

Family Court In The Act

Perceptions of the law have always varied throughout British history; Queen Victoria was arguably one of the first women to embody the concept of Girl Power with her legislation to protect wives and free them from their proprietary status and Oliver Cromwell was seen by many as a legal reformer who fought for their freedoms. In every aspect of British history, the court system has often been viewed as the engine for change and the Family Courts today are now very much a part of that engine.

Yet today, a truly sinister perception of the Family Courts has emerged: that Britain is witnessing a revival of the Star Chamber where justice is being stifled and courts no longer offer a safe-haven for people to protect themselves and their children. They have become instead a battleground for conflicts of interest and the misuse of discretion. Justice has been relegated to an afterthought.

The Family Courts are also blighted by an entrenched public loathing; with minimal funding and levels of competence at an all-time low, trying to get a fair hearing is like trying to get hold of one of those snazzy new designer gowns the judges are all wearing (well, they're very popular at this time of year, what with Halloween coming up). Other problems include mixed up sets of rules and guidelines for these courts. These include the old rules for court procedure (Family Proceedings Rules), combined with the Civil Procedure Rules and the new laws slowly being put into place, the first of which is the Family Procedure (Adoption) Rules 2005 (at some point to be unified with other rules under the Family Procedure Rules and which will replace the Family Proceedings Rules). That's an awful lot of mixing and matching so it is no surprise then, that the practitioners in the system are themselves confused, but the anarchy caused means that ultimately it is the family that gets caught up in these Acts.

If you have a good lawyer or sit before a sensible judge, you might be spared the nightmare roller-coaster ride that the Family Courts offer but if like most parties who come to court, you find yourself either un-represented or unsure that your best interests and that of your family are being represented, to arm yourself with a knowledge of how the Family Courts work is the most effective way of establishing your right to a fair trial.

So, what are the Family Courts? And are you ever likely to find yourself inside one?

The Family Courts make up what is now known as the Family Division, which was created in 1970 to give matrimonial matters a clear and defined identity in the court system. These courts deal with family related issues such as divorce, contact, adoption and abuse (child abuse and domestic violence for instance) as well as analysis of medical treatment cases . You might find yourself making an application to these courts if you are getting divorced or cannot decide on the best arrangement for your children once you separate or you may find that the local authority has taken your child into care and you need to come to court to decide the future of your family.

Most court proceedings will start off with someone filing a form; in divorce proceedings for example, this form is called 'Petition for divorce' and it is usually filed with the appropriate court by the person who wants the divorce. Forms are designed to give the court information on what it is you want by way of relief or help and what areas of the problem you would like

the court to focus on (unfortunately the court will not grant you permission to dangle your meanie of an ex over Tower Bridge until he's sorry). Once forms are filed they then become part of a timetable so that the forms can be processed as quickly as possible and everything should be filed within a specific time limit. The reality today is that the courts are very back logged and as a result, your hearing (which is your chance to go before a judge to have your case heard) may not take place for many months. For children in care, social services may go to the court to ask them to issue Orders in relation to the child in question.

You might be advised to go to mediation. Mediation is just a way of sorting out disputes that might arise between family members either after separation or in relation to children and involve a trained mediator who will sit with you and your family or spouse and help you come to a solution that you are comfortable with. This process may even prevent you from having to go to court in the first place.

This can be a positive way forward and does help some families but this form of communication does not always work for everyone, especially where one person is uncooperative or hostile.

The Family Courts in their current state are not the ideal venue for families; the lack of heart in the system and the less than urbane treatment people experience means that ultimately the courts can cause more problems than were there to start with. However, the courts are beginning to acknowledge that maybe their adversarial approach is not the most effective way forward and now, the closed nature of the hearings is being reviewed to give us all more confidence in the system.

For many years the Family Courts have been criticised for being closed, secretive courts and slowly but surely, they are beginning to respond. In July 2006, the government set out a Consultation Paper entitled "Confidence and confidentiality: Improving transparency and privacy in family courts". This paper invited views from children on how to make the courts more accessible. The Paper concluded that more media involvement should be allowed but there were of course restrictions on the type of reporting and the types of cases that could be exposed. (On the 20th June, 2007, the follow up Paper to the July 2006 Paper then clarified the types of cases that would be reported and how the public were to access that information).

Still, one thing is clear: legislation is the key to unlocking the courts and making them open and accountable, which at the moment they are not. The Family Court has been caught in the act, but how long will it be before they can act effectively for our families in court?