

The NSPCC's Response to Public Law Family Fees Consultation Paper (CP32/07)

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NSPCC Response to

Public Law Family Fees Consultation Paper (CP32/07)

Introduction

The NSPCC welcomes the opportunity to respond to the Public Law Family Fees Consultation Paper (CP32/07)

The NSPCC is the UK's leading charity specialising in child protection and the prevention of cruelty to children.

The NSPCC exists to end cruelty to children through a range of activities designed:

- To help children who have suffered abuse overcome the effects of such harm
- To prevent children from suffering abuse
- To prevent children from suffering significant harm as a result of ill-treatment
- To help children who are at risk of such harm
- To work to protect children from further harm.

We have more than 180 teams and projects throughout England, Wales and Northern Ireland and the Channel Islands. Their work includes:

- Family support, assessment, counselling and therapy to children and families experiencing abuse
- Investigations into allegations of child abuse
- Work within schools and other youth organisations to provide a voice for children and advocate their rights.

In February 2006, ChildLine formally joined with the NSPCC in a move that ensures even stronger services and a more influential voice for children and young people. ChildLine is the UK's free, confidential 24-hour helpline for children and young people. Between April 2005 and April 2006, ChildLine counselled 159,535 children.

The aim of our FULL STOP Campaign is to end cruelty to children. We believe that, given the will, most abuse can be prevented. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection.

General Comments

1. The NSPCC is strongly opposed to the proposals set out in this consultation paper. It is a matter of public interest to ensure that children are kept safe and have access to justice. There is a real and serious risk that vulnerable children and their families will be prevented from having full access to justice if these proposals are implemented because some decisions about taking proceedings in relation to vulnerable children could be finance led. That is totally unacceptable.
2. The government cites the policy objectives for this consultation at p. 24. They want the fee system to meet its financial targets; protect access to justice; and achieve a close match between income and costs with the system. Much attention is given in the paper to meeting financial targets by achieving a close match between income and costs. This is really one objective, not two. However very little attention, if any, has been given to the quoted objective of protecting access to justice. The government has explicit obligations in the Convention on the Rights of the Child for the child to have access to justice and we consider that the government may well be in breach of their obligations if these proposals are implemented.
3. The NSPCC is gravely concerned about the potential lack of protection of access to justice for vulnerable children and families. Cases identified as suitable for an early Final Hearing under the new revised procedures will pay significantly less in fees. The paper puts forward the view that local authorities are likely to be 'encouraged' by the introduction of increased fees to attain earlier resolution of cases. This implies that the only or primary barrier to reaching an early final hearing is the lack of well prepared cases. Clearly some cases take longer because of the personalities involved and the complexities of the facts in the case and no amount of careful preparation can overcome the difficulties with speed. It is also vital to remember that some cases benefit from positive delays which give time, for example, for assessments or trial placements.
4. The paper states the obvious fact that it would be unlawful for social services departments to avoid taking court proceedings for financial reasons where they considered that to be the appropriate step. The danger here is that local authority decisions regarding taking proceedings will be unduly influenced by financial constraints. They will not 'cross the line into unlawful territory' and the financial constraints may be unlikely to have an impact on emergency protection for children but could very well have an impact on cases where neglect or emotional harm are primary issues and cases may be more likely to drift, which would clearly be against the best interests of children.
5. The NSPCC is also very concerned about the potential for local authorities to use other strategies to avoid care proceedings, including placing children inappropriately in voluntary accommodation under s.20 of the Children Act 1989 rather than initiate expensive proceedings. We refer to a research review commissioned by the Department for Constitutional

Affairs by Dr Julia Brophy¹. Dr Brophy's paper was commissioned as a briefing paper for the 'Child Care Proceedings Review'. It includes the topic 'Use of accommodation as an alternative to care':

While early work (Packman and Hall 1998) indicated voluntary accommodation of children was generally working reasonably well, some concern has been expressed that at least some local authorities may utilise 'accommodation' as an alternative to court proceedings. Freeman and Hunt 1998 identify that this strategy by a local authority initially applied in just over half of their sample. From parents' perspectives at least, few parents (3 in total) reported they readily agreed to the accommodation of their children in the first instance; the remainder reported feeling pressured to comply, with court action posed as an alternative if they refused. Equally researchers reported many parents maintained their own agenda on how far they were prepared to conform to the arrangements, and most hoped the voluntary arrangement would be a short-term measure. However, the researchers highlight that in all the 'enforced' (voluntary) accommodation of children, such children were accommodated after they had suffered significant harm. The researchers therefore argue 'it would seem that choosing the voluntary option does not require parents to face up to the real concerns about their care of children'. In the longer term some parents in this study felt ill informed about local authority plans and their rights within the system, some felt disillusioned and deceived when court proceedings were finally instigated. Most parents had not sought legal advice at the point at which children were accommodated and regretted this. The researchers point out that some parents felt confused about uncertain and changing goals and felt powerless within the social services system.

6. It can be seen from this review that the government's own research indicates that there is a risk that children and their families will be prevented from having full access to justice if these proposals push local authorities in the direction of finding alternatives to expensive court proceedings. The proposals are in direct contravention of the government's own safeguarding agenda and they fly in the face of the government's objective to ensure that the five outcomes for children listed in 'Every Child Matters' can be achieved, namely that every child can be healthy; stay safe; enjoy and achieve; make a positive contribution; and achieve economic well being.
7. We are extremely concerned that this paper does not represent a consultation process in any true sense of the words because financial decisions have already been taken which preclude any genuine process of consultation.
8. The paper indicates that local authorities are currently charged £150 when care proceedings are issued and that under the proposals they will be charged in excess of £4000 to issue care proceedings. Issuing adoption proceedings currently costs £140. The new proposed fee for applications by a local authority for a placement order is £400.

¹ Brophy, Julia, 2006. *Research Review: Child Care Proceedings Under the Children Act 1989*. DCA Research Series 5/06, University of Oxford.

9. Decisions regarding these proposals have already been taken and they are specified in the 2007 Spending Review settlement. The HMCS budget has already been set at a level £35 million lower than it would have been if the decisions to implement these proposals had not already been made. The most recent local authority spending settlement incorporates the transfer of responsibility for the fees to local authorities. However, there is no indication that the HMCS has properly evaluated the varying levels of court applications across different local authorities to ensure that a particular spending settlement will be appropriate to the needs of a particular local authority. The paper points out at p.29 that:

The consultation paper will seek views from local authorities upon whom the increases will fall whether our financial impact assumptions are accurate. If responses indicate legitimate concerns in relation to the timing or the cost we work with DCLG and DSCF to find and acceptable solution before deciding on when they will be implemented.

10. Local authorities should have been given an opportunity to express their views on whether the HMCS impact assumptions are accurate before a consultation paper was issued. The paper indicates at p.28 that the increase in spending by local authorities is to reduce net spending by HMCS and the public spending plans from April 2008 already reflect this. It is difficult to imagine how legitimate concerns from local authorities can be dealt with between the closing date of the consultation paper on 11 March 2008 and the implementation date for the proposals on 1 April 2008.
11. There is a suggestion that a speedier and more cost-effective court process will be delivered based on the premise that the new statutory guidance on pre-application interventions and case preparation, and the Public Law Outline will produce better preparation of cases, thus saving time. All cases involving these vulnerable children should be well prepared. However the Public Law Outline was only just published in February 2008 and none of these initiatives have been tested yet, so no reassurances can be given as to whether time will be saved.
12. Given that the NSPCC is totally opposed to the proposals in the consultation paper, we do not consider that anything can be added by addressing the specific questions in the paper.

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