

SEEKING THE FRIENDLY FACE OF JUSTICE: COMMUNITY ASSISTANCE IN THE FAMILY COURT¹

Prof S Burman is the director of the Centre for Socio-Legal Research; and Ms L Swanepoel is a researcher in the Centre for Socio-Legal Research at the University of Cape Town

BACKGROUND

After more than fifteen years of anticipation, a Pilot Project Family Court has at last been established in Cape Town as one of five such courts throughout South Africa. The aim of the Court is to provide urgently needed judicial services to families at a reasonable cost, treating the family holistically by amalgamating the services of the divorce, maintenance, family violence and children's courts. To date, however, only the divorce section of the Court as envisaged has begun operation.

The idea of a Family Court has been on the table ever since the first Hoexter Commission (1983) reported, although there has been much disagreement as to quite what form the court should take. However, throughout the two Hoexter Commission reports (1983; 1997) and the various Department of Justice policy papers and speeches on the proposed court, one theme has persisted – that of ensuring that the court is user-friendly.

Quite how this was to be achieved was not spelt out in any great detail. The first Hoexter Commission recommended 'that special attention should be given to the lay-out and interior appointments and facilities of the family court. Well-appointed waiting rooms, offices in which interviews may be conducted, and child-care facilities are essential at a family court. At the reception centre of the family court there should be a sympathetic and informed receptionist on duty' (1983:529). The Second Hoexter Commission (1997:136) added the recommendation that free legal advice on family matters should be provided to the public at the Family Court reception centre and at circuit sittings, for which 'the Family Court should make use of the services of legally qualified volunteers from recognised legal clinics and (should they in future be required to perform community service) the services of newly-qualified legal graduates performing community service.' The Department of Justice concept document included in its vision statement that the court should be sensitive to the needs of the community and should offer counselling and mediation support services. It recommended that the Family Advocate's Office (responsible for safeguarding the best interests of the children in all divorce cases) should be involved in setting up these services, and added that 'NGOs which want to provide support services should be encouraged to do so and should, where possible, be allocated a room in the court building in which they can work. Mediators, social workers, psychologists, lawyers, paralegals and university students might all be involved in providing support services' (Department of Justice 1997:3-4). It has, however, been left to each Pilot Project court to put these suggestions into practice.

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The Centre for Socio-Legal Research is monitoring the Family Courts of the Western and Eastern Cape. The former began operations in January 1999 and the Centre has to date reported on its initial eight months of operation (Burman, Dingle & Glasser 1999). It has not, however, discussed in detail how the pivotal premise of a user-friendly court is being implemented. This article, based on detailed monitoring at the Court, is an examination of how that interface between the community and the court has materialised in practice. It assesses how far the blueprints have been followed, discusses the problems that have arisen, and makes a preliminary analysis of how the varying expectations and cultural norms of the roleplayers mediate the effectiveness of the arrangements.

THE HELPDESK

Of the recommendations listed above, very few have been followed. The Minister of Justice was finally forced to establish the court in pilot project form as a result of increasingly vociferous public pressure and despite a lack of finances, expertise, or adequate preparation (Goldblatt 1997). There are no waiting rooms, well-appointed or otherwise, and no offices in which interviews may be conducted. The Court is so short of space that neither of the two clerks has an office, being forced to find desk space in the court room or in the Helpdesk Office when the court is in session. There are no child-care facilities of any kind, nor even a carpet on the floor of the corridor in which clients wait and where their babies crawl. Nor is there a reception centre of the type envisaged, directing the public to the various sections of the court or officials of the court, and no 'sympathetic and informed receptionist' is on duty. Counselling and mediation support services remain merely a dream at present, as does free legal advice that makes use of 'the services of legally qualified volunteers from recognised legal clinics and ... newly-qualified legal graduates performing community service' (Hoexter Commission 1997:136). All this is hardly surprising, given the fact that the Pilot Project has been given no budget at all, its staff being either seconded from other posts in the Department of Justice or paid in temporary donor money renewed from month to month. Even the files the court uses have to be begged from the Magistrate's Court. However, despite this disadvantage, a way of enlisting assistance for the public has been found: the idea of volunteers assisting with advice has been combined with the recommendation that NGOs provide support services. The result is a new creation – the Helpdesk.

This amalgamation was first suggested indirectly in 1998. A Steering Committee had been set up for each Pilot Project, and the Western Cape Steering Committee put forward the idea of an 'information desk manned by organisations working in family related matters and relevant services to provide adequate information on services and remedies available, by providing the necessary support services' (Western Cape Family Court Pilot Project Steering Committee 1998). From early in the planning for a Helpdesk, it became clear that the national policy aiming to use professionals, or even civil servants, had perforce been discarded in the light of financial realities. This enforced shift meant that a very different service was to be offered from that envisaged by the national policy planners, with consequences described below.

It was left to the Presiding Officer of the Cape Town Pilot Project Divorce Court to bring the Steering Committee's vision of a Helpdesk into existence, despite the absence of funds. Consultations were held with, inter alia, the Senior Family Advocate and certain of her staff, with volunteers from the Black Sash Advice Office (the longest-established advice office in Cape Town), and with the co-ordinator of the lay assessors from the Magistrate's Court in Athlone, a largely lower-income area. Meetings were called with paralegals and community workers from Athlone and Mitchell's Plain (another mainly low-income area), many of whom were already

running 'information desks' from their homes. They were asked whether they would assist in setting up a Helpdesk, and it became evident that people from the community would be willing to participate if certain requirements were met. Two of these were training for the volunteers and a separate office for the Helpdesk, rather than a desk in the Court corridor, as initially envisaged by the Steering Committee (Interview, EB 27 October 1999).

Selecting potential trainees proved more problematic. Four interviews, each of a different group of seven people, were held with paralegals, lay assessors, and community workers from Athlone and Mitchell's Plain, but from these only six people proved suitable for training. The remaining 16 volunteers were found more informally by contacting organisations such as the ANC Women's League and asking for suitable and interested people to undergo training. They were recruited from different backgrounds and no prior formal legal or other training was required. It was intended that a person with suitable skills should also be obtained to act as co-ordinator, but this proved unexpectedly difficult and the appointment was delayed for several months. It was at this stage that the Centre's monitoring of the Helpdesk workers began.

MONITORING METHODOLOGY

As it was essential to assess how the volunteers interacted with members of the public and handled diverse personal and other enquiries, a research assistant currently completing a Master's degree in Research Psychology was employed to monitor the training of the volunteers and their operation at the Desk. She attended all sessions in the training week, during which she interviewed a number of the volunteers informally. As the volunteers then began work at the Desk in pairs, each pair of volunteers was monitored as often as possible, which necessitated various adaptations in schedule as the pairings changed over the period. Monitoring began on 22 February 1999, directly after the training week, and ending on 1 October 1999, with the monitor present throughout at least two days each week and each pair of volunteers monitored for a full week three times. A future extension of the project will involve in-depth interviewing of clients and volunteers to obtain their views of the process, and monitoring of the interaction between volunteers and the newly appointed co-ordinator.

The basic aim of the monitoring was to observe how the Helpdesk as a whole was contributing to making the divorce court more accessible and user-friendly to the public. In order to assess this, we set out to observe whether clients' queries were handled in a friendly, empathetic, intelligible and speedy manner. We also attempted to assess factors contributing to accessibility to the Desk for members of the public before they actually sat down before a volunteer. The data have been further analysed to see how far it was evident that service providers and clients were operating from similar or differing expectations, and with what results.

It was intended that monitoring should take the form of observation from the sidelines but in practice it rapidly became participant observation to an undesirable extent. As a Desk Co-ordinator had not yet been employed as envisaged, and with the rest of the Divorce Court staff having to deal with their own heavy workloads, the monitor found herself frequently and pressingly requested to assist with most of the tasks intended for the Desk Co-ordinator. This resulted in practical problems as well as problems of objectivity during the first few weeks of monitoring. Having to deal with enquiries from both the volunteers and members of the public resulted in time being spent in resolving their own difficulties instead of observing the volunteers in action. As volunteers slowly became more familiar with their duties, this obstacle was overcome.

THE TRAINING COURSE

The training course for the volunteers was held over the week of 15-19 February 1999, being organised and co-presented by the Presiding Officer for 22 participants. These came from both the coloured and black townships of Cape Town, bringing with them the differing cultural norms and linguistic skill found there. An additional 16 people arrived at the training venue on the third day, most of whom had learnt about the course from acquaintances and hoped that payment would be forthcoming. The venue was not equipped to deal with more than about 25 people and was very overcrowded. The Presiding Officer explained to them that ideally only 20 people could be accommodated on the course and suggested that the newcomers leave their names if they wanted to be contacted to take part in a later course. As a number did, this may alleviate any shortage of staff in the near future.

From the first the Presiding Officer emphasised that it would not be the duty of the volunteers to counsel, mediate or give legal advice, but to know where to refer people in search of these services. She also stressed that the Helpdesk would be the first step in assisting people to obtain a divorce, and that those who did not approve of divorce should not be involved in the project, as the aim was to assist the public and not to impose the personal beliefs of the volunteers on those seeking assistance.

Although legal representatives may – and do – appear in the Family Court, an aim is to enable those with simple cases to obtain a divorce without legal representation. The course covered, in inevitably superficial manner, presentations and discussions on the varieties of marriage in South Africa – civil, customary and religious – listening skills and ways in which to detect whether mediation would be appropriate, although participants were cautioned against attempting to mediate themselves. They were also briefly shown how to complete the divorce forms, but this proved to be far from adequate preparation for what was to be their main task at the Desk. Indeed, even though for the first fortnight the Clerk of the Court assisted the first clients each day while volunteers observed the process, it took a considerable time before volunteers were generally able to handle document queries adequately.

The general reaction to the course was of enthusiasm and anticipation of putting into practice what had been learnt, although the dryer aspects of the law were clearly not entirely grasped. Similarly, it proved difficult to persuade the volunteers that counselling and mediation were not part of their role: many imagined that they would be assisting clients to resolve their personal problems by these means, especially as dispute resolution in township community rhetoric and practice revolves round such methods (Burman & Schärf 1990; Roberts 1979).

THE HELPDESK IN ACTION

Infrastructure

On 22 February the Helpdesk began operation. It had been allocated one large office with three desks, originally intended for the two volunteers and a Desk Co-ordinator. The two volunteers on duty each sit behind a desk, assisting members of the public with queries and to complete divorce documents. As the desks perforce are close together and are not separated by any partitions, volunteers and clients have no privacy while discussing queries. Partitions have been repeatedly requested by the Presiding Officer but did not materialise during the period in which monitoring took place. Another consequence of the lack of budget is that even basic stationery is in such short supply that volunteers have to provide their own pens, and scrap paper has on occasion had to be used to make copies of divorce forms, resulting in confusion as to which side of the paper is relevant for the Court.

Social Work/Maatskaplike Werk 2000:36(2)

As there is no waiting room, clients have to wait their turn either in the actual office or outside in the corridor. Both options create problems. If clients sit inside the office, this contributes to the already existing problem of lack of privacy. When clients wait outside in the corridor, other problems arise. Since the courtroom is adjacent to the Helpdesk office, people waiting to appear in court also wait in this corridor. Most are not aware of the structure and procedures of the court, with the result that they respond to any call from a volunteer for the next person requiring assistance. This tends to result in a flood of people arriving at the Desk, many of whom, it is subsequently discovered after much waste of time, are only waiting to appear in court.

A new Clerk was appointed at the end of June to issue summonses. As no other space was available, she too was allocated a desk in the Helpdesk office. This resulted in people waiting in the corridor for three different services, which further aggravated the problem of people arriving at the inappropriate Helpdesk. In an attempt to remedy this, it was arranged that people who wanted summonses issued should wait inside the already crowded Helpdesk office, while people waiting to see the volunteers and to appear in court should wait in the corridor, but this had the unfortunate effect of increasing the lack of privacy.

A further problem is that of people jumping the queue for Helpdesk assistance, which gives rise to considerable anger in the corridor. When people waiting for the Clerk to issue summonses also waited outside the office, the animosity was even worse: people did not realise that two separate services were being conducted in the Helpdesk office and could not understand why someone who had arrived after they did would be called into it before they were. On some days people may have to wait for as long as three hours for assistance, and if a person enters the office without having waited in the queue outside, people sometimes become aggressive and follow them into the office, vociferously demanding fairness. A simple mechanism, such as a ticket machine for each queue, is urgently needed to defuse this situation, and would also enable the staff to monitor how many enquirers they assist each day.

Unfortunately, various unauthorised or ignorant sources have provided the Registrar's name to many enquirers, and there is no sifting mechanism to discover why they arrive requesting him by name. They frequently wait for several hours outside his office before they discover that he is not the appropriate person to see. This further raises the level of aggression in the queues in the corridors. The need is for a reception desk from which people can be directed to the appropriate source of assistance and control the queues, but there is no reception desk and the personnel of the Court are so overstretched already that nobody is available for this purpose.

Working hours and partners

Initially it was decided that, although two volunteers staffed the desk on a daily basis, one of the pair may arrive late so long as at least one volunteer was at the desk between 09:00 and 15:00. However, the unexpected popularity of the Court soon made it obvious that these hours were too short and that both volunteers were required most of the time. Indeed, often the Helpdesk was obliged to begin operating at 08:00. The hours were subsequently extended officially to 08:45 to 15:45, but in practice the Helpdesk is often so busy that the volunteers begin at 08:00, continue through their lunch hour, and work well past the official closing time.

At first the pairing of the volunteers was based simply on the idea of ensuring that each one of the three major language groups (English, Afrikaans and Xhosa) was represented at the desk on any given day. Some problems arose because not all the individuals were able to work well together for personality reasons. Others required different partners so that the pair had suitable linguistic or other skills. The problem was addressed by reallocating partners, but it does demonstrate the need for a pool of trained volunteers on which to draw.

THE TYPES AND MANAGEMENT OF QUERIES RECEIVED

Documents

The most common request is for assistance to complete the divorce documents. This entails either explaining to the client how to complete the documents at home or assisting the client to complete the documents at the Desk immediately. It is also necessary to explain to the client what other documents should be returned to the Desk together with the completed forms, and where to get the necessary revenue stamp and replacements for missing certificates. The volunteers usually write a list of these requirements for the client and try to anticipate the most common problems, thereby saving clients considerable time.

At first volunteers were inclined to instruct clients what to fill in instead of explaining procedures to them, with unfortunate results. The divorce summons includes a section in which the client should indicate desired property, custody and maintenance arrangements. This section will determine the outcome of the divorce to a great extent and should therefore be completed in detail and with care. Some problems arose when clients did not fully complete the form. For example, often clients would suggest paying maintenance for their children and write down an amount without indicating that they were actually offering to pay this amount. This would create confusion for the defendant because, if nothing were added to this prayer except an amount, it would suggest that the plaintiff was asking for maintenance instead of offering it.

Completing the reasons for the break-down of the marriage resulted in different problems. When a client felt hurt or angry, he or she would usually want to write down all the details leading to the break-down, and volunteers initially encouraged clients to do this. Unfortunately, this sometimes resulted in people insisting on defending the matter, not because they disagreed with the prayers, but because they disagreed with the details set out and wanted an opportunity to explain their side of the story. It was therefore suggested that volunteers advise clients to keep the reasons as brief as possible.

As trial and error teaches both the court officials and volunteers how best to handle the issues together, the services of the volunteers are slowly relieving the court officials of some demands on their time. An example is seen in cases of substituted service, which is necessary when a client does not know the whereabouts of the spouse. Initially such clients would be referred to a clerk for assistance with the necessary formalities, but the requests for his help were so frequent and his workload so heavy that volunteers had to be trained to handle such cases. To make this easier, and in consultation with one of the volunteers, the Registrar drew up a standard application form for a request for substituted service, and it was about to come into use as the monitoring period ended.

In some instances, however, there is relatively little volunteers can do for clients. People often approach the Desk, not to enquire about how to obtain a divorce, but about procedures to follow after being summonsed by a spouse. The volunteers can assist with the necessary form-filling in such circumstances – with a Notice of Non-Defence if a client indicates that he or she is in agreement with everything stated in the summons, or with a Notice of Intention to Defend where the client disagrees with the summons – but, beyond that, volunteer assistance is perforce limited. Clients wishing to defend the divorce action were initially referred to the Legal Aid Board or to an attorney of their choice, but many clients cannot afford an attorney, and since October 1999 the Legal Aid Board no longer assists in divorce matters. Consequently volunteers were advised to inform each client of a third option, namely that of discussing the matter with the spouse and trying to reach a mutual agreement without involving a third party. It is in such cases that the assistance of legally-trained volunteers and mediators would be invaluable.

Third-party enquiries

Sometimes people ask volunteers for information or a set of divorce forms for a friend or family member. At first volunteers assisted everyone who approached them, but it soon became clear that some people were using this information and the Court's documents to charge other people for assistance. Clients would approach the Desk with a set of typed divorce documents and say that they had paid R350 to get the documents drawn up after responding to an advertisement in the newspaper – documents which they could have obtained and been assisted in completing at the Helpdesk free of charge. One specific community worker often accompanied members of the community to the Desk during the first few months of its operation. Only after a while did the volunteers realise that she was also charging for her assistance. As soon as volunteers became aware of this problem, they informed the Presiding Officer of the situation. She advised them to assist only those clients who needed information for themselves, and to refer anyone else to her or the Registrar. It is clear that, however defective the Helpdesk may be in its present form, it is saving the public from exploitation by various operators indulging in sharp practices.

Another type of third-party enquiry is that from attorneys and community workers who come to the Desk to ask about divorce procedures, because members of the public with such queries often approach them for information. A Catholic welfare organisation from Elsie's River, a low-income area, approached the Presiding Officer about the fact that many of its clients could not afford to travel to Cape Town (some 20 km) to complete divorce forms at the Court. The Presiding Officer therefore asked volunteers to explain the forms to workers from this organisation. Unfortunately, forms subsequently brought back to the Desk by the workers were often still not completed correctly and had to be sent back to the clients, creating delays. From the Helpdesk volunteers' experience, it is clear that a period of supervision is necessary for trainees.

Property

Clients often ask for advice relating to proprietary matters. Initially the complications of marriage in and out of community, division of property, and forfeiture of the benefits of the marriage defied any formulation of simple rules of thumb for the volunteers to use in dealing with cases, with much consequent waste of time in rewriting forms. However, as time passed and volunteers became better acquainted with divorce procedures, including legal terms, they spent more time making sure that clients understood the options of 'division' and 'forfeiture'. In doing so, clients were given an opportunity to think about what they wanted and to consider their options, making sure about their choices. However, as stressed above, volunteers are not trained to give legal advice, and therefore cannot assist clients in resolving property disputes nor give informed advice about all the options available to them. Access to such advice, free of charge, is needed if the Court is to serve all sections of the community, as intended.

Maintenance

While completing the divorce documents, clients often ask for guidelines regarding how much maintenance they should request or how much they should offer to pay. Volunteers do not attempt to advise clients about an actual amount, but do advise them to be reasonable and to take into account income and expenses of both parties, if necessary discussing the matter with the spouse. Should a client prove obdurate, volunteers were instructed not to put pressure on him. Nonetheless, it would seem that outraged feelings do sometimes overcome them, and they have been observed on occasion lecturing a father about his financial responsibilities towards his children and persuading him to increase the amount.

As personal maintenance for wives is in practice performed usually confined to wealthier members of the community, the divorce form does not include a prayer for it. However, on some occasions, when wives indicated that they had no income, or where they specifically asked about personal maintenance, the volunteers would advise them to ask for it in the prayers, thereby providing additional assistance for hard-pressed women.

Custody and Access

Custody is usually agreed upon or taken for granted by the time clients approach the Desk for a divorce, but sometimes one party indicates that he or she wants to 'fight' for their children. On occasion, too, cases occur where it has been agreed that the mother will retain her *de facto* custody of the children but she wishes to prevent the husband seeing them unless he pays maintenance he owes. Under such circumstances, volunteers usually remind clients to keep the best interests of the child in mind. Although by law it is not obligatory for clients of the Family Court to fill in an Annexure A form (which ensures that the Family Advocate reviews the provisions made for the minor children of the marriage), the court officials believe that the Family Advocate's protection for children is valuable. They have therefore instructed volunteers to inform clients that an Annexure A document should be completed and sent to the Family Advocate's Office whenever children are involved. In those instances where clients indicate that both parties will be seeking custody, volunteers advise the client that this will inevitably necessitate an inquiry by the Family Advocate's Office. It has happened on occasion that clients suggest that they want to fight for custody because they do not want to pay maintenance or because they want to keep the house and believe that it will be allocated to them if they have the children. Occasionally, too, even where these motivations do not apply, the threat to fight for custody may be used as a bargaining counter with the other party, with a wife's withdrawal of a maintenance or property claim demanded in return for dropping the custody fight. However, when it is brought to the parties' attention that the Family Advocate's Office will investigate the matter, these clients usually change their minds and indicate that the children may go to the other spouse. It is clear that more children are receiving protection as a result of the Helpdesk's instructions than the current law would necessarily afford.

The Helpdesk's role in this regard is not confined to safeguarding the children in a fight between the parents. In some instances clients indicate that they would prefer joint custody. As there is considerable scepticism among the Court officials and Family Advocates about the chances of parents successfully agreeing on decisions after divorce when they could not do so while still married, on the instructions of the Presiding Officer joint custody is usually discouraged by volunteers. However, if a client insists, as sometimes occurs, that an agreement to that effect has been reached with the spouse and that it is working well for them, the volunteer would encourage the client to write down the details of the arrangement.

Indeed, much of the volunteers' advice on custody is encouragement to the parties to set out full details in the divorce documents for the Family Advocate. For example, whenever a person indicates that the other spouse has a drinking and/or drug problem and it is undesirable for the children to visit or sleep overnight at the other parent if drinking is in progress, volunteers advise clients to write down as much detail as possible in both the summons and the Annexure A document.

Interdicts and laying charges

The Helpdesk also helps clients to obtain physical protection where they indicate that this is required. Many female – and a few male – clients complain about abusive relationships and often want an interdict against the spouse for the interim period before the divorce is finalised. These

clients are assisted to complete the divorce documents as usual and also referred to the Interdicts Office – either at Cape Town Family Court or to the Magistrate's Court nearest to the client's home.

Some clients mention sexual abuse, either of themselves or the children, and in cases where clients have not laid charges, volunteers suggest that the clients should consider doing so or discussing the matter with a social worker or an organisation such as FAMSA. Volunteers do not insist that clients should report matters if they prefer not to, but they always strongly suggest that clients should consider it.

Other matters

During training volunteers learnt where to refer people who approached the desk with queries concerning matters where no divorce was involved, or where personal or legal advice is sought. A list with the numbers of various organisations was made available to the volunteers shortly after the Desk came into operation and clients are indeed referred to these organisations, though usually only after all the circumstances of the case have been discussed, in order to make sure that the client actually wants and needs further assistance. Volunteers have found that often clients need only to discuss their grievances. Counselling skills would be very useful in handling such cases.

Cultural issues, language and communicating

Because all the volunteers are community workers in various ways, they are able to understand and assist clients from their knowledge of relevant circumstances, or to refer clients to other community workers from areas near home. Research has shown that of the clients finalising their divorces, 47.7 per cent are coloured people, 11.7 per cent are black, and 40.5 per cent are white, but observation revealed that very few of the Helpdesk clients tend to be white, probably as most of them could afford to have lawyers fill in their forms. However, as the two volunteers on any given day can between them speak the three major languages, clients always have the choice of being assisted in their home language. The issue of ensuring that clients can communicate freely with the Helpdesk in the language of their choice is taken very seriously by all, from the Presiding Officer down, as demonstrated by the occasion when a deaf man approached one of the volunteers for assistance. It was established that a sign language interpreter was required. After consultation with the Presiding Officer, this was arranged for the following week, with the Regional Office of the Justice Department paying the interpreter's fee. As clients frequently need to discuss intimate matters, being assisted in their home languages and by a volunteer who is familiar with their cultural beliefs assists in making the Court less intimidating. That the volunteers are successful in this can be seen not only in the effusive thanks of many clients, but in the way they often reinforce their thanks for friendly and efficient assistance by subsequently bringing the volunteers things to eat, one client even arriving with a whole cake for one of the volunteers.

All volunteers attach great importance to good listening skills, about which they were taught at their training course. While listening to a client's discussion of personal problems, they are usually very keen, attentive listeners, but on occasion the need for more training in this area becomes evident. Sometimes, at the beginning of a session, they tend to pick up only a key phrase and then assume that it covers all the client's needs. When a client, for example, approaches the Desk with a summons from his or her spouse, volunteers often take for granted that the client wants to defend the matter. This is not always the case: clients sometimes want to indicate that they are in agreement with the contents of the summons.

Similarly, problems sometimes arise when volunteers do not express their own meanings with sufficient clarity, such as the occasion when a volunteer was assisting a client who was prepared to give up her half share in the house if her husband, after his death, left the house to their son. As the client had been married for more than twenty years, the volunteer suggested that she reconsidered this decision. The volunteer did not express himself clearly and the client thought that he wanted her to reconsider the divorce. Both were objecting to what the other was saying without actually listening to what was being said. This carried on for some ten minutes, with both volunteer and client becoming increasingly impatient and agitated. The monitor eventually felt obliged to intervene and explain to each what the other one was trying to communicate. It is questionable whether the volunteers' very sporadic stints of duty at the Helpdesk will be sufficient to remedy the communication deficiencies outlined above without further ongoing training.

Intervention by volunteers

Although the volunteers generally assist clients to complete the divorce documents after making sure that this is what clients really want, it has happened on a few occasions that they became too personally involved and, for example, tried to persuade a client to reconsider his or her decision. One such case occurred when an elderly Muslim asked the volunteers to assist him in obtaining a divorce. He indicated that he had been married to his wife for 43 years but that they had drifted apart and that it would be best for them to divorce. Both volunteers attending the Desk were free to assist this client and both tried to persuade him to discuss the matter with his wife before deciding to end a marriage that had endured for such a long period. Although the client made it quite clear that he had thought it through carefully and was sure that he wanted a divorce, the volunteers would not assist him in completing the documents, insisting that he discuss it with his wife first.

During custody and maintenance inquiries, volunteers often remind clients to bear the best interests of the child in mind, without giving specific advice. It has, however, happened that a less subtle response has been elicited. One of several such instances occurred when a client indicated that his wife was not fit to look after the children and that he, though willing, could not afford to do so. The volunteer became very angry and took it upon himself to lecture the client on parenting responsibilities.

Usually when both parties approach the Desk together, they have reached some sort of settlement agreement. However, this is not always the case, as sometimes they visit the Desk in need of assistance to resolve their disputes. In these instances the parties often argue with each other and disrupt the whole office, which highlights the need for mediation facilities.

PAYMENT FOR HELPDESK DUTY

Volunteers received very belated refunds of their travel expenses incurred during the training course, and initially received a payment of R100 per day for work at the Helpdesk. However, this has been reduced to R75 per day, as funds were not forthcoming. Volunteers are paid entirely from donor funds and, at the time of writing, volunteers have been warned that the future of funding for the Helpdesk is unknown beyond the end of 1999.

EVALUATING THE HELPDESK

In assessing how far the current Helpdesk approximates to the various blueprints outlined above, the primary evaluation must be framed in terms of the basic aim of establishing the Desk – that of making the Family Court more user-friendly to the general public. In this it has patently

succeeded, as indicated by the many spontaneous thanks and little gifts of food showered on the volunteers. However, given the dread with which most people view a visit to a court, especially in the trying circumstances of a marriage disintegration, does such gratitude indicate that the Desk provides more than some amelioration of the grimness of the path through the thicket of divorce proceedings? If it is asked whether the Desk could be more effective, it becomes clear that it leaves much to be desired.

The overriding factor in this deficiency is the total lack of any allocated budget. As has been shown, this has affected every aspect of its existence: the type and source of staff recruited, their training, infrastructure, and mode of operation. It may be argued that the professionals originally envisaged as providing the Helpdesk services are beyond the finances of any but a First World country, and that only the most basic knowledge of a few legal factors are needed at the Helpdesk as it is at present constructed. Whether it would be more time and cost effective to construct the desk differently is in present circumstances of purely academic interest. In the future possibly volunteers with legal, counselling, or mediation training could be recruited for as many days as possible, but there are likely to be difficulties in constructing a rota to cover every day of the week. This could be a particular problem should clients not be able to afford to return whenever the expert volunteers are available. However, much could be done to improve the current volunteers' services. Such basic infrastructure as a reception desk and a ticket machine to control the queues outside their office would assist greatly, not to mention some screens and basic stationery. Ongoing training in communication skills would also contribute greatly to their effectiveness.

Above all, a guaranteed budget from which to pay them more than a ludicrously low daily allowance would help increase their incentive to continue the work even when the novelty wanes. This will become especially important if employment opportunities become more numerous, enabling them to command greater amounts than the current payment. Unless Helpdesk work comes to increase volunteers' status in the community, there will be little reason for them to continue, beyond the warm feeling from knowing that they are doing necessary – if sometimes unappreciated – work. Additional training in the necessary skills, possibly with certification at the end, would act as an added incentive and help increase their status in the community.

The Helpdesk as it currently exists is essentially the result of varying and frequently conflicting expectations and agendas. It was created from political necessity as one of the main defining differences of the new Family Court, but without the commitment to fund it adequately to provide necessary training or conditions of service. The volunteers serve it, at least partially, to serve the community as counsellors and also for payment. The clients' expectations vary from wanting only a friendly ear to expecting the efficient, speedy and professional services expected from a law firm. Only a steady and guaranteed source of funding can reconcile these diverse expectations. Indeed, a basic question which the Helpdesk raises is what can be done to ensure that institutions founded on civil society's willingness to work for idealistic motives do not collapse when current idealism inevitably dims as the new South Africa ceases to be a novelty. The Helpdesk is a prime example of an institution that is patently needed and will be for the foreseeable future, but is perforce operating on so shaky a foundation that it is unlikely to survive – at least with its present semi-trained and increasingly experienced personnel – unless the situation is remedied. Should it not continue, a crucial feature of the Family Court will vanish with it – that of a genuine community commitment to bringing to the court system a recognizable and friendly face.

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