Family Solutions subgroup of Private Law Working Group recommends a new Part 3 FPR Protocol to direct separating and divorcing families to out-of-court processes

Comment from primary proponent of proposed new Part 3 Protocol

On 12 November 2020, The Family Solutions subgroup of The Private Law Working Group (PrLWG), set up by the President of the Family Division in 2018 under the chairmanship of Mr Justice Cobb, released its latest report "*What about me? – Reframing Support for Families following Parental Separation*".

A key recommendation of the report is an overhaul of the approach of family law professionals and their interface with the family court. Mandatory core training for lawyers is proposed – lawyers must have a greater knowledge of relationship dynamics and an understanding about the effects of parental conflict on children. "This is long overdue" said Karen Barham. "It cannot be right that however well-meaning a lawyer can conduct cases involving children without this essential knowledge and training".

"However illuminating to learn about snails in ginger beer bottles, the fact remains that we are producing generation upon generation of family lawyers without any requirement to study and understand human behaviour and psychology. In my view lawyers practising in the field of children law and family breakdown must now be required to have specialist training".

"Further notwithstanding an increasingly sophisticated range of non-court resolution processes parents and their lawyers continue to cling to the court".

Under Part 3 of the Family Procedure Rules the court, the lawyers and the parties have an obligation to consider out of court resolution processes such as mediation. A proposed new Part 3 Protocol with 'teeth' will assist the court to encourage and facilitate an out of court process. **The idea was advanced by Karen Barham Consultant Family Law Mediator & Parenting Coordinator at Moore Barlow, member of the Family Solutions group and author of The Surrey Initiative.** She hopes this will pave the way for an overhaul of the FPR by giving judges authority to order cases into out of court processes. Further sanctions would include costs orders against parties and their lawyers for unreasonably refusing to consider or engage in an out of court process.

She comments as follows:

"*Part 3 as it stands is not working; it lacks teeth and too often it is paid lip-service. Judges need to be able to order a case into an appropriate out-of-court process. I am proposing an appropriate and nuanced approach depending upon whether the case involves arrangements for children or finances."*

"If implemented my proposals would ease the burden upon the stretched resources of the family court leaving it more readily available for those cases that genuinely require the state's intervention or adjudication".

"*The ability of the court to order a case into an out-of-court process, to impose costs upon the parties and in some cases their lawyers with other sanctions (such as adjournments ie Ungley Orders) would make the shift we are desperate for. A Part 3 Protocol is a start and I am delighted to see my proposal forming part of the excellent recommendations emanating from this report.*

"I am now looking to develop this and have gathered a group of key movers and shakers to see what a new FPR would need to look like".

Such a proposal is expected to be embraced by the judiciary following two recent decisions:

- HHJ Wildblood QC sitting in the Bristol Family Court in Re (B) (a child) (unnecessary Private Law Applications). *"Therefore, the message in this judgment to parties and lawyers is this, as far as I am concerned. Do not bring your private law litigation to the Family court here unless it is genuinely necessary for you to do so. You should settle your differences (or those of your clients) away from the court, except where that is not possible. If you do bring unnecessary cases to this court, you will be criticised, and sanctions may be imposed upon you. There are many other ways to settle disagreements, such as mediation."*

- Mostyn J JB v DB [2020] EWHC 2301 (Fam) – the parties had been *'directed to use mediation or other dispute resolution process'*. The judge considered that contrary to his earlier direction the husband had *'wilfully refused to engage properly'* resulting in him being penalised by an order to pay £15,000 of the wife's costs.

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Notes to Editors:

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