

Rhetoric, reviews & reality

David Allison berates the uneasy alliance of family politics & law

When I was elected as Resolution chairman in March the political parties were fighting to be elected. In my speech to the Resolution national conference I warned then that political parties offered “puff rather than progress” and failed to engage with the reality of family life in the UK.

Six months on, and with Cameron and Clegg at the helm of a coalition government that few had predicted, the rhetoric around family law remains far removed from the reality for families facing the consequences of severe and far-reaching cuts. Meanwhile the family law profession is grappling with a series of government reviews which promise to fundamentally alter the system in which justice is done.

Let me start with the rhetoric. We have been told that “strong and stable families are the bedrock of a strong and stable society”, a taskforce has been set up by the prime minister to put “strong, stable and loving families at the heart of British life”, and the coalition document contains a laudable sentiment to keep family disputes out of court.

I doubt any family lawyer would disagree that strong and stable families are an essential part of social health and stability. But we also know that family breakdown is a fact of modern life and the family justice framework must be about achieving constructive and lasting outcomes when relationships do break down. Families come in all shapes and sizes and the desire to promote family life must not be allowed to stigmatise those families which do not fit the traditional mould.

Then there are the reviews. The family justice review, the legal aid review, and the inquiry into the family courts are just a few examples, and, of course, these are all part of the wider comprehensive spending review expected next month.

Resolution welcomes the opportunity to “think big” about the kind of family justice system our clients want and need and we are encouraged by the attention given to alternatives to court and parent information as part of the family justice review.

However, what is clear is that saving money is a primary driver for the review panel. At the oral evidence session we attended along with the Law Society, the Family Law Bar Association and the Association of Lawyers for Children, the chairman of the review panel, David Norgrove, told us bluntly that there was no point in raising anything that required additional resourcing because spending on family justice would undoubtedly go down.

While in the current climate cuts might be inevitable, I struggle to see how this can square with the government’s stated objective of putting “strong and stable families at the heart of British life”. Frankly the government must put its money where its mouth is.

There is a danger that the drive to reduce spending and increase efficiency will result in a narrowing of the gateway to court to such an extent that those who need the court’s input or protection cannot access it. The changes to the legal aid system

areas of work outside of the scope of legal aid entirely.

What is being ignored in all the various reviews is the need to reform the substantive law (presumably because the government is concerned that this will cost). It is a scandal that the last government failed to act on the Law Commission’s call to reform the law for cohabitants and a scandal that the current government will not now act to help the many thousands of people who cohabit outside of marriage and instead continues to stigmatise those families.

The substantive law on divorce is also in urgent need of reform. It unnecessarily sets people against each other from the outset and fails to encourage agreement, forcing people to blame each other before the process even begins. The culture change which is necessary to promote alternatives to court will not be achieved without changing a law that requires couples to make allegations of fault.

Conflict

Whatever changes are made to the family justice system or legal aid, without real family law reform distress and conflict will



“What is clear is that saving money is a primary driver for the review panel”

are bound to result in a reduction in the number of solicitors carrying out legal aid work so that the most vulnerable or needy cannot access their help.

Struggle

Legal aid lawyers are struggling with the outcomes of the recent civil bid round to determine contracts for delivering legal aid from October 2010. Although the full picture is not yet known, we are hearing worrying reports of advice “deserts”, where clients will have to travel long distances to reach a legal aid lawyer, and reports of losses of specialist practitioners on vital issues such as domestic violence and public law children work.

If the immediate picture for family legal aid looks unclear, its long term future looks even more uncertain. The outcome of the legal aid review could bring drastic changes to the family law landscape taking certain

not be minimised. Review of processes in isolation from the law is simply inadequate. Distress and conflict will not be reduced without the removal of fault based divorce and the introduction of a legal framework for cohabitants to protect them and their children and facilitate the making of agreements between them.

We understand and accept the need to make efficiency savings. We appreciate and respect the rhetoric coming from our new government about the importance of the family. But we do not accept that simple solutions, hastily introduced with the hope of making quick financial savings, will deal with the reality of family life and family breakdown.

NLJ

David Allison is chairman of Resolution, the family lawyers association & is a partner with London based Family Law in Partnership. E-mail: dna@flip.co.uk