

# THE JUSTICE PAPERS

The Bar Council

**The dismantling of access to justice:  
the loss of expert witnesses in the family courts**



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My previous experience as an expert witness frequently provided much-valued evidence to those charged with making fundamental decisions about the lives of children and their families. When those rulings are about the permanent separation of children from their parents, it is essential that the court has the best evidence to inform its decision making. But a decade ago, the financial earthquake happened, funding cracks appeared, and the government determined that expert knowledge was expendable.

Amid the financial chaos and subsequent austerity measures that ensued, families became significantly impacted by precarious employment, reduced access to public services and a rise in mental and physical needs. As a result, we have witnessed an unprecedented rise in the number of children coming into care, and successive governments have promoted the use of targeted figures to increase the number of children adopted. Drastic funding cuts of 50 per cent from local authority budgets have eradicated services within our cities and towns. Many local authorities have a shortfall in the number of social workers they require, and too many are over-reliant on newly qualified staff. Against this backdrop, family courts are busier than ever, but the sources of expertise to ensure a full interrogation of the evidence has been depleted.

At the time when families find themselves subject to care proceedings, life will likely have been very stressful, and there will be evidence of concern about children's well-being. The judicial process requires parents, who are already struggling, to demonstrate

their ability to improve their parenting, while engaging in an adversarial process, 'a fight,' to keep their family together. Thus, parents who are already under stress will have to factor in multiple appointments with social workers and other professionals, while simultaneously having to understand and respond to legal procedures. Too often this will be a recipe for failure. We should always remember that decisions to permanently remove children from the care of their family, have a multi-generational impact on the child and leaves an indelible scar on all members of the family.

As a previous expert witness, I know the times when my experience and skill at assessment meant a court decided children could remain living within their families. On occasion, this also meant that siblings were not separated from each other. In one matter, the proposed plan had been for one child to remain in long-term foster care while the younger two siblings were to be adopted individually. Instead, the court had sufficient evidence before it that allowed it to determine the children could grow up together with a sense shared belonging. Today, and for the last decade, similar courts have been constrained, limited in their ability to access such expertise. Today, those children might not have remained together. Both children and families involved in care proceedings rely on those of us with the expertise to assist the process. On a macro level, it is about access to social justice, and at a private level, it is about being able to safely share your life with your brothers, sisters, mum, dad, aunt, uncle, and grandparents. It is simply about our government providing funds to communities that can support families to thrive.