

It's not fair!

30 JULY 2014

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It may seem odd to some that Withers bemoans the loss of Legal Aid for virtually every aspect of family law — true our clients were not the beneficiaries of the system — those with little money themselves having to turn to family friends and/or commercial lenders. Then why do we mention it? The answer is that it affects the Court and the Judges as the Division has to deal with the ever increasing number of people who have no choice but to go it alone — to prepare their own documents and come to Court without representation. We question if this is fair? It hits people who are at rock bottom. We are supported by a specialist library, collections of specialist notes, case histories, access to specialist barristers, taxation experts, translators and accountants, our own specialist support lawyers and still questions arise to which there appears to be no certain answer — this is particularly so with the burgeoning weight of European law. So how can someone without that panoply of specialist equipment be asked to complete documents correctly in accordance with the legislation and rules — know what a fair settlement looks like — and present their case appropriately when there is no agreement? Believe it or not lawyers do help their clients to find a solution to their difficulties without the need and cost of a formal judicial Court case — that is the goal. Conversely the Courts are having to accommodate an escalation in the number of cases about children and money in which one or both of the 'litigants' have no lawyer with them. The burden of sorting out 1) the pertinent facts, 2) the relevant arguments, 3) the necessary documentation and valuations — falls on the Judges. This has the inevitable result that Court appointments are extended (or there have to be more of them) and the 'system' is struggling to cope, which affects everyone in the family law world. Increasingly, diktats are being sent down with the aim of formatting documents; reducing paperwork the Judges read; limiting oral evidence and endeavouring to micromanage the Court process generally. The aim is laudable — to reduce the burden of work the Judges face, to try to streamline the process and so speed it up for everyone — but where will it end? The Bar Council presented its preliminary findings from a major survey conducted to assess the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012: a high proportion of those surveyed felt that LASPO had impacted on access to justice; an overwhelming 80% of respondents who worked in the family courts reported an increase in delays; 88% reported a significant rise in the number of litigants-in-person; and 61% noted an increase in the number of lay clients who said they had difficulty in accessing legal advice and representation. We know that the Court system is not what it was Petitions take much longer to issue. Agreed financial Orders are similarly held up for weeks. Documents filed are mislaid or do not get to the appointed Judge in good time. Everyone from the Head of the Division downwards is trying to improve the service but we are left with the feeling that there is a tsunami of cases out there building up which threatens the (in many ways welcomed) reform process. Reforms take time to bed in. Delays will hopefully improve, efficiency will hopefully increase.....but not for all, and there lies the travesty.