FAMILY JUSTICE (TRANSPARENCY, ACCOUNTABILITY AND COST OF LIVING) *Draft* Bill 2012 *(for public consultation)*

A Bill to make provisions regarding arrangements for children involved in court cases; to make provision about the transparency, administration and accountability of courts and case conferences; to require the promotion of measures to assist families and such other persons as may be specified to reduce the cost of living through lower fuel bills; and for connected purposes.

Explanatory Note:
The objective of this bill is to improve the quality of decision making relating to care matters and make the state more responsive to the welfare of children and families. There are a number of technical changes to increase accountability and reduce conflicts of interest and promote the welfare of children.

Part 1 Transparency and accountability

1. Children's Case Conferences

(1) Any child or parents or other relatives of the child attending a case conference must be given in advance a statement of the matters to be discussed at the Case Conference; a publication explaining the childcare system and how it may affect them in the future; and copies of any documents or reports to be used at the conference.

(2) Any person attending a case conference may add to or comment on any document or report discussed.

(3) Case conferences must be chaired by an attendee who is not employed by the local authority.

(4) All decisions relating to possible court proceedings made at children's case conferences shall be by secret ballot.

(5) Any child or his family may appeal against any decision made by a children's case conference to the relevant scrutiny or appeal committee of the Children's Services Authority.

Explanatory Note:
can be strengthened then fewer decisions on issues such as details of contact or whether care proceedings are needed will reach the court. The environment is potentially less adversarial than a court hearing and has a better structure within which to reach compromise positions. Had this been in place the Webster/Hardingham miscarriage of justice would not have happened.

2. Proceedings in the Family Court and the Court of Protection

(1) Any party to proceedings in the Family Court or court of Protection shall be permitted to have up to 5 observers present provided that a maximum of 15 such observers shall be permitted per hearing.

Explanatory Note:
Attending the family court can be quite intimidating. If you have a young mother, for example, in her teens or early 20s then allowing her parent to attend as of right will make it less intimidating. Under The Family Proceedings (Amendment) (No.2) Rules 2009/857 parties can already pass information to close friends for advice. Allowing them to attend court reduces the level of stress without actually widening the number of people who have access to the details of court proceedings.

(2) Any person may give information regarding any proceedings in the Family Court or the Court of Protection to any person carrying out academic research regarding such proceedings who is a member of or operating on behalf of an academic institution that has experience and expertise in carrying out such research provided that any publication of the research removes all identifying details.

Explanatory Note:
Public court proceedings are subject to academic scrutiny, but private court proceedings are not. This subsection will allow detailed review as to whether there is intellectual integrity to the evidence being given or whether it is unreliable. Given that the only systematic research as to the quality of psychological research (that of Professor Jane Ireland) found that 2/3rds of psychological reports are "poor or very poor" such scrutiny is urgently needed.

(3) Grandparents or siblings of parents, who are not parties to a case, shall

(a) be able to participate in that part of any proceedings which involves considering whether or not children should be placed with them; and such people who have had care of children should not face detailed assessment unless their children have been subject to a child protection plan or care proceedings; and
(b) in the case of grandparents be permitted to participate in proceedings if they have had long term involvement with their grandchildren and have information which will be helpful to the outcome of the case.

(4) Grandparents shall be permitted to have reasonable direct and indirect contact with their grandchildren without this contact being supervised unless it is not in the interest of the welfare of the child

Explanatory Note:
Although the law requires that family are looked at first for the placement of children in foster care there is often a requirement for a detailed assessment of grandparents, aunts or uncles. It is often far better for a child to be placed with family than with a foster carer. If family carers have brought up children without any identified problems it is unnecessary to have a detailed assessment in place.

Additionally grandparents are often excluded from family court proceedings. The paperwork overload of automatically having grandparents as parties to a case means that automatic party status is not the solution although some grandparents should be parties. However, if the court is to decide not to place children with grandparents when they cannot be placed with their parents then the grandparents should be allowed to challenge in court the reasons given to the court.

(5) Children not placed with their family should be placed as close as is practicable to their home authority.

Explanatory Note:
Very often children are placed many miles away from family. This should be avoided.

3. Children in care

(1) The Secretary of State must make regulations to establish a process and procedure whereby if a child in the care of an authority has made a complaint

(a) that complaint shall be investigated and determined by an independent body; and
(b) a litigation friend independent of CAFCASS can be provided for that child.

(2) Regulations made pursuant to this section shall be by statutory instrument subject to the negative resolution procedure.

(3) Until such regulations are made any person who has day to day contact with a child in care may apply to be the litigation friend for that child and the court must accept that application if the person applying demonstrates that there is a prima facie case that the child is suffering in the care of the authority and the attention of the court is needed.

Explanatory Note:
Many children in care suffer from abuse whilst in care. However, the local authority is responsible for detecting and dealing with that abuse whilst also having responsibility for the care of the children. This creates a major conflict of interest. The criminal law has been used recently to deal with some of the abuse of children such as that in Rochdale. However, there needs to be a mechanism to deal with things more effectively.

The case A and S (Children) and Lancashire County Council [2012] EWHC 1689 (Fam) demonstrates the failing of an "independent" reviewing officer – another appointee of the local authority. The A&S case arose because one of the children approached a solicitor. The case is worth looking at, but essentially found that the children were *"subjected to degrading treatment and physical assault"* and that Lancashire County Council *"failed adequately to protect their physical and sexual safety"* whilst they were in care.

In evidence to the House of Commons Justice Committee Barnado's called for reviewing officers to have 'independence from the local authority'.

Subsection 3 would enable a teacher, GP, or someone like an NSPCC child's advocate, to raise concerns with the local authority. For such concerns to have any effect there has to be a background opportunity to take the case to court. Children who are "gillick competent" can approach a solicitor themselves and some solicitors have the backbone to take action against the local authority (those that don't work for the LA). This can apply from the age of 12 or 13, but in the case above was at the age of 16. However, younger children are simply subject to the whims of the local authority. It is important to note that what the children said in the Lancashire case was "*FOR THE IMPORTANT PEOPLE TO LISTEN TO US."*

This subsection will require the *"important people"* to listen to children in care.

(4) The criminal records of any child in care shall only contain information that would have been included had that child not been in care.

Explanatory Note:
At times the police are called to deal with incidents involving children at care homes (like throwing a bowl of cereal at a carer) which would in a family not involve the police. This should not follow the children around as part of their criminal records checks.

(5) Being currently or having been subject to a care order at any point in childhood shall be a protected characteristic for the purposes of the Equality Act 2010.

Explanatory Note:
Care leavers have been sacked when people found out that they were in care previously. This would act to prevent discrimination against care leavers which arises as a result of their having been in care.

4. Amendment of the Children and Adoption Act 2002

After section 52(1) of the 2002 Act there shall be inserted

"(1A) Where a judge is of the opinion that parental consent may be dispensed with pursuant to subsection (1) (b) he must

(a) in his judgement explain how he has considered the requirement of section 1 (4) of this Act; and
(b) then only make an order placing a child in the care of a local authority after considering whether it is possible and in the interest of the welfare of the child to place the child with one of his relatives."

Explanatory Note:
This requires judges to give reasons, as already intended by Parliament in the 2002 Act (but often disregarded) why they have forcibly adopted a children rather than just saying "the welfare of the child requires it".

6. Children and Parents: Duties of local authorities and other bodies

(1) When a local authority or other body carries out any functions or makes any decisions in connection with the upbringing of a child, the child's welfare shall be the paramount consideration.

(2) In respect of subsection (1), the local authority or other body must act on the presumption that the child's welfare is best served through having access to and contact with both parents and grandparents sufficient to enable him to have a meaningful relationship with both parents and grandparents unless in the opinion of the court such contact is not in the interests of the welfare of the child and that information about the child should be provided to both parents.

Explanatory Note:
This emphasises the importance of childrens' relationship with both parents and the role of grandparents.

7. Rights of Children to Records

Upon attaining the age of 16 a child shall have a right,, to copies of all the records held by any local authority or the NHS Trust relating to their care.

Explanatory Note:
It is often difficult for children to get access to the paperwork that relates to them. They should not have to take court action to get it.

Part 2 Other provisions relating to the administration of justice

8. Right to report wrongdoing

(1) It shall not be contempt of court (notwithstanding any court order or statute) for any person

(a) to report wrong doing to a law enforcement agency or regulator, Member of Parliament or other elected official; and
(b) for such a regulator, law enforcement agency, Member of Parliament or other elected official to investigate the allegation of wrongdoing.

Explanatory Note:
It may sound surprising but court orders have been obtained which prevented reporting a crime to the police. The police have refused to investigate allegations of murder because of a court order and a painting supervisor was banned from reporting that drinking water was poisoned with a carcinogen to the coastguard. Also an injunction prevented reporting important information to the Financial Services Authority.

Even now the Health Professions Council are saying that they need court permission to investigate psychologists.

Some people have been prohibited from talking to MPs!

People should have the right to complain. This in one sense confirms Article 5 of the 1688 Bill of Rights.

(2) It shall be an offence to threaten any person in order to prevent them reporting a wrongdoing pursuant to subsection (1).

Explanatory Note:
In the USA it is a criminal offence to threaten someone to stop them reporting wrongdoing. The same should be the case in the UK.

9. Matters relating to court proceedings

(1) The common law offence of scandalising the court is hereby abolished.

Explanatory Note:
The use of the arcane contempt to prosecute Peter Hain MP demonstrated that this needs to go. If a judge has been wrongly criticised her or she can take out a libel action. Truthful comments about the judiciary must be allowed.

(2) A list of persons imprisoned for contempt of court, the term of imprisonment and the reasons that they are imprisoned must be published by the courts on the internet.

Explanatory Note:
Although someone imprisoned for contempt of court in a secret hearing (such as Deborah Paul) should be identified during final stage of the proceedings, if no-one is there at that time to record the fact there is no scrutiny of what is being done. For parliament and society to decide whether or not the judges are acting properly in imprisoning people this needs to be reported.

(3) Where any person has been granted leave to bring a judicial review the Court shall make an order restricting the costs for which the applicant may be liable unless there are compelling reasons as to why this should not happen.

Explanatory Note:
Judicial review is the only mechanism, for example, that enables people to challenge a local authority when it gives planning permission. It is, however, only open to very poor people (who get legal aid) and the very rich (who don't have to worry about court costs).

The biggest problem is that applying for judicial review is a bit like grabbing onto the tail of a tiger. You cannot be certain how big the costs bill will be if you lose. The costs that can be awarded against people for applying for judicial review are normally not that high. However, a full hearing can be very expensive, but what is important is that normally there is no limit on the costs.

There have been a few pre-emptive orders for costs given. This clause would extend those to all cases of judicial review. It would allow people on asking for permission for judicial review to have some idea of what maximum risk they are taking. For community groups and Non Governmental Organisations this would be an important opening up of access to justice.

(5) A child may apply for the quashing of an extradition order for a parent and it should be granted where the parent and child are habitually resident in the UK; the parent was in the UK when the offence was committed and a prosecution in the UK is possible.

Explanatory Note:
Extradition should really be used for fugitives. This would deal with a few cases (like that of David Bermingham of the Natwest Three) where it is important for the children to have a prosecution in the UK.

In his case he was forced to plead guilty in the USA because he faced 35 years in jail for a not guilty plea, but was sentenced to 37 months part of which was served in the UK. He was released in August 2010.

It remains unclear as to what offence they actually committed. Other changes to the law are needed. However, they would not fit within this bill (because they would not be in order).

10. The Official Solicitor

(1) The Secretary of State must make regulations to establish a process and procedure whereby the work of the Official Solicitor is subject to wider scrutiny.

Explanatory Note:
There is no public scrutiny of the activities of the official solicitor who has stated that he is not accountable to parliament for what he does in individual cases. This is not acceptable. What the Official Solicitor does affects many many people and there needs to be independent scrutiny beyond the secret court proceedings in which he or his staff are involved as a litigation friend.

11. Recording of Hearings

A person who is subject to the decisions made by a hearing at a case conference or a party to a hearing in court may record such a hearing for the purposes of producing a transcript of the hearing.

Explanatory Note:
For people to appeal a court decision they need a transcript of the judgement. Someone who is not wealthy often needs to get permission for public funding for the transcript. Very often people are prevented from appealing decisions because they haven't got a judgment (although it is possible to appeal on the basis of there being no judgment). The court hearings are recorded. However, if people can make their own recordings then they can produce their own transcripts without it costing the taxpayer any money.

Such recordings should not be used for publication merely to have a transcript for litigants (and attendees to use)

12. Right to assert litigation capacity

Any person who has been deemed to lack capacity to bring or conduct any proceedings may at any time appeal against that decision, or make an application to assert capacity presently, and shall have standing to conduct the proceedings in that matter themselves and without their litigation friend.

Explanatory Note:
Many people have their litigation capacity removed. There are questions as to whether or not the psychologists reports used for these decision are reliable. One of the hardest things for someone who has had their mental capacity removed to do is to challenge the decision. Solicitors will refuse to act for them. The legal services commission won't fund anything and at times the courts will refuse to accept any paperwork. In essence they become a legal non-person.

This would allow them to challenge the decision. The current rules only allow a litigant to state that they have got better (and recovered capacity) not that the original decision was wrong.

13. Ambit of Reasonableness in Capacity

Any person who, in the assessment of their capacity to make a decision, proposes to make a decision that is within the ambit of possible reasonable choices shall be deemed to have capacity for the purposes of that decision notwithstanding that they would otherwise be found incapacitous, unless it would on balance of probabilities cause them serious harm, whether immediately or in the future.

Explanatory Note:
to whether someone would make a bad decision, they look also at the decisions that people make. This is better than Masterman-Lister v Brutton & Co and the Mental Capacity Act 2005.

Part 3 Cost of living and measures to achieve lower fuel bills

14. Purpose of this Part

(1) The purpose of this Part is to promote the opportunity for people to have better access to measures to achieve lower fuel bills and more efficient use of fuels.

15. Strategy

(1) The Secretary of State must promote access to measures to achieve lower bills and more efficient use of fuels by drawing up a strategy ('the strategy') to achieve significant increases in the installation of domestic energy efficiency measures and microgeneration technologies, as specified in the Climate Change and Sustainable Energy Act 2006 but including passive flue gas technology, by 2015, 2020 and 2025.

(2) The strategy must

(a) Include steps to ensure that all new homes comply with Level 6 of the Code for Sustainable Homes by 2016

(b) set out a clear commitment to use the Building Regulations by 2020 to require any replacement heating system to achieve a step change in energy efficiency provided that he is satisfied that it is cost effective; and available in sufficient volumes to service the likely size of the market; and can be installed and serviced by an appropriately trained and competent workforce

(c) ensure that microgeneration measures access have access to green deal finance and access Feed in Tariffs or Renewable Heat Incentive funding as the case may be.

(3) Before publishing the strategy the Secretary of State must

(a) consult such persons as he considers appropriate and in particular

(b) consult and try to reach agreement with stakeholders as to what is to be deemed as significant pursuant to subsection (1).

(5) The Secretary of State must use all reasonable endeavours to implement the strategy.

Explanatory Note:
The Bill will assist the government in achieving its policies to increase energy efficiency and microgeneration and also to drive down fuel bills (as well as achieving significant reduction in emissions of carbon dioxide thus also assisting with its climate change strategy). This signals a clear strategic path against which the industry can have the confidence to invest because it knows its market will grow substantially at the start of the next decade and so reduce prices by means of mass production.

16. Fuel Poverty

(1) The Secretary of State must

(a) Within 6 months of the passing of this Act consult on the definition and means of dealing with fuel poverty.

(b) Thereafter but not later than 12 months after the passing of this Act produce a costed road map to end fuel poverty, subject to the proviso in subsection 3 , by a date to be specified in the road map.

(2) Ensure that the road map is debated and voted on in Parliament and thereafter Implement the road map.

(3) The proviso referred to in subsection (1) is that the Secretary of State shall not be under a duty to end fuel poverty in properties where the occupiers have declined to have measures installed or that are of such a size that they cannot be properly insulated

Explanatory Note:
Following the Hills Fuel Poverty Review the government has indicated its intention to consult on fuel Poverty and thereafter prepare a roads map to deal with this problem. This section will assist with those objectives.

Consultation responses:
Please respond to Ron Bailey at ronbailey@btinternet.com or John Hemming at john.hemming.mp@parliament.uk

By 20th September 2012.