of British justice are maintained.

## **Enterprise and Regulatory Reform Bill**

We applaud improvements to promote the fair and effective resolution of workplace disputes and the effective running of the Employment Tribunal system. The Tribunal process provides access to remedies which safeguard the statutory rights of individuals who, for want of resources, are very often the weaker party in the process. While we recognise that justice must be delivered to a budget, we urge the government to not lose sight of why the Employment Tribunal exists in the first place.

While it is understandable that in the present economic climate businesses need support, the government should respond to the evidence, rather than perception, when preparing proposals to reduce burdens on business. When repealing 'unnecessary' legislation, fundamental rights must not be discarded.

## **Care and Support Bill**

The introduction of a Bill to consolidate existing legislation and statutory guidance is a necessary measure taken by the government. In doing so, we urge the government to implement in full the recommendations of the Law Commission Report on Adult Social Care. While we hope that the Bill will improve the experience of those in need of care and support, it can only do this if accompanied robust solutions to the current funding crisis.