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Family division head seeks 'immense' culture change

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Family judges need to undergo an 'immense' cultural change to help tackle delays in the family justice system, the head of the family division said this week.

Giving the Bar Council's Law Reform Committee lecture, Sir Nicholas Wall (pictured) said that 'active case management and judicial continuity are the two principal contributions which the judiciary can make to the problem of delay'.

The judiciary is 'critical to the success of the family justice system', he added. Judges need to 'take control' of cases and 'take the initiative' on what needs to be done, to improve a situation where some cases are taking up to 78 weeks to resolve.

Wall recognised that this would be an 'immense' cultural change for judges, moving away from the traditional, more 'aloof' role of an arbiter who 'does not descend into the ring'.

He said the change may not happen quickly but must be made. 'Times have changed and we have to change with them,' he said.

He added: 'Case management does not come naturally to many judges and training will be necessary.'

Wall said the Family Justice Review, published last month, offered 'an opportunity to reform the family justice system which is unlikely to be repeated' in his lifetime, and that it should be 'seized'.

However, he rejected its recommendation for a new family justice service, in favour of a Family Business Authority (FBA) to implement a plan to modernise family justice.

Wall said: 'I am persuaded that setting up a family justice service as what would amount to a new independent bureaucracy outside HMCTS, whether to bring coherence to the family justice system or negotiate funding with HMCTS, would not be cost-effective, nor would it benefit family justice in the long term.'

He said the FBA, which is the decision-making part of the HMCTS board for family justice, has already been set up at 'virtually no cost' and will begin immediately to introduce some of the other changes recommended by the review.

It is a counterpart of the Civil Business Authority and the Magistrates Business Authority and operates within HMCTS and the existing framework agreement between the Lord Chancellor and the Lord Chief Justice.

The FBA will be chaired by the most senior HMCTS director with responsibility for family justice, and will 'help me lead a cultural change', Wall said.

He continued: 'I believe this approach builds upon what is presently happening within HMCTS and amounts to a more realistic and cheaper means of achieving the objectives set by the review.'

Meanwhile, in a speech to family lawyers at the Collaborative Family Law Group, Supreme Court justice Lord Wilson of Culworth, gave his 'unalloyed support' for the collaborative process and other methods of resolving family disputes outside the court process.

He said: 'Collaborative family law offers various mechanisms of dispute resolution which, in most cases, will much better serve the interests of the parties.'

Both judges also warned of the consequences of the government's proposed legal aid cuts.

Wilson said: 'Tonight I publicly join the chorus of so many others with intimate knowledge of the family justice system who are urging the government to think again.'

He said: 'The government's proposed withdrawal of public funding of legal advice even for parties who have no chance of being able to purchase it for themselves is, at a superficial level, entirely understandable given the present economic emergency.'

But he added: 'It would actually be a false economy. Without legal advice, more private family disputes would end up in court; without legal representation, the hearings of them would take longer; and, without assistant legal navigators, the trial judges would more often be blown off course so there would be more appeals.'

In his speech Wall described the proposed removal from the scope of legal aid of nearly all private law family work as a matter of 'considerable anxiety'.

He said it was essential that parents and children retain the right to good quality legal representation, and warned of the 'myriad' of litigants in person who will come before the courts if the proposals go ahead.

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